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"TRADE UNIONS IN CONTRACT LABOUR SYSTEM: AN INDIAN PERSPECTIVE"

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ABSTRACT

Contract labour system refers to the arrangement where the worker is not directly employed by the principal employer for whom the work is done, rather he is employed by an intermediary known as a contractor to perform job for the employer. It is seen to be economically and financially feasible for seasonal employment. Since they are not regularized workers, the job security is much lesser. The Contract Labour Act, 1970 was introduced with the objective of abolishing this system when it is necessary and to provide security to the contract workers. There is laxity in terms of its implementation because a large number of establishments are still not registered as per the requirements of the Act, prevalence of multiple overlapping steps of adjudication which burdens the contract labour and makes it impossible for enforcement of their rights.

Trade Unions for employees are formed in order to represent the collective interests of the people it represents. The objective is to provide representation to its members and increase the bargaining power of the workmen. The operation of trade unions for furthering the rights of contract labour is on a murky ground because they are not regularized workers who are controlled by the principal employer. Rather they are under the authority of the contractor who

is a third party. These results in impacting the representation that would've received if they were regularised workers.

This paper focuses on the lack of legal framework for the purpose of representation of trade unions for contract labour, the competing claims of employers and contract labour by highlighting the inadequacy in the Act of 1970 and evaluating this system through the lens of economic theories followed by the suggestions to remedy the same. The data is secondary and the research methodology used is doctrinal.

Key words: Contract labour system, trade unions, social security, collective bargaining, dispute resolution, efficiency

INTRODUCTION

With the advent of industrialization, the labour structure and relationship between employers and workmen has witnessed significant changes. Increase in technology resulted in loss of jobs and increasing expectations from employers for higher productivity and efficiency from the employees and the urge to earn higher profits. This meant structuring the labour in such a manner so as to reduce expenditure and decrease the liability owed to them. In India, contrary to the workplace set up in the early days before the imperial rule where the relationship was familial, the contract labour system began in the late nineteenth and early twentieth century. One of the reasons was due to the inability of the British to understand the nature of Indian labour which made it difficult for them to recruit and coordinate with them. This was due to certain social and religious practices in the society at that time, with which they were unfamiliar. In order to solve this, they decided to delegate the responsibility of recruiting labour to a third party who functioned as a middle man. This intermediary performed the job of visiting local and places and searching for workmen to reduce the shortage of labour. The system became advantageous to the employer because the intermediary controlled the labour and hence the liability shifted on him to pay the wages. [1]

The contract labour system became more prominent in the last decade of the twentieth century as shown by a study conducted by the International Labour Organization. The study related to a sample size taken from the public sector which showed that about 20 to 40 percent of the workforce was contract labour and in certain industries such as construction or public work the

[1] HS Pandey, *Contract Labour and Social Security Legislation in India* (Vol.36 No.2, Journal of the Indian law Institute 1994).

number was almost double the regular employees. This meant contract labour was preferred in the type of jobs that were mostly short term and seasonal in nature. This study also highlighted the reasons of adopting contract labour and this was mainly due to-

1. Lower wages which is payable to them when compared to the regular employees
2. Non- payment of benefits and perks
3. Flexibility for the employer due to the shift of liability and since social security need not be provided
4. Extraction of more work because they are vulnerable
5. The ability to employ labour in bulk at a lesser cost[2]

Through this it can be concluded that the situation of contract labour is vulnerable when compared to the regular workers in an establishment which necessitated the regulation of this system of employment. The discussion towards this was initiated in the second five year plan by the planning commission which recommended that there must be studies conducted to assess the situation of contract labour in the country. It was further brought up at the tripartite committee discussions with inputs from the state government. It was realized that the abolition of contract labour in all the sectors would not be feasible because of the flexibility and financial advantages it offers. Therefore, it was decided that it would be abolished wherever it was not necessary according to the appropriate government or the condition of contract labour would be regulated and improved by enacting provisions that restrict the employers from abusing them. With this objective, The Contract Labour (Regulation and Abolition) Act, 1970 and the Rules of 1971 were enacted. [3]

The framework of the Act focuses on regulating the system by mandating registration by the employers where more than 20 workmen are employed on a contract basis in the preceding twelve months and licensing to the contractors to ensure there is transparency in the manner of recruitment and proof of employment when it comes to claim of wages by the contract labour and to prevent sham contracts. However, there are many establishments which fall within the ambit of the act but they are not registered due to the laxity in the procedure of implementation.[4] In such a scenario where in the job security is at stake which directly impacts the social security of these workers, it becomes important to create an effective mechanism through which their interests are represented and the grievances are redressed in an efficient manner. This was also

[2] Bagaram Talpule, *ILO Initiative on Contract Labour* (Vol.32 No. 35, Economic and Political Weekly 1997).
[3] HL Kumar, *Labour and Industrial laws* (11th Edition Volume 1, Lexis Nexis 2020).
[4] Debi S Saini, *The Contract labour Act 1970:Issues and Concerns* (Vol.46 No.1, Indian Journal of Industrial Relations 2010).

one of the reasons which led to the formation of trade unions during the British period itself. However, the nature of trade unions has witnessed significant changes over the years. This is because during the time of independence the country, its policies were based upon socialist principles which further changed in 1991 to liberalization and this had a bearing on the functioning of trade unions and its impact. Hitherto, the trade unions had developed on a national scale with affiliation to political parties because protection of workers rights was a major part of the independence struggle. But post the New Economic Policy, due to increased expectation on the management to increase productivity it was urged that the trade unions be specific to a particular enterprise in order to ease the process of collective bargaining.[5]

This paper focuses on the issues faced by contract labour and the role trade unions play in mitigating the same. The positive and negative aspects of the contract labour system and trade unions through economic theories are considered with an objective of enumerating an efficient system and dispute resolution mechanism.

IMPORTANCE OF COLLECTIVE BARGAINING

Collective bargaining refers to the negotiation of labour issues through a body of members rather than an individualized claim with the objective of achieving a mutual settlement. This is possible due to the recognition of the right to form associations as granted under Article 19(1)(c) of the Indian Constitution and ILO Declaration on the Fundamental Principles and Rights at Work.

In India the process of collective bargaining has been in practice since the First World War because it was used by the textile workers of Ahmedabad through the Textile Labour Association and the Mill Owners' Association. However, the labour legislations focus on adopting the tripartite system of dispute resolution rather than direct negotiation through collective bargaining. This becomes difficult in practice especially in private enterprises where the state cannot be made a party as required by the tripartite method. Even though the law puts emphasis upon this, the method of collective bargaining has been used widely in practice especially by trade unions. Direct negotiations with the employer through trade unions ensure that there are speedy settlements. The trade unions that are formed exclusively for one

[5] JS Sodhi, *Trade Unions in India: Changing Role and Perspective* (Vol.49 No.2 , Indian Journal of Industrial Relations 2013).

particular enterprise tend to have stronger collective bargaining power rather than a general trade union that functions on a national scale or across various industries.[6]

There existed a notion that collective bargaining only had minimal influence over the industrial relations because the agreements that were formed between the parties as a result of this was bilateral in nature which made it privy to the parties. The court in *Poona Mazdoor Sabha vs GK Dhulia*[7] stated that since these are private agreements they fall within the purview of contracts rather than industrial laws itself. Therefore, in order to make it a valid contract as per labour law the Industrial Disputes Act was amended in 1956 and 1965 to introduce the process of registration of collective agreements entered into with the conciliation officer to make it legally enforceable.[8]

Collective bargaining aims at arriving at a decision that satisfies the claims of employer and employees with respect to the conditions of work and wage pursuant to which an agreement is formed stating the terms of the settlement. It is necessary for employer-employee relationships to pre-exist for this process to occur.[9] This is an issue for contract labour because there is no direct relationship between the principal employer and the contract labour due to the presence of an intermediary. If there is no relationship of employer-employee vinculum juris, the collective bargaining process becomes far from possible.

In order to clarify the relationship between employer and contract labour certain judicial precedents must be considered. In the case of *Secretary, Haryana State Electricity Board vs. Suresh and Ors*[10] it was held by the court that the true test to determine the relationship of employer and employee when a person is supplying goods or performing services to the business of another, is to ascertain '[W]whether he has economic control over the worker's subsistence skill and continued employment.' The case further stated that:

> The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil and looking at the conspectus of factors governing employment, we discern the naked truth, though draped in a different perfect paper arrangement, that the real employer is the management and not the immediate contractor.

[6] BR Patil, *Collective Bargaining and Conciliation in India* (Vol. 12 Indian Journal of Industrial Relations 1976).
[7] 1956 (2) LLJ 319 (Bom HC)
[8] ibid 6
[9] V Vijay Durga Prasad, *Collective Bargaining: Its Relationship to Stakeholders* (Vol.45 No. 2, Indian Journal of Industrial Relations 2009).
[10] 1999 (3) SCC 601

In the case of *The Director of Steel Authority of India Ltd vs. Ispat Khandan Janata Mazdoor Union*[11], it was held by the court that the control lies in the hands of the principal employer only after the labour is assigned to him by the contract labour. It is the contractor who chooses whether a particular job and employer must be assigned to a contract labour. Therefore, the ultimate control with respect to the assignment of job and the time period for which labour will work lies with the contractor. The supervision shifts to the hands of the principal employer only after the contractor allots the job. The primary power lies in the hands of the contractor and the secondary control lies in the hands of the principal employer.

The conclusion that is derived from these cases is that the primary control over the contract labour is in the hands of the contractor before the labour is assigned to the principal employer. Post the work is assigned the power of supervision shifts to the hands of the principal employer if the economic control lies in the hands of the employer and if he dictates the terms of the work done by the contract labour. It is necessary to determine the control over the contract labour because the claim and the conciliation process depends on this because the parties to the negotiation is decided through this and against who the claim of the contract labour must be made.

Certain other challenges for collective bargaining for contract labour is that they are scattered in various establishments which makes it difficult for them to be organized under a particular trade union. There is also a distress that they might lose their job if they become a part of a trade union. They are not included within the union of the regular employees which creates a separation and hence they are not a part of the collective agreements that are entered into between the trade union of regular employees and the management.[12]

RECOGNITION OF TRADE UNIONS AND ITS RELEVANCE TO CONTRACT LABOUR

Trade unions are governed by the Trade Unions Act of 1926. The objective of the Act is to provide for the registration of trade unions and to define the legal provisions which apply for the same. The Act under Section 2(h) defines trade union to mean combinations of persons whether formed temporarily or permanently for the purpose of regulating the relationship between employers and workmen, workmen and workmen, employers and employers. It is to

[11] AIR2019SC3976

[12] Ratna Sen, *Unionization and Collective Bargaining*(Vol 47 No. 4, Indian Journal Of Industrial Relations 2012).

be noted that the Act allows for the formation of trade unions for a temporary purpose and for a limited period of time. Recognition of trade unions is necessary because it is a precondition for the negotiation to take place. The employer must recognize the validity of a trade union within an enterprise for it to function in a valid manner and for the dialogues to take place with respect to the terms of employment and other allied concerns. If the trade union is not recognized by the employer then this is not possible. The Act per se does not provide the process for the recognition by the employers. However certain states have enacted rules for governing the same. However an amendment was proposed to Section 29(2) of the Act to incorporate the provision about recognition in 2018.[13]

In the case of *Balmer Lawrie Workers' Union and Ors. vs Balmer Lawrie and Co. Ltd and Ors*[14] the court has stated that when there is an establishment with many trade unions representing the interests of the workmen, it is necessary to provide recognition for one of the rival trade unions in order to improve the industrial relations. The presence of many trade unions decreases the harmony in the workplace because of a divide in the claims of each of them, all of which cannot be conceded to or negotiated by the employer. The Chairman of National Commission of Labour, Justice Gajendragadkar has said that a sole bargaining agent is essential to maintain industrial peace and the trade union which represents the majority number of workers must be recognized. This means that even though there are multiple unions, the one that represents the majority will be recognized and it will represent all the workmen which is in tune with the industrial democracy. The case further stated that this process of a recognized trade union is not against the right to freedom of speech and expression because this doesn't prevent the unrecognized unions from forming a body and raising concerns. Hence it is not inferior. However, recognized trade unions are conferred with some rights, duties and obligations which is not so in the case of other minority unions.

The recognition of trade unions is important with respect to representation of contract labour because a body formed solely to advance their claims would be a minority trade union in an establishment which will get overshadowed by the majority union and since recognition will not be provided, it creates a tough space for negotiations with the employer. Lack of continuity in the employment of contract labour in a particular industry renders it difficult to form a separate union for such labour in any establishment. Hence, it becomes advantageous for the

[13] Vinay Joy, 'India: Proposed Amendment on Recognition of Trade Unions- Trade Union (Amendment) Bill 2018' (*Mondaq* 10th September 2018)
https://www.mondaq.com/india/Employment-and-HR/732550/Proposed-Amendment-On-Recognition-Of-Trade-Unions-Trade-Union-Amendment-Bill-2018, (accessed on 15th April 2020)

[14] AIR 1985 SC 311

contract labour to be represented and subsumed by the trade union that represents the regular workmen of the establishment. However, the probable disadvantage of this is that the interests of the contract labour will be subordinated to that of the regular employees mainly because of the repeated changes in the people who are employed on these terms.

DISPUTE RESOLUTION OF CONTRACT LABOUR

Section 2(k) of the Industrial Disputes Act 1947 defines the term 'Industrial Dispute' as- 'It means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non- employment or the terms of employment of with the conditions of labour, of any person'. The term workman is defined under Section 2(s) of the Act as 'Any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied'.

A conclusion drawn after a combined reading of these two provisions is that an industrial dispute is between persons where employer-workman relationship subsists and a workman is a person who is employed by an industry for certain monetary consideration and it includes an apprentice. Therefore, an industrial dispute can be raised between persons who are 'employed' by the industry. The definitions indicate that there must be a direct relationship between the employer and workman in order to raise an industrial dispute. This makes the position difficult for contract labour because there is no direct relationship between them and the principal employer and hence it does not come within the purview of industrial dispute.

The Contract Labour Act, 1970 provides for the definition of contract labour under Section 2(b) as any person who is employed by a contractor with or without the knowledge of the principal employer. Under Section 2(i) of the Act, workman is defined in the same terms as the Industrial Dispute Act and it excludes managerial, supervisory and an out-worker. Under Chapter 7 of the Act, it states that inspectors shall be appointed by the appropriate government for every local area and such inspector has the power to enter any premises and examine whether the provisions of the Act have been complied with. Section 6 of the Act states that registered officers are appointed by the appropriate government for local areas in order to monitor and execute the licensing and registration requirements of the contractors and principal employers as prescribed in the Act. Therefore, this legislation aims at decentralizing the implementation of the provisions by appointing separate authorities to implement it. However,

it does not dwell into the procedure through which the contract labour can raise their claims and the procedure for resolving it such as the Industrial Dispute Act. Since the definitions provided under the latter legislation are restrictive there is an ambiguity with respect to whether contract disputes can be redressed under it.

In the case of *Gujarat Mazdoor Panchayat vs State of Gujarat*[15]The court considered the ambit of industrial dispute as provided under the Industrial Dispute Act to be broad enough to include any dispute between an employer and workman and it is stated that the provision is comprehensive as such to include even disputes of abolition of contract labour. However, post the enactment of the Contract Labour Act of 1970 these types of disputes were removed from the Industrial Disputes Act and included within this legislation. To the extent of abolishing the contract labour system as per the conditions provided under Section 10 is brought within the ambit of Contract Labour Act. The determination as to whether there is an employer- employee relationship is still a dispute that is not covered by the Contract Labour Act and it comes under the Industrial Dispute Act. Furthermore, the case has stated that there can be two situations that arise. Firstly, when it is proved before the court that the contract was a façade and the veil is pierced to show that the direct supervision is exercised by the principal employer which proved that there exists an employer-employee relationship and brings it under the Industrial Dispute Act. Secondly, the scenario where it is proved that there is a genuine contract between the contract labour and contractor, who exercises the ultimate supervision over the labour which brings it under the purview of the Contract Labour Act itself. In conclusion, if a dispute has to be raised under the Industrial Dispute Act it must be proved that the contract is a sham and the direct supervision is exercised by the principal employer. Concerns of contract labour who are under the supervision of the contractor needs to be looked into by the Inspector as provided by the 1970 Act. If such an inspector is not appointed in every local area due administrative lag by the appropriate government there is no monitoring authority or platform for the contract labour to raise concerns. The non-formation of a representative union is a further detriment to this void.

[15] (1991) 2 GLR 1354

INSIGHTS FROM INTERSECTION BETWEEN LAW AND ECONOMICS

Employment of labour and economics has a direct correlation both at the micro and the macro level. The emergence of legal techniques to remedy the situation of exploitation of labour pre and post the Industrial Revolution and the prevalence of feudal system without any legal regulations persisted. The relationship of master and servant, wherein the latter was bound to work even against the will, through absolutism and policing was prevalent. The concept of capitalism emerged and the theory of Karl Marx to counter this through class struggle so as to achieve absolute equality. Consequently, legal methods were adopted to remedy the situation of inequality and there was a change in the system of labour contracts.

Philip Lotmar's work named as 'The Labour Contract' which was released in two volumes 1902 and 1908 provides a detailed analysis of the legal aspects of labour contract. During Lotmar's time period there was no legal theory of labour contract as such and the inequality in the society provided a favorable area to bring in further clarity. He stated that labour contracts could not be accurately studied with the help of only laws and jurisprudence since any contract is formed as a result of the facts that lead to it. Through his work he recognizes the inequalities between workmen and employers and conceptualizes the nature of labour contracts into fairly large categories which includes service contracts and other contracts such as that between a patient and a doctor or a lawyer and his client without much differentiation.[16]

Sinzheimer, also a German legal scholar further tried to narrow down the broad definition provided by Lotmar and he stated that there are two prominent characteristics of a labour contract namely subordination of one party to another and medium of exchange of remuneration or the like for work done. Lotmar further stated that the labour contracts are governed by 'collective autonomy' which is independent of the positive law made by the state and rather than treating such contracts as private between the parties, labour contracts were to be treated as a collective agreements in the sense of extra-state law rather than the positive law of the state which is categorized as 'legal pluralism' in terms of sociology. Max Weber's analysis of Lotmar's work further provides us insights into the nature of state and extra-state laws by analyzing the empirical validity of both social norms and positive law.[17] These ideas

[16] Michel Choutu, *Max Weber on the Labour Contract: Between Realism and Formal Legal Thought* (Vol. 36 No. 4, Journal of Law and Society 2009).
[17] ibid

hold relevance to the present discussion because the labour system was recognized to be a type of contractual obligation in the 18th century itself with mutual exchange as a characteristic. Further, it existed even when positive law was not as well defined as the present day as a part of sociological norms formed by the society itself categorized as extra-state laws. Contract labour system and subcontracting developed as variants of the same.

With the emergence of Institutional Economics, the various structures in society was studied as institutions keeping in purview the sociological aspects and human behaviour as relevant considerations, contrary to the analysis of previous economists who did not consider this. Thinkers such as Karl Marx followed by Veblen and JS Mill saw social change as a result of change in the methods of production through conflicts between existing power structures and the developing new systems. Veblen recognized the 'evolutionary economic process' and the role that the legal system plays in eliminating the differences and conflicts in the social system. In the post-war period, thinkers such as Ross and Myers recognized the role of collective institutions and unions as economic institutions, a key part in fixing wages and influencing the behaviour of the workers under an imperfectly competitive system. Around the 1960s the New Institutional Economics developed with the ideas of Ronald Coase who provided the concepts of transaction cost in the system of economic exchange in his article 'The Theory of Social Cost.' Transaction cost refers to the additional cost which occurs in a transaction due to imperfect information available also known as information asymmetry. On a small scale this cost can be eliminated because of proximity of contracting parties, but this increases the cost of production. In production at economies of scale, there exists information asymmetry between the parties that increases the transaction cost.[18]

The theories of Institutional Economics are relevant because it analyses the collective groups as institutions that are affected by human behaviour. The Contract Labour System can be categorized as an institution that is influenced by the behaviour of the principal employer, the intermediary and the contract labour. There is a problem of information asymmetry in this set up because the goal is to minimize the cost of production and the hiring of such labour is not concentrated in small groups of workers and principal employers. The amount that is paid to a labourer by one employer may vary to another even though the nature of work is similar depending on the demand for labour and the geographic area of work. The contractor in certain situations in order to protect his interests or for other considerations may agree to employ the

[18] Gerry Rodgers and A. R. Kemal, *Institutional Economics, Development Economics and Labour Economics with Comments* (Vol. 31 No. 4,The Pakistan Development Review, Papers and Proceedings PART I Eighth Annual General Meeting of the Pakistan Society of Development Economists Islamabad Winter 1992).

labour with a particular principal employer even though it might not be in the interest of the labour. Owing to the transitory and volatility of the labour in this system and the respective interests of the contractor and principal employer that do not coincide, there is a high degree of information asymmetry and transaction cost. While the contract labour system has its own advantages such as decreasing direct obligation of the employer, it increases transaction cost owing to multiple parties who have objectives that do not coincide. In order to mitigate this, the contractual terms must be laid down in specific terms so as to ensure that the gap in information is bridged and hence reducing the cost of the transaction.

Agency theory is another concept that explains the relationship between principal and agent. In order to explain the theory, Alchian and Demsetz in their paper 'Production, Information Costs, and Economic Organization' illustrated four people who were employed to lift certain materials and load it into the truck. In order to check whether these four persons are performing the assigned task required a fifth person must be employed to oversee their job and this person will be designated as manager and will also be remunerated for the same. Further, in order to increase the business additional money can be borrowed by a lender and there is further supervision from their end in order check the performance of the business because the repayment of his credit will depend on its performance. This results in the formation of a firm and conceptually it results in capitalism.[19] If it was possible for just the four people to do the job accurately, the supervisor would not be necessary. But this theory states that it is not possible because there is an element of self interest in every human being as a part of nature itself which makes people not completely trustworthy. As a result additional manpower is necessary to oversee the work done by the workmen and this creates the hierarchical organizational structure that functions in a manner wherein one person is the agent of the principal.[20]

There are three main parts to the agency theory. Firstly, human behaviour is governed by self-interest and people focus on maximizing the same. Secondly, social interactions in society are a series of contracts that facilitates exchange. Thirdly, it is difficult to ensure that these contracts are performed to the complete extent due to transaction cost and information asymmetry and further surveillance also involves additional costs. The major criticism to this theory is that it focuses on the self-interest of the workmen because they can easily shift from one job to another and the employer might face adverse selection if the sills of an employee

[19] Armen Alchian and Harold Demsetz , *Production, Information Costs, and Economic Organization* (62(5), The American Economic Review 1972).
[20] ibid

are misrepresented, ignoring the power disparity between the two. However, it becomes important to understand the theory since it highlights the hierarchy and division of work as well as provides a base to understanding certain other theories such as the Human-Relations theory which casts an obligation upon the employer to use the power in a just and a humane manner. Agency theory further states that in scenarios where the interaction between employer and employee is minimized, and people are employed for short term the self-interested behaviour increases.[21] This occurs with respect to contract labour because firstly they are engaged to perform jobs that are for short term and secondly they are employed for lesser duration.

The By-product Theory of Labour movement is another economic theory that criticizes unionization of workmen by stating that it increases the rent seeking behaviour. This is because the basic objective of forming a union is to change the firm's policies in favour of the employees which are akin to lobbying. Any worker who participates in the union is motivated by self-interest the benefits accrued to him while the collective good is only a by-product. It states that collective bargaining ignores the public good because the motive is to bring in legislations that change the existing scenario in a particular firm and each participant is a part of the union due to personal benefits that would be accrued at the end of the bargaining process ultimately subordinating public good and increasing the rent seeking behaviour. [22] However, even though rent seeking behaviour occurs through unionization, the benefits of it exceed the negative effects of lobbying per se. This is because if unionization is avoided in the pretext of this economic theory, it will result in the subordination of the rights of the workmen because there is no other effective means through which their interests can be adequately represented. Since the benefits of unionizing exceed the cost which is borne by it, it is advisable to enter into such associations. Moreover, the argument that it decreases social good through lobbying does not stand valid because even though unions are formed to push towards the sole welfare of workmen, the employers will counter this by stating their claims and these results in collective bargaining to balance the situation.

The theories stated above essentially puts forth that the system of contract labour and moreover trade unions are inefficient in theoretical terms because it is not optimal in economic terms. However, the prevalence of the contract labour system cannot be eliminated due to the practical

[21] Charles Perrow, *Economic Theories of Organization Theory and Society* (Vol. 15 No. ½ ,Special Double Issue: Structures of Capital 1986)

[22] John H. Mangel, Charles D. Delorme, Jr. and David R. Kamerschen, *Alternative Theories of the Labour Movement* (Vol. 29 No. 3, Indian Journal of Industrial Relations 1994).

advantages. In order to make the system fairer and favorable in economic terms to the workmen, employers and the society certain principles towards reduction of transaction cost, information asymmetry and understanding the principles of agency from these theories can be adopted towards achieving efficiency.

SUGGESTION AND CONCLUSION

The Trade Union Act of 1926 gives more importance to the associations that are formed specifically to a particular establishment. The formation of internal trade unions is beneficial because these types of associations are well aware of the peculiarities of the establishment and the workmen they are representing. This is also beneficial for contract labour who are intermittently employed by the establishment since they can be subsumed by these internal unions that are recognized by the establishment. This enables the trade union to have the requisite information about the contract and also to ensure that the labour is not caught up in a contract system which is not genuine. Gathering information about the nature and terms of employment on ground becomes important before resolving the dispute and internal trade unions can do this effectively because they have access to the information about the terms of the labour contract and other ancillary details.[23] These advantages are absent if the workmen are members of a nation- wide external union due to information asymmetry.

However, there are certain constraints that are encountered by the operation of these internal trade unions as well. The above-mentioned suggestion of incorporating the contract labour within the trade unions that represent the regular workmen of an establishment is a viable option in case of an industry that deals with both perennial and seasonal work for which it engages permanent employees as well as contract labour respectively. In labour markets that deal only with seasonal work there is no fixed set of labour. For example, in the construction industry which employs the majority of contract labour the nature of work is always restricted to a particular time period and there is no scope for engaging permanent workmen since there is no perennial work. In such a scenario, there is no scope for formation of an internal union because of the continuous shift of the workmen from one contractor to another and subsequent being assigned to different principal employers in short intervals of time. This results in a

[23] Sharath Babu and Samina Nahid Baig, *Contract Labour (Regulation & Abolition) Act, 1970: Role of Trade Unions and Challenges* (Vol. 52 No. 1, Indian Institute of Industrial Relations 2016).

difficult situation for such workmen and their only source of redress is through the inspectors under the Contract Labour Act of 1970.

The construction industry is also divided into multiple lines of work of different nature such as brick laying, plumbing, carpentry etc. which allows for sub-contracting as well. The relationship in this is vertical and the welfare of the contract labour is dependent upon the patronage of the contractor. This feudal nature does not make it favourable for the formation of unions.[24] A possible solution to this is to encourage the formation of region wise trade unions that are localized to provide rolling membership for contract labour who are engaged in jobs that fall within the area. This mitigates the vacuum of lack of representation of such workers. The Contract labour Act, 1970 has enumerated the provisions for regulation and registration of contractors and principal employers through the system of licensing, but no such provision is given for the contract labour itself. Amending the Act so as to mandate the registration of workers who engage in such seasonal employment by a unique number and identification issued will ensure that there is greater transparency and a count of the number of labour who are engaged in such employment which also eases the monitoring process. One of the disadvantages of this sector of employment is that there is no proper statistics about the number of people engaged as contract labour in different industries. This information asymmetry reduces transparency and it makes it difficult to keep track of the social security that must be given to them. Documenting the details of contract labour and not just the contractors will help in streamlining the process of contract labour recruitment and it will also ease the implementation of the Act by the labour department. If this is implemented then the localized trade unions that can be formed for exclusively representing contract labour can document the details of the labour registered with them for a period of time and subsequently the movement of contract labour to different types of work and industries can also be tracked.

This will also ease the process of dispute resolution because even though the contract between labour and contractor is genuine and it does not come within the purview of Industrial Disputes Act, and there is no internal union to represent the interest of regular workers because there are none employed due to the seasonal nature of work, an agency in the form of regionalized contract labour trade unions can represent and espouse their cause through providing an opportunity for the labour to become its members. This will ensure that the collective bargaining system is utilized and the contract labour disputes can be resolved effectively.

[24] M.S Shivakumar, Yap Kioe Sheng and Karl E Weber, *Recruitment and Employment Practices in Construction Industry: A Case Study of Bangalore* (Vol. 26 No. 8, Economic and Political Weekly 1991).