

# ഇശൽ പൈതൃകം

ത്രൈമാസിക ലക്കം: 33

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## **Problems and Prospects of Contract Labour: Implications and Challenges for Trade Unions in BSNL.**

**Vinod P.K**

*The present paper is an analysis of the challenges and repercussions of the contract labour system and its various dimensions in the telecom sector especially on BSNL, a public sector company in India. The government of India as part of economic reforms and structural adjustments incorporated many changes in its political system. The bifurcation of Postal and Telegram Departments under the Department of Telecommunication (DoT) was one of them. All governments in the era of globalisation and privatisation employ casual labourers and thus it becomes the order of the day. The system of contract labour is highly beneficial for the government and other firms especially when they face grave economic crisis, but at the same time it affects seriously the labour culture and trade union activities in a country like India. The efficacy of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 is also discussed in this paper. The present study is based on primary data collected through interview and personal conversations with trade union leaders and contract workers and on secondary data collected through articles, journals, annual reports and websites.*

**Key words:** Contract Labour, Telecom Reforms, Trade Unions, Liberalisation and Privatisation.

## **Introduction**

During the second half of the twentieth century, world economies adopted drastic changes that brought significant deviations in administrative culture and labour laws in their national set up. The poor performance of the public enterprises as indicated by small profits or huge losses made the government to liberalise and reform their economic policies. To achieve flexibility in the management of work force, the employers began to search for cheap labour without compromising the essential skill required for mass production. It signifies the disadvantageous condition of poor labourer as it involves a significant degree of persuasion and unfairness. “Labour costs often become a significant amount directly influencing the bottom line performance of the company. To avoid disruptions and a certain level of unpredictability, many opt for contract labour rather than hiring permanent workers”. (Hanumantha & Pavitra, 2020).<sup>1</sup> The **Contract labour** is the labour of workers whose freedom is restricted by the terms of a contractual relation and by laws that make such arrangements permissible and enforceable. Their wages are less and the contract is more short term. “Although the trade unions have been trying to restrain the management from subcontracting jobs, the new tendency towards ‘neo liberal flexibilisation’ and its legitimization by state legislation will make subcontracting more popular and easier” (Mankootam, 2003, p.48).<sup>2</sup>

## **New Economic Policy (NEP)**

Government of India, followed a path of state controlled model of economic and industrial development. The public sector controlled major share of manufacture and the service sectors. The policy of protectionism followed by independent India had been blamed for the decline of industrial development in the country. In the wake of economic crisis, the government announced ‘New Economic Policy (NEP) characterized by liberalisation, privatisation and globalization (LPG). In the post-liberalisation period, labour reform was being given new meaning which implied the power to ‘hire and fire’ workers, and freedom to determine wages according to the market demand and supply (Rai, 2008).<sup>3</sup>

The government announced New Industrial Policy (NIP) on 24<sup>th</sup> July 1991 and subsequent amendments brought far reaching changes in the industrial sector of India. “The NEP dismantled the industrial licencing system that abolished the requirement of obtaining industrial licence from the government in all except five specified industries. These specified industries need to be regulated on account of environmental hazards, national security and social welfare.” (Kapila, 2017, p.90)<sup>4</sup>

The new policy package included several major measures, such as privatisation of public sector organizations, modernization and technological change, training of man power and upgradation of skills and the rehabilitation of sick industries. Mankootam (2007) opines that a key feature of industrial relations in India has been the confrontational relationship between employer, management and trade unions and the overwhelmingly dominated role played by the state through labour laws that restricted the flexibility of labour. (Mankootam, 2003, p.55)<sup>5</sup>. Employers started to adopt new strategies in recruitment, deployment and labour standards. Apart from contract labour, casualization of employment, retrenchment, Voluntary Retirement Scheme (VRS) are other methods to achieve flexibility in labour in domestic economic ecosystem.

### **Contract Labour: A Historical Perspective**

Contract Labour is a significant and growing form of employment practised all over the world since ages. These workers are hired on a temporary basis and are often paid lower wages than regular employees. The contract labour is labour which is not carried on the payroll and is not paid directly. It is usually divided into two categories viz. those employed on job contracts and those employed on labour contracts (Mamoria et al., 2004)<sup>6</sup>. The Second Commission on Labour (CoL) recommended that “organisations must have the flexibility to adjust the number of workforce based on economic efficiency” and that it is “essential to focus on core competencies if an enterprise wants to remain competitive” (The Report, Commission on Labour, 2002)<sup>7</sup>. Contract workers may perform a range of tasks, from manual labour to technical work, depending on the requirements of the company. The origin of contract labour can be traced back to

the emergence of the small scale industries which found it economically unfeasible or unviable to undertake all activities of production process themselves and therefore got some part of work done from workers hired through contractors.

The contract workers generally belong to the unorganized sector as they lack bargaining power. A contract labour is a person who is hired, supervised, contracted and remunerated by a contractor, who in turn, is compensated by the user enterprises. “The system of contract labour and outsourcing reduces government expenditure, offers tremendous opportunities for employment and allows the employers flexibility to choose what is best for them” (Tayal, 2002).<sup>8</sup> In India, different sectors of economy especially the industrial and service sectors employ more casual and contract labourers. The principal employer contractualise the work into pieces and get the work done by workers hired through the contractors.

### **Telecom Reforms and Contract Labour**

The telecom sector, the major contributor to the Gross Domestic Product (GDP) of our country has witnessed some significant developments in the post reform period. As part of India’s liberalization policy, the government introduced National Telecom Policy (NTP) in 1994 which paved way for opening the Indian telecom sector for both domestic and foreign investment. These reforms have intended to speed up the ‘ease of doing business’ and alleviating the immense financial stress infested the industry. This reform package contains both structural and process reforms. NTP-2012 endeavors to create an investor friendly environment for attracting additional investments in the sector apart from generating manifold employment opportunities (DoT, 2002).<sup>9</sup> Interestingly, one of the visions of the NTP is to promote creation of new job opportunities in the sector.

To overcome the hindrances of inflexible labour laws of India, the companies have found a solution by hiring contract workers in large numbers. Telecom stands out as one service sector with a high 46 percent share for contract workers. The employer maintains the right to retrench the workers, if business conditions demand it. In BSNL the term “contract labour” refers to the practice of hiring personnel on a contractual basis for particular projects or periods of

time rather than employing them as permanent. The jobs contracted out involve customer care, IT services, marketing and other operational duties, as well as the installation and maintenance of telecom infrastructure.

The contract workers began working under the department even before the formation of BSNL. At that time, they worked under a “casual system”. The casual labourers were selected through employment exchange or directly appointed by the Line Inspectors and Sub Inspectors of the telecom department. Majority of them were regularised later. But this system came to an end after the judgment of Hon’ble Supreme Court in Umadevi Vs State of Karnataka in 2006.

### **Casual and Contract Labour in BSNL, Kerala Circle**

Telecommunication is the oldest communication service provider of India, whose history is related to the British era in the 19th century, the first telegraph line was installed by the East India company (EIC) administration in 1851. Two separate departments for postal and telecommunication were coming into being after the division of Post& Telegraph (P & T) on 1<sup>st</sup> January, 1985. The formation of BSNL as a corporate public sector company on 1<sup>st</sup> October 2000 was one of the landmark events in the history of telecommunication in India.

In the post-liberalisation period, labour reform was being given new meaning which implied the power to ‘hire and fire’ workers, freedom to determine wages according to the market law of demand and supply. (Rai, 2008).<sup>10</sup>. Contractual production through sub-contractors popularly known as ‘multilayer contract system’ exists in almost all sectors of economy, it is comparatively low in the service sector. BSNL has adopted the casual labour system since 1980, i.e. during the initial stages of the telecom reforms.

### **The Contract Labour (Regulation and Abolition) Act-1970**

Contractual employment agreements at BSNL are governed by all applicable labour laws and rules in India. Employment terms and circumstances, such as pay, working hours, social security, and other benefits, should be in accordance with the law. The contractor or individual worker and BSNL negotiate the contract’s precise terms

and conditions. The Contract Labour (Regulation and Abolition) Act, 1970 was passed during the reign of Indira Gandhi to abolish and regulate the employment of contract labour in India. The system of contract labour is unavoidable in some crucial sectors of Indian economy. The contract labourers engaged by the contractors were exploited and denied many basic rights and privileges that were enjoyed by the regular employees directly appointed by the company.

The Contract Labour (Regulation and Abolition) Act 1970 is the leading force for the protection of the rights of huge work force of contract labourers in India in terms of working hours, wages and other conditions of service as enjoyed by regular employees. The object of the Contract Labour (Regulation and Abolition) Act, 1970 is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances. Wherever it is not practical to abolish the contract labour system, the Act provides for its regulation so as to ensure better service conditions and basic amenities to the contract labourers (The Act, 1970).<sup>11</sup> Section 1(4) of the Act provides that it applies:

- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labourer;*
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen* (The Act, 1970). <sup>11</sup>

However, it is provided that the appropriate Government may, after a notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification. Still, the implementation of the Act has been inadequate, leading to exploitation and abuse of contract workers. Apart from The Contract labour (Regulation and Abolition) Act there are many other legislations to protect their rights such as the Industrial Disputes Act, of 1947, the Minimum Wages Act of 1948, the Payment of Wages Act-1936, and the Employees' Provident Funds and Miscellaneous Provisions Act of 1952.



Central and State Advisory Boards are to be constituted to aid and advise the concerned governments. Registration of establishments before a Registration officer, is a necessary pre condition for employing contract labourers. Employers must declare the number of contract workers and the nature of the work they do. Rest rooms, toilets, drinking water facilities and canteens should be maintained to protect the health and security of the workers. The Act clearly mandates that only those activities which are “perennial” and “non-core” can be contracted out. But this provision is violated in majority of institutions including Bharat Sanchar Nigam Limited (BSNL).

### **Problems and Challenges**

The contract workers encounter many issues during their employment. They are not provided with basic amenities and genuine work environment. Job insecurity, under payment, long working hours without proper leisure time and refreshments are some of the burning issues not attended by the principal employer (BSNL) and the contractors. Their payment is often made in the second or third week of the month. They are not entitled to social and security measures such as health insurance, festival advance and festival allowances. They are not covered with any pension scheme as enjoyed by the regular employees of the establishment. All these have direct impact on their work efficiency and quality of life.

The contract workers are being exploited by the contractors as the workers are not aware of their rights. They have not been given any training or orientation which would have increased the efficiency and level of performance. Due to the temporary nature of work and fear of victimization, the efforts to form unions or associations were also discouraged. Article 39 in Part IV of Indian constitution (DPSP) reads:

- The State shall, in particular, direct its policy towards securing*
- (a) "that the citizens, men and women equally, have the right to an adequate means to livelihood;*
  - (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;*

*(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment” (Bakshi, 2003).<sup>12</sup>*

Thus the Constitutional provisions for economic rights under Art.39(a),39(e) and 39(f) are denied to the casual labourers. The miseries of contract labourers have multiplied after the introduction of outsourcing work in BSNL in 2020. The major areas of industrial disputes in the scenario of contract labour in BSNL are: delay in payment of wages and arrears in time, denial of festival allowance, low wage of unskilled labours, long working hours and high handedness of the outsourcing agencies. To satisfy their demands, the workers employ methods like ‘hunger strike, picketing, go-slow and stay-in-strike’-all these in turn, deteriorate the work environment that invites show cause notices and further agitations. The contractor cast aside the liability to ensure the welfare of contract workers on the ground that they are not the employers of the contract workers. Bharat Fiber (FTTH-fiber to the home) started in February 2019 is a unique technology being deployed by BSNL to deliver the high speed broadband. FTTH is fully outsourced to private franchisees. Many workers are shown as piece-rate workers to escape from the purview of legal coverage.

The provisions of The Contract Labour (Regulation and Abolition) Act 1970 and The Contract Labour (Regulation and Abolition) Rules 1971 were not followed in BSNL in its true spirit. This noncompliance with the Contract Labour Act and Rules is due to ineffective administration of the Act and due to negligence of the labour machinery in the state.

Every licence granted under sub-rule (1) or renewed under rule 29 shall be subject to the following conditions as stipulated by section 25(2) of the Contract Labour (Regulation and Abolition) Central Rules, 1971.

*“(iv) the rates of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum Wages Act, 1948 (11 of 1948), for such*

*employment where applicable and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;*

*(v) (a) in cases where the workman employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work.”<sup>13</sup>*

Where twenty or more women are ordinarily employed as contract labour, there shall be provided two rooms, of which one of them shall be used as a play room and the other as bed room for children under six years. As per Section 21(3) of the Contract Labour (Regulation and Abolition) Act, 1970,

*(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.*

*(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.<sup>14</sup>*

Thus it is clear from provisions of the Act, that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due. The Act also provides that the contractor shall supply adequate number of toys and games in the play room and sufficient number of cots and beddings in the sleeping room. Even though, the Contract Labour Act, seeks to end exploitation of contract labourers by providing equal

treatment, proper and habitable working conditions to all labourers without any discrimination. Further, The Second Labour Commission Report recommended that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years.

However, the Code considerably reduces the scope of protection against arbitrary retrenchment, closure, and lay-off. The employer requires government permission only if the number of employees is 300 or above as against the earlier benchmark of 100 workers. This means that large number of workers of the nation will be defenseless, which satisfy the vested interests of the hire and fire regime.

***Outsourcing and SLA in BSNL.*** A digital notification was put forward in 2002, which allowed workers to be hired as contract labour. Based on this, a high power committee was created to determine contract work, and in 2004, the "Job Contract" scheme came into place, which regulated the employment of contract workers and the terms of employment are defined by the out sourcing agencies as Even though it is against the provisions of the Contract Labor Act, the contract workers are often hired to do perennial work- such as creating bills, working as a peon, line man and helper. Officially, they are hired as sweepers, watchmen, etc, but their managers make them do non perennial workers covertly.

Instead of 26, contract workers were only permitted to work 13 days each month, and those over 55 years were excluded. Work hours were cut to 3 hours per day for individuals who couldn't work for 13 days, such as sweepers. Their continuity of service was broken since their working hours were cut in half. This effected their pay as well, which was cut down from an average of Rs.16,000 to 8,000.

This was further challenging by the austerity measures put in place in 2019 to deal with the economic crisis facing BSNL. As against the Job Contract Labour (JCL), the management introduced Service Contract Labour or Service Level Agreement (SLA) by which contracts would be given out to bidders, and contract workers would be massively retrenched through outsourcing. Despite the mistreatment

of JCL workers by the Management, the introduction of the new SLA poses an even greater threat to their rights. The Job Contract Scheme prioritised the worker's rights. Under JCL, even when contractors changed, the contract workers could work at the same place (Mundayoor, 2020).<sup>15</sup>

### **Unionisation of Casual and Contract Labours**

The unionisation of contract labourers at BSNL depends on a number of variables, including Indian labour laws and regulations, the policy of the company and other considerations. The Trade Union Act of 1926 allows the contract workers in India to establish and join trade unions. These unions are able to advocate for the rights of contract employees and engage in negotiations with employers on their behalf.

The Casual and Contract Labours Union (CCLU) was formed in May 1991, under the leadership of CCLU, the casual labours organised a 68 days' strike for achieving social security measures like Provident Fund (EPF) and Employees State Insurance (ESI). The management admitted the demand and the agitation was a great success. The union later changed its name as Telecom Casual Labour Union (TCLU) in 2001. With the support of the dominant BSNL Employees Union [BSNLEU(N)], the union made several successive interventions for the cause of casual and contract labours in BSNL. The BSNL Casual and Contract Labour Union [BSNLCCLU(N)] was formed on 15<sup>th</sup> March 2008 under the presidentship of V.A.N Namboothiri, the then president of BSNLEU(N). The union started agitations to implement minimum wage in the company. (C.M Vijayan, Personal communication, November 11, 2022)<sup>16</sup>.

BSNL Casual and Contract Workers Federation (BSNLCWF) which is affiliated to CITU is the national level organisation of the contract labourers. At present there is only one registered and recognized union operating in contract labour front in BSNL, Kerala.

### **Bharatiya Dak Taar Mazdoor Manch**

The BMS affiliated unions under the banner of the Bharatiya Dak Taar Mazdoor Manch launched agitations for the cause of the

Casual labour. The union organised a 'marathon dharna' in front of the Sanchar Bhavan at New Delhi, for more than 365 days. Simultaneously the association filed a case before the Hon'ble Supreme Court of India praying court intervention in to the burning issues raised. More than 1.25 lakh casual labour were regularized at one stroke.

### **Recommendations**

- The provisions of The Contract Labour (Regulation and Abolition) Act and The Contract Labour (Regulation and Abolition) Rules 1971 should be complied in its letter and spirit.
- To avoid the nepotism and other kinds of malpractices, Contract labours pool may be created from which the labourers may be selected.
- The principal employer should not remain as a mere spectator towards the issues of contract labours. Creative intervention from the part of labour department is also necessary in this regard.
- The contract labourer may be absorbed to the establishment as regular worker as and when a permanent vacancy arises.
- The contractors who are violating the licence agreements should be forbidden and his/her licence may be cancelled.
- Payment of wages and arrears, if any should be disbursed by the contractor and it should be ensured both by the principal employer and the labour department.
- Social security measures like Employment Pension Fund and ESI should be made available to all workers without considering the year of service.
- Victimization and retrenchment must be avoided or at least reduced to minimum to set up healthy industrial relations.
- All Possible efforts be made to increase regular appointment and make special recruitment/reservation for contract labours to these posts.

### **Conclusion**

The deregulation of Indian economy in 1990s requires the loss making public enterprises to manage their business purely on commercial lines. The policy of privatisation and disinvestment bring

an adverse effect on the rights of employees. The system of contract labour helped the industries to reduce their expenditure on labour capital at the expense of the rights of workers as it abandons the recruitment of regular employees. The contract labours are denied almost all the privileges including the casual leave that were enjoyed by the regular employees. Outsourcing has resulted in the reduction of wages by around 50 percent while the number of workers engaged has come down by 60 percent. The number of contract workers across the state has reduced to 25 percent after the introduction of outsourcing. The trade unions face great erosion of power in collective bargaining while dealing with labour disputes. The unions of contract labourers are now at a stage of extinction after the replacement of labour contract system with the system of outsourcing of labour. The problem of 'outsourcing' lies in the fact that it is not the worker but the work is important in outsourcing. The flux of casual and contract labour worsened the life situation of labour.

The government initiated various labour legislations like The contract labour (Regulation and Abolition) Act of 1970. The labour friendly provisions of the Act were not complied with by the contractors and at the same time the labour department keep the eyes closed towards the burning issues of the contract labours. The ability of trade unions to collectively bargain can be impacted by the use of contract labour. Contract workers may weaken the collective bargaining power of permanent employees if they make up a sizable fraction of the workforce. To ensure fair treatment and better working conditions, unions may need to come up with tactics to successfully represent and defend the interests of both permanent and contract employees. Unions may try to forge alliances and fight for the rights and welfare of all workers in light of the shared difficulties experienced by both permanent and contract employees. Unions may collaborate with other labour organisations and civil society organisations to strengthen their advocacy activities in the changing labour ecosystem of Kerala.

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