The Exclusion of Contract Workers from Trade Unions Constitutes Violation of Worker Rights

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Introduction

This paper, as is evident from the title, seeks to explore the rights of contract workers and establish that their exclusion from a trade union simply because they are contract workers constitutes a violation of their rights.

Given that the paper seeks to discuss the violation of contract workers' rights, it would be prudent first to establish what those are. Therefore, there is a preliminary discussion on the fundamental rights of contract workers guaranteed under various statutes, the obligations of the principal employer towards the contract workers as supported by multiple judgements, and situations where principal employers may be held liable for violating the rights of contract workers.

Subsequently, the paper will examine the provisions of the Trade Unions Act while examining judicial interpretations of the statute and the rationale and intent behind its enactment, with a specific focus on the principle of collective bargaining.[1]

Having established that unions are necessary for collective bargaining, the realisation of worker rights, and the fact that the principal employer has certain obligations towards contract workers, the paper will then argue that contract workers and regular employees share a commonness of interest. Therefore, excluding contract workers from this collective bargaining (i.e., unions) violates their rights.

Lastly, the paper will discuss the case of *Bellasonica Auto Component India Employees' Union v State of Haryana,* where the registrar cancelled the registration of a trade union because the union had admitted a contract worker into the union.[2] This will be used to highlight that the exclusion of contract workers from trade unions is a very real and concerning issue that requires judicial

[1] The Trade Unions of India, 1926

[2] *Bellsonica Auto Components India Employee's Union v State of Haryana, CWP-19451-2023*

intervention as soon as possible to safeguard the rights of these workers. In this manner, the paper will establish that **excluding contract workers from trade unions violates worker rights.**

Contract Workers: Who are they, and what are their rights?

Contract labour is a form of work wherein an employer enters into a contract to supply the workforce with a third party to fulfil the labour requirements of their enterprise. The former is known as the principal employer, and the latter is known as the contractor.

The benefits offered to a business by using contract labour are numerous; cost-effectiveness, flexibility of employment, fewer regulatory compliance requirements, etc., are some of the main reasons a company may turn towards contractual labour. These benefits are among the reasons for the increased contextualisation of India's workforce across many industries. In 2002-03, the number of contract workers in the manufacturing sector was reported to be 1.4 million, which increased to 5.5 million in 2021-22, while regular employees went from 4.7 million to 8.1 million in the same period. This represents a 292% increase in the number of contractual workers. Furthermore, it was reported that the share of contract workers in the factory workforce has increased from 23.1% to 40.2% from 2002-03 to 2021-22.[3]

From the data, it is clear that there is an overwhelming trend of contractualization of the workforce, causing an increase in the overall number and their share of the workforce. This makes the questions regarding their rights all the more pertinent.

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Contract workers have had several rights accorded to them through legislation and court judgements. The Contract Labour Regulation (Abolishment) (CLRA) deals with contract workers and their rights.[4] It continues to be the fundamental statute regarding the rights of contract workers until the Occupational Safety, Health, and Working Conditions Code (OSH) comes into force.[5] As stated in *Gammon India Ltd. v. Union of India*, it was noted that the CLRA was enacted.

[3] The Contractualization of Workforce in India's Factories Continues, The Wire, Accessible: https://thewire.in/labour/the-contractualisation-of-workforce-in-indias-factories-continues. Last Accessed on: 30th September 2024

[4] Contract Labour (Regulation & Abolition) Act, 1970

[5] *Id*

To prevent the exploitation of contract workers and regulate their terms of employment to afford them specific basic amenities such as a safe working environment.[6]

In *BHEL Workers Assn.* v. *Union of India,* it was stated that contract workers are entitled to have parity of rights with regularised employees employed by the principal employer in regards to wages, holidays, working hours and conditions of service as long as they were employed in similar work, however the question of whether the work is similar or not would be up to the Chief Labour Commissioner to decide.[7]

Thus, it is clear that contract workers have been afforded certain rights through judgements and statutes. However, the question remains: while the principal employer has certain obligations towards regularised employees, does the principal employer have any obligations towards the contract workers?

The CLRA provides specific benefits to contract workers, such as clean drinking water, canteens, restrooms, timely disbursement of wages, etc. The CLRA places the primary onus on the contractor to fulfil these obligations and provide these benefits. However, the principal employer may also be liable if these obligations are unfulfilled.[8] This is enumerated under section 20 of the CLRA.

This position of law was solidified in the case of *PUDR v Union of India.* [9] It was stated that the principal employer would be bound to fulfil any obligations the contractor failed to achieve. However, the principal employer can recover the same from the contractor. Benefits like provident fund under the EPF Act and insurance under the ESI Act are also a part of these obligations.[10]

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Furthermore, sections 12(1) and 12(2) of the Employee's Compensation Act, 1923 state that the principal employer is liable to pay compensation to the workman and may recover the

[6] *Gammon India Ltd. v. Union of India, (1974) 1 SCC 596.*

[7] *BHEL Workers Assn. v. Union of India, (1985) 1 SCC 630*

[8] Pathak, Manishi (2017) "An Overview of Contract Labour Related Laws in India," National Law School Business Law Review: Vol. 3: Iss. 1, Article 4. Available at: https://repository.nls.ac.in/nlsblr/vol3/iss1/4 Last accessed on: 30th September 2024

[9] *People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235*

[10] Employees' State Insurance Act, 1948, Employees' Provident funds and Miscellaneous

Amount from the contractor.[11] This was upheld by the Bombay High Court in *Sarjerao Unkar Jadhav v. Gurinder Singh.*[12]

Having established the rights of contract workers and the obligations of the principal employer towards these workers, let us now examine trade unions and the judicial interpretation of the principal and rationale behind collective bargaining.

Trade Unions and Collective Bargaining

Trade unions are a way for workers to secure benefits from their employers through collective demands. This represents an essential, indispensable conduit for workers to achieve their rights.

It would be prudent to examine who is entitled to join a trade union first. Section 6(e) of the Trade Unions Act of India[13] Speaks of '*the admission of ordinary members who shall be persons engaged or employed in an industry with which the Trade Union is connected'*. It also reflects the broader goals appended in the Trade Unions Act concerning the development and maintenance of institutions representative of workers' interests on account of democratic management. It is important to note here that section 6(e) does not distinguish between contract workers and regular employees.

The importance of trade unions has been expounded upon in various judicial interpretations. In *Bihar State Electricity Board, Patna v. Their Workmen,* the Supreme Court pointed out how indispensable unions were for securing industrial peace.[14] The Court stated that such unions were essential as photostats of bargaining agents to get them better working conditions and wages and to hold aloft the torch of dignity and equality for workers.[15]

As contemplated by the Act, collective bargaining is not a means of securing better wages or working conditions only but also a vehicle for advancing workers' broader economic, social, and

Political rights. Acting individually, workers are viewed by the Act as bereft of bargaining power to negotiate on equal terms with employers. To this imbalance, unions respond with collective

[11] Section 12, The Employee's Compensation Act, 1923

[12] *Sarjerao Unkar Jadhav v. Gurinder Singh, 1990 SCC OnLine Bom 36 : (1991) 62 FLR 315.*

[13] Trade Unions of India Act, 1926

[14] *Bihar State Electricity Board, Patna v. Their Workmen, 1976 AIR 251, 1976 SCR (2) 42*

action in which workers' voices get heard loud and clear while bargaining on equal footing with employers.

These commendable goals notwithstanding, contract workers continually encounter enormous obstacles in joining and participating in the collective bargain under the canopy of trade unions. As seen earlier, the contextualisation of the workforce is steadily rising. Hence, many workers may be kept and treated separately from other permanent employees in many sectors of industries where they usually perform similar work. It thus contravenes and defeats the democratic purpose of this Act by withholding from a significant percentage of workers their right to engage in collective bargaining.

Exclusion of contract workers violates the fundamental right of freedom of association under Article 19(1)(c) of the Indian Constitution: it is a right of the contract workers to form unions and engage in collective bargaining for fair wages, due occupational safety, and job security as both of these procedures are essential in securing such rights; and to exclude them from the very same thing is an obstruction of international labour standards, specifically those stipulated by the ILO. ILO Convention No. 98, of which India is a signatory, represents collective bargaining as an inherent right of all workers, including those under contractual employment.[15]

Thus, it is clear that the right to unionise and, as a corollary, participate in collective bargaining to secure certain benefits is a fundamental right guaranteed by the Constitution, the importance of which has been underscored by court judgements in the past.

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A commonness of interest between contract workers and regular employees

For workers to form a trade union, a commonness of interest between them must be established first. It must be shown that the workers have a common professional interest, for instance, performing similar tasks in the same industry under the same employer. The importance of the presence of a common interest has been acknowledged and recognised by the courts. For instance, in the case of *All Escorts Employees Union v State of Haryana*, the court noted a need for a commonness of professional interest among the workers who intend to form the union.[16]

[15] International Labour Organisation, *C98 Right to Organise and Collective Bargaining Convention*, 1949
[16] *All Escorts Employees Union v State of Haryana AIR 2017 SC (SUPP) 279*

In a situation where all the workers, contractual and regular, perform their roles in the exact location and with roles/functions in the industry that are essentially similar to each other, all while answering to the same ultimate employer, in such a situation there can be no denial of the existence of a commonality of interest. In such a scenario, the distinction between contract workers and regularised employees becomes irrelevant. For all practical purposes, there is an obvious commonality of interest and need for collective bargaining. Furthermore, as observed earlier, the principal employer has certain obligations towards the contractual workers and has the ultimate responsibility in case the contractor fails to fulfil any obligations towards the contract workers. By this logic, a relationship between the contract workers and the principal employer necessarily exists, which has been implicitly recognised in law.

Thus, contract workers, too, share a need for collective bargaining against the principal employer, and their exclusion from such a collective bargaining process only seeks to encourage their further exploitation and reverse some of the protections that have already been afforded to them.

How the inclusion of contract workers into a trade union led to the cancellation of the registration of the trade union: A case study

The issue of whether or not contract workers may join a trade union on par with regularised employees was brought into the limelight in the case of *Bellsonica Auto Component India Employees' Union v State of Haryana*, where the Registrar of Trade Unions, Haryana, cancelled the registration of the Bellsonica trade union for admitting a contract worker as an ordinary member.[17]

The registration of the trade union had been cancelled since the union admitting a contractual worker as an ordinary member was held to be violating the Trade Unions Act by the registrar by stating that only those workers who are engaged and employed with the establishment with which the union is connected could be it's members. It is relevant to observe that section 2(g) of the Trade

[17] *Bellsonica Auto Components India Employee's Union v State of Haryana, CWP-19451-2023*

Unions Act states that a 'workman' is "all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises".[18]

As most present workers at Bellsonica are contractually employed, keeping the contract workers out of the ambit of membership of the trade union meant the denial of protection under the labour laws and the right to collective bargaining.[19]

Further, as per section 6(e) of the Trade Unions of India Act, the law does not distinguish between contractual and permanent workers concerning forming a trade union. Therefore, such arbitrary distinction drawn by the Registrar goes against the act and completely distorts reality wherein all of them are on par as involved in the same or similar operations while also violating the fundamental rights of the contract workers under Articles 14 and 19(1)(c)[20]. Additionally, Rule 5 of the union's constitution states that any worker "who is working" in Bellsonica Auto Components India Private Limited can become an ordinary union member, provided he pays a one-time subscription and admission fee at the time of membership.[21]

Although the civil writ petition in the Bellsonica case stands withdrawn, it shows that the issue of contract workers being denied membership into trade unions continues to be a controversial topic, much to the woe of said contract workers.

Conclusion

Therefore, throughout this paper, it was shown that industries are moving more and more towards contextualisation of their workforce due to reasons such as flexibility of employment and cost-effectiveness. At the same time, contract workers, although guaranteed certain rights by statute and jurisprudence, continue to face issues when it comes to gaining a seat at the table during collective bargaining, even though there are clear obligations the principal employer has towards them, implying the existence of a legal relationship, that is similar, albeit not precisely alike to regularised employees.

[18] The Trade Unions of India Act, 1926

[19] People's Union for Democratic Rights, *Why was the registration of Bellsonica Union cancelled for including contract workers as members?*, Accessible: https://www.pudr.org/press-statements/why-was-the-registration-ofbellsonica-union-cancelled-for-including-contract-workers-as-members/ (last visited September 28, 2024)

[20] Article 14, Article 19(1)(c), The Constitution of India, 1950

[21] *Id*

The only way to remedy this is for legislative or judicial intervention to clarify once and for all that contract workers are eligible to join trade unions on par with regularised employees. It must also be mandated that a trade union's constitution must not be allowed to discriminate against contract workers since this would violate their fundamental rights.