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To,
The Government of India
Ministry of Labour and Employment

Attn: Ms. Anita Tripathi
Deputy Secretary (LRC)
Ministry of Labour and Employment
New Delhi
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Objections to the Draft Amendments to the Contract Labour (Regulation and Abolition)
Act 1970

Employers, to circumvent the Industrial Disputes Act, 1947, that set norms of responsibility and accountability of employers towards their workers, have attempted always to employ third parties/contractors to camouflage the real employer-employee relationship.

The Contract Labour Regulation and Abolition Act, 1970 was enacted to deal with situations where there was a genuine contractual relationship between the employer and a contractor to achieve certain ends for the employer. Its statement of objects and reasons records that “the system of employment of contract labour lend itself to various abuses. The question of the abolition has been under the consideration of government for long time. In the second five year plan, the planning commission made some recommendations, namely undertaking of studies to ascertain the extent of the problem contract labour, progress abolition of the system and improvement of service conditions of contract labour, where the abolition was not possible. The matter was discussed at various meetings of tripartite committees at which the State governments were also represented and the general consensus of opinion was that the system should be abolished, wherever possible, and practicable and that in cases where the system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.” The idea was to gradually provide a mechanism for the gradual phasing out of the contract Labour system.

With the integration of most production, both of goods and services, into the global supply chain, the production process has undergone a transformation that requires more regulation and not less. Production has become fragmented along a complex, diverse and a dynamic supply chain to ensure cost cutting at every level, especially to cut labour cost. This has in turn led to a decline in real wages and social security and unsafe and hazardous working conditions.

Employers today are increasingly demanding a need for flexibility in hiring and firing workers and also using them flexibly and hence are expressing a greater need for third party suppliers of labour. In most cases, the arrangement is open and blatant – the contractor is merely an intermediary while the principal employer controls every aspect of their employment relation. The Supreme Court’s jurisprudence in such cases establishes such employment relations as “sham contracts”. This jurisprudence has always acknowledged that where the contractor’s role is only to supply contract labour and all the other incidents of the employer-employee relationship are between the principal employer and the employee, such a relationship is a sham contract and courts were to act as if the contractor interposed in the relationship between the principal employer and the employee was ‘nominal’, did not exist. The clear purpose of the present amendment is an attempt to overturn this jurisprudence.

This amendment is an attempt to defraud the legislative intent behind the Industrial Disputes Act and the intent behind articles 14 of the Constitution. This is because the proposed amendment to section 2 of the act, specifically the addition of the words “**as mere human resource**” to the definition of contractor – the clause which read “who supplies contract labour for any work of the establishment”, now read, “supplies contract labour for any work of the establishment **as mere human resource**”, is an attempt to legitimise sham contracts.

Our clause specific objections to this amendment is as follows:

Section 2

New insertion

Explanation – For removal of doubt, it is clarified that where in or in connection with the work of an establishment a workman, who is regularly employed in an establishment of a contractor, is hired in or in connection with such work of the first said establishment by or through the contractor, with or without the knowledge of the principal employer, shall not be deemed as —contract labour for the purposes of this clause;

Our Objection

The insertion of this explanation will exempt principal employers of all responsibility. The contract worker will be treated as a permanent worker of a service provider company or manpower agency. This is bad in law in so far as it lays completely open existing law on responsibility of the premises of work, supervision, hours of work, weekly off etc. Further deliberately creates a false relationship wherein there may be a workman working in an establishment without the *knowledge of the principal employer*.

Section 12

New Insertion

(2) If a contractor does not satisfy the requisite qualifications referred to in sub-section (1), the licensing officer may issue him the licence for a limited period specified in the licence for undertaking or executing such work only and subject to the condition as may be specified in the licence and such licence shall be renewable under sub-section (3) of section 13.

This is a slight of hand wherein, this will allow even those contractors to get contract work who will not meet the minimum parameters of compliance to obtain a license. This will lead to problems of occupational health and safety at workplace resulting in a rise in workplace related accidents and hazards.

New Insertion

Provided that the conditions under this clause shall not include any limitation for doing the work of a particular nature in an establishment and the licence granted under sub-section (1) to undertake or execute any work through contract labour shall be construed to include any kind of work irrespective of its nature;

Our Objection

Contradicts the intent of the Act, Section 10 of the existing Act which lays down the provisions of prohibition of contract work in an establishment on grounds of nature of work and subsequent Supreme Court orders as in the case of Workman v. Food Corporation of India (1985) 2 SCC 136 [Government corporations should strive for abolition of contract labour]

Section 16, 17 and 18

New insertion

(2) The provisions of sub-section (1), shall not apply to an establishment, in respect of a contract labour, referred to in sub-clause (ii) of clause (c) of sub-section (1) of section 2, supplied therein and such contract labour shall be entitled for the same facilities, in respect of the facilities specified in sub-section (1), to be provided by the principal employer as the principal employer provides to his regular employees

Our Objection

After the amendment in Section 2 (as mentioned above) an establishment can be run without any regular employees, in which case the factory owner will not be required to provide any facilities of drinking water, washroom or rest room etc., as it will have no employees. Hence, the provision that workers hired by / through another agency will have no benchmark to seek parity with.

Section 23

Substitution of the existing clause

Existing act	Proposed amendment
Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labor, or	Contravention of provisions regarding employment of contract labour.—Whoever contravenes any provision of the notification, issued under section 10,

contravenes any condition of a license granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.	prohibiting the employment of contract labour shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.
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Omits the words “or contravenes any condition of a license granted under this Act” and restricts it to the contravention of only Section 10, which as mentioned above will have no bearing after the amendment in Section 12.

Section 24

Substitution of existing clause

Existing Clause	Proposed Amendment
If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.	Other offences.- If any person contravenes any of the provisions of this Act or any rule made thereunder for which no other penalty is elsewhere provided, he shall be punishable with fine which may extend to ten thousand rupees: Provided that where such person commits an offence under this section for first time, then, the inspector having jurisdiction shall give him notice specifying therein the contravention made by him and requiring him to rectify such contravention within such time as mentioned in the notice and if the person rectifies the contravention within the time so mentioned, then, no complaint shall be made against him for taking cognizance under section 26.

Our Objection

First time offense will not be punishable, which will provide impunity to the contractors, especially in short term contracts where the contractor might have obtained a license without complying with the due process under Section 12.

Section 27A

New insertion

27A. Composition of offences.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this

Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence, in the manner as may be prescribed.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date-

- (i) of commission of a similar offence which was earlier compounded; or*
- (ii) of commission of similar offence for which such person was earlier convicted.*

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

Our Objection

Allows for the compounding of offences which effectively means that a contractor who would get a license to undertake work of any nature without any compliance capability will get to walk away with paying a fine. Also, the first offence will not be punishable and a warning will be issued by the licensing officer in that regard as per Section 24. This clause will provide unprecedented impunity to contractors.

Furthermore, the proposed amendment fails to recognise the changing global employment environment especially in the context of all forms of non-standard employment in the global supply chain. We take this opportunity to remind the Government of India of: the Resolution concerning decent work in global supply chains adopted in the 105th Session of the General Conference of the International Labour Organization in 2016 admits that “failures at all levels within global supply chains have contributed to decent work deficits for working conditions such as in the areas of occupational safety and health, wages, working time, and which impact on the employment relationship and the protections it can offer. Such failures have also

contributed to the undermining of labour rights, particularly freedom of association and collective bargaining. Informality, non-standard forms of employment and the use of intermediaries are common. The presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain. Migrant workers and homeworkers are found in many global supply chains and may face various forms of discrimination and limited or no legal protection” and that “...Governments may have limited capacity and resources to effectively monitor and enforce compliance with laws and regulations. The expansion of global supply chains across borders has exacerbated these governance gaps.” It recognises that “governments, business and social partners have complementary but different responsibilities in promoting decent work in global supply chains.” In this respect, the resolution states among other things that governments should:

“Strengthen labour administration and labour inspection systems in order to ensure full compliance with laws and regulations and access to appropriate and effective remedy and complaints mechanisms. The responsibility for law enforcement lies with governments, taking into account that employers, workers and their organizations have an important role to play in promoting and ensuring compliance;

“Actively promote social dialogue and fundamental principles and rights at work, including freedom of association and the right to collective bargaining for all workers, regardless of their employment status, including in EPZs.

“Set out clearly the expectation that all business enterprises domiciled in their territory and/ or jurisdiction respect human rights throughout their operations, and the fundamental principles and rights at work for all workers, including migrant workers, homeworkers, workers in non-standard forms of employment and workers in EPZs.

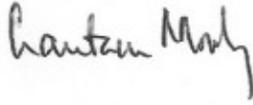
“Implement measures to improve working conditions for all workers, including in global supply chains, in the areas of wages, working time and occupational safety and health, and ensure that non-standard forms of employment meet the legitimate needs of workers and employers and are not used to undermine labour rights and decent work. Such measures should go hand in hand with increasing productivity;

“In order to suppress forced or compulsory labour, provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked, in line with the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Protocol of 2014 to the Forced Labour Convention, 1930.

We remind the Government of India that these exist detailed studies and reports, including those carried out and commissioned by the Government of India, that clearly show that there is rampant violation of the Contract Labour Act and hence exploitation of workers. These amendments will only increase this in so far as the amendments seek to absolve the principal employer of all responsibility in the employment of contract labour.

In view of the forgoing we call upon the Government of India to withdraw the amendment and ensure the robust and rigorous implementation of the Contract Labour Regulation and Abolition Act 1970.

Sincerely,

A handwritten signature in black ink, appearing to read "Gautam Mody". The signature is written in a cursive style with a prominent loop at the end.

Gautam Mody
General Secretary
New Trade Union Initiative