

**WHO BENEFITS FROM THE LAW?
REMINISCES FROM FIELDWORK ON
CONTRACT (AGENCY) WORKERS IN INDIA***

Paper

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ABSTRACT

The Indian labour law regime faces the problem of plenty. There are about 44 Central labour laws and 200 State laws (Datta & Sil, 2007) governing labour matters. In fact enacting legislations in the third world is considered as the easiest and the most convenient tool of laying down labour standards (Punekar, 1957). However field studies has shown that inspite of an abundance of legislations in India, the intricacies of labour laws are more than often used by the rich and the powerful to either hinder welfare measures or else prolong adjudication to the detriment of precarious workers like contract and informal workers who are underprivileged and insecure. Thus many willful attempts of the contract workers to seek better terms of employment from their employers are found to be lost somewhere in the legal process of conciliation, investigation and arbitration.

This paper presents the author's interface with labour laws during fieldwork on contract workers within India in the industrial regions of Rudrapur (Uttarakhand), Delhi Metro Rail Corporation and the brick kilns of Danapur in Bihar The author by adopting the methodology of multi-sited ethnography attempts to showcase the contrasting faces of India's development story.

KEYWORDS

Labour laws, Contract labour, agency workers, precarious labour, collective bargaining, labour field work in India, Brick kiln.

INTRODUCTION

“Contract (agency) Labour can be distinguished from ‘direct labour’ in terms of employment relationship with the establishment and the method of wage payment” (1st National commission on Labour report, 1969, pg.418). As per the Contract Labour (Regulation & Abolition) Act, 1970 of India, Contract workers are those who are “employed by or through a contractor” (service provider) (Section 2(b)) on temporary basis depending on the availability of work. Thus in the organized sector, a workman is deemed to be a contract worker when s/he is hired in connection with the work or “contract for service” of an establishment through a contractor¹. They are indirect employees, persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the establishment. This triangular relationship of employment seeks to insure the employers from the vagaries of employment and to ensure them complete maneuverity over the forces of production, as, unlike regular workers, contract workers are hired and fired at will, are cheaper, and are generally unorganized. Such flexibility of keeping the workmen in a vulnerable state of employment relationship is considered vital by the industry for its’ long term survival in the competitive market as this helps the entrepreneurs in offsetting the risks of the market onto the workers by tempering with their wages and tenure. Such form of impermanent employment is on the rise throughout the world. As per an ILO report (2012), the number of workers in vulnerable employment globally in 2011 was estimated at 1.52 billion, an increase of 136 million since 2000. The regional statistics reveal that the vulnerability has largely increased in South Asia and Latin America in which India is the main contributor in increasing the numerical count. In India since economic liberalization (1991), the organized sector has seen a gradual substitution of direct employment from contractual jobs (Shyamsundar (2011), pg.11-13). A recent study has assessed that in India contract labour account for about 55% of public sector labour employment and 45% of private sector jobs². The numbers may vary but there is no denying the fact that Contract labour or indirect work relation has emerged as the major form

¹The present paper focuses on contract workers engaged through contractors (indirect employment) in the organized sector, as defined in India vide the contract labour (Regulation & Abolition) act, 1970. The contracts may be ‘job contract’ on work basis or ‘manpower contract’ for the supply of labour between the principal employer and the contractor in a triangular employment relationship.

² See, http://articles.economicstimes.indiatimes.com/2012-10-10/news/34363332_1_contract-workers-contract-labour-act-regulation-and-abolition (accessed on 20.07.2014)

of employment in India since economic liberalization³. The multiple legal regimes are seen to only aid further precariousness and informalization at workplace.

ACTS AND STATUTES IN INDIA CONCERNING CONTRACT LABOUR⁴

The constitution of India guarantees the right to life and liberty (Article 21) to every citizen. The right to life has been interpreted by the Supreme Court as meaning right to live with dignity which can only be ensured in the case of workers by providing fair wages and decent working conditions to them⁵. The constitution also provides the right to form associations and join unions to the workers (Art. 19(1)(C)). The Directive principles of state policy which are the guiding doctrines under the constitution lay great emphasis on granting decent living to the working population. Article 39 seeks that the State should strive towards seeking adequate means of livelihood and that the operation of economic system should not result in the concentration of wealth and means of production to the common detriment. It further directs the State to ensure that the health and strength of workers are not abused due to vocations unsuited to their age or strength. The Directive principles also asks the State to endeavor to secure for the workers a living wage and such standard of life which can ensure them full enjoyment of leisure and for social and cultural opportunities (Art.43). Overall in India there are about 44 Central labour laws and 200 State laws (Datta & Sil, 2007) governing labour matters. There are laws governing almost each and every aspect of labour. However it is primarily the Contract Labour (Regulation and Abolition) Act, 1970, followed by the Workmen's Compensation Act, 1923, the Factories Act, 1948, the Employees' State Insurance Act, 1948, Minimum Wages Act, 1948, Industrial

³ There seems no consensus over the data on Contract labour since economic liberalization (1991), The V V Giri National Labour institute (VVGNI) in a study has estimated the number of contract workers as 3.6 crores out of which about 60 lakhs are covered under the Contract labour (R&A), Act, of either the Centre or the State. The annual survey of Industries (ASI) data quoted by Bhandari & Heshmati (2006) shows that employment through contractors constitute 23% of total organized workforce in 2003 compared to 11% in 1992. As per NCEUS data on manufacturing sector in India, contract workers have risen from 12 percent in 1985 to 26 percent in 2004, and the number is ever increasing. (see, Sen, Saha and Maiti, 2010). The planning commission in its report (2011) for the 12th FYP has noted that "all the increase in manufacturing employment that took place through the decade was confined to informal employment (contract and adhoc workers)" (pg. 108). Also see, Bhowmik (2009): India- Labor Sociology Searching for a Direction, Work and Occupations, Volume 36 Number 2.

⁴ For individual acts and statutes see, <http://www.labour.nic.in/content/>

⁵ For details on legal provisions under the constitution and judicial interpretation see, Ramapriya GopalaKrishnan and Jeanne Mirrer (2013): Shining cars shattered dream, ICLR.

http://www.laborcommission.org/files/uploads/2Shattered_Dreams_FINAL_website.pdf

Disputes Act, 1947, the Employees Provident Funds Act, 1952 and the Maternity Act, which are applicable to contract workers and governs the Contract labour system in the Country (See, Kumar, 2012). Most of these laws contain elaborate provisions with respect to entitlements of workers based on certain threshold of applicability of these acts. For example, the Contract labour (R & A) act, 1970, which principally regulates the legal entitlements of the workers applies to all establishments in which 20 or more workmen are employed on contract basis in the last 12 months. The Act provides for licensing of both the contractor and the principal employer and lays down elaborate list of facilities like canteens, toilets, rest rooms, crèches, washing facilities, first aid, etc., to be provided to the workers while on job. The act also outlines duties of the contractor with respect to payment of wages to the workers. It bounds the contractor to pay wages timely and before representatives of principal employer. The Contract Labour (R & A) rules provides that “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, the wage rate, holidays, hour 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” (chapter III, rule 25 (2) (v)(a))⁶.

Moreover most labour laws in India endeavor to provide uniform entitlements for all categories of workers. For example, **the Employee’s (workmen’s) compensation Act**, specifically creates provision for the contract workers as the contractor or “managing agent” (Section 2 (e) & (f)) has been included in the definition of an employer. **The Employees' State insurance (ESI) Act** is applicable to establishments⁷ employing 10 or more workers and just like the Employee’s compensation act, makes provision for the contract workers as the Contractor or “immediate employer” (Section 2 (13)) has been included. Similarly as per section 3(O) of the **Maternity Act**, “woman means a woman employed, directly or through any agency” thus covering contract women workers. Also **the Employees Provident Funds (EPF) Act** covers contract workers; as per the act “employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and

⁶ The provision for equal pay and benefits for equal work is however provided in the rules (and not the act) and that too only as a condition of issue of license to the contractor.

⁷ The original act covered mostly factories and had delegated the power to the appropriate government to extend the provisions of this act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise (Section 1(5)). Thus with the passage of time more and more establishments have been covered.

who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment” (section 2(f)(i)). **The Factories Act** interpret "worker" as a person employed, directly or by or through any agency (including a contractor⁸) with or without the knowledge of the principal employer (Section 2 (L)). The employer is termed as the “occupier” on whom the ultimate control over the affairs of the factory lies. The act lays down a long list of workplace amenities and safety instructions to be complied by the ‘occupier’ for the workers. The **Minimum Wages Act, 1948** is a comprehensive piece of legislation covering all scheduled employment types (section 2 (b) i & ii) and employer types (section 2(e)). The contract workers are also covered as “employer means any person who employs whether directly or through another person”, and "employee means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment (section 2(i)). By the **Industrial Disputes Act** a "workman means 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”. The Act recognizes the right of the workers and their unions to collectively raise their voice and protects the workers during the pendency of conciliatory, adjudicatory or arbitration proceedings.

CASE STUDIES IN INDIA

The case studies covered in this paper attempts to cover contract working of all colors from the petty workers laboring in brick kilns of Bihar to multi-national export oriented heavy industries of Rudrapur in Utrakhnad. But still, many forms of contract working especially in agriculture, mining, part-time construction and small scale sectors could not be covered vide the present field study. The case studies use the multi-sited ethnography (Marcus, 1995 & 1998) methodology for qualitative data collection from different locations within India. “Semi-structured face-to-face interview” followed with part-scheduling method was adopted to collect

⁸ Added by the Factories (amendment) Act, 1976.

responses in the study⁹. The face-to face interviews generally were conducted in-depth preferably on trains, railway-platforms, tea-stalls, bus-stops, etc., during the lax time of the respondents. However in cases where responses of the workers could not be taken outside their work premises (like, brick kilns, DMRC) interviews were conducted at site.

A. RUDRAPUR SIDCUL AREA

State Infrastructure and Industrial Development Corporation of Uttarakhand Limited (SIDCUL) was set up in 2003 when Government of India came up with a special package of fiscal incentives for the development of the northern hill states. One of the three sites chosen by SIDCUL was Rudrapur on the foothills of Himalayas in the terai belt. The government already owned large tracts of land here; moreover Rudrapur is well connected by rail and road network¹⁰. More than 300 industries mostly in private sector are being set-up here; the list includes top companies like Tata Motors, Bajaj Auto, Escorts, Voltas, Britannia, Nestle, Parle Biscuits, HCL, Hewlett-Packard, Dabur, Kores India, Ashok Leyland and Lenovo. Rudrapur being located at the border of Uttarakhand adjoining Uttar Pradesh in the rural-urban arena has abundant labour resources at its' disposal as unemployment rates here are very high. Most of the workers employed at Rudrapur stay in the surrounding districts of Rampur (UP), Bareilly (UP), and Nainital (Uttarakhand), and travel daily by train which is the cheapest mean to travel to the town. As the industries here has been setup in post-liberalization period to meet the demands of the markets located in India and abroad, companies were found to adopt all possible means to cut cost including adoption of dubious labour practices. Companies here operate with a minimal permanent work force and manage most of its affairs through contract labour engagement. For the data collection I preferred to travel with the workers in trains to their work stations as while travelling they had ample lax time to respond, moreover this methodology helped in getting random respondents of workers from different factories, job profile and regions. Interviews were also conducted of regular workers/ union leaders, contractors, principal employers and enforcement officials.

⁹ Scheduling is asking the questions in same order, while in standardizing method questions are asked in same way to each respondent. See, Phellas, Constantinos N; Bloch, Alice and Seale, Clive (2012): Structured Methods: Interviews, Questionnaires and Observation.

¹⁰ Even an airport largely catering to private chartered flights is operational in Pantnagar, which is about 12 Kms. away.

A.1. Medium Scale Seasonal Enterprise¹¹: The industry that I studied was manufacturing rice bran oil, de-oiled cake (animal feed) and other products from agricultural by-products. By the very nature of its' raw material, the industry was seasonal and saw ups and downs in the production process and consequently in the demand of labour. Contract labour¹² was the main form of employment with regular workers forming a small percentage of the



workers' population. As the industry was seasonal, migrant laborers formed the bulk of the labour force who were mainly engaged in loading and unloading of the raw material and products. The industry was a proprietary firm with an entrepreneur heading the family enterprise with his son and other relatives assisting him in the business. Located at the periphery of the main Rudrapur industrial area, the enterprise was aptly situated at the midst of the rice growing region. However to compete in the market, the industry needed to produce cheap rice bran oil and other products to face off competition from similar industries

located in other parts of the country and still cheap imports from China and other producing countries¹³.

¹¹ As per the Micro, Small and Medium Enterprises (MSME) Development Act of 2006 a medium enterprise is where the investment in equipment is more than two crores rupees but does not exceed 5 crores (now Rs. 10 crores for manufacturing sector industries as per Ministry of Micro, Small and Medium Enterprises, Govt. of India recent ceilings).

¹² Though termed as contract labour due to the presence (*de-jure*) of a contractor, however for all practical purposes the workers represented informal labourers with no legal coverage whatsoever.

¹³ See, for details, <http://www.commodityonline.com/commodities/oil-oilseeds/ricebranrefinedoil.php> (Accessed 8.2.14).



Photo-2



Photo-3

State Of Labour: The labour force consisted primarily of migrant labour from Champaran and other regions of Bihar who were found residing in industry premises located towards

the road side. The labourers were in groups from the same village, region and/ or caste/ community in Bihar as apparent from their language and appearance. As they were found residing in industry premises on the road side, I could easily approach them¹⁴. On seeing me approach, all the workers immediately got curious and surrounded me (*see, photo.1*). It was difficult to imagine all the workers staying in two rooms of size about 10ft. X 15ft with cooking area inside one of the rooms (*see, photo.2*). The living area made me remember the slum dwelling of Delhi, however surprisingly the workers seemed to be cheerfully engaged in some game of cards. I was told that their work depended on material received in the factory, since last three days no material was received hence they were without work adding up their “*khuraki*”¹⁵. The workers were engaged for loading/ unloading for which payment was made through the labour contractor on per piece basis. No other payment or facility was provided by the industry to the workers. The workers seem to be aware of the prevailing rates of loading/ unloading present in the region and were ready to migrate to other regions in the country (like Punjab)

¹⁴ Normally wherever labourers are residing or working within the industry premises, prior permission from the management need to be taken for interview.

¹⁵ “*Khuraki*” is the daily diet cost charged by the contractor for providing daily meal to the workers. It is generally deducted from the salary to be paid before the workers leaves for home or some other destination of work. As informed by the workers, the existing rate of “*khuraki*” was Rs. 65 per day.

where better rates or more work was available. On enquiring about the contractor of the workers, I was surprised to meet one among the workers (*see, photo.3*), (the person with a paper in hand is the contractor) who was himself illiterate acting as the contractor for the workers. The contractor failed to produce any registration paper or document of registration; in fact he seemed to have no idea of contractual obligations. It was very much evident that the contractor was a shadow one put up by the management to manage work of the factory. On being questioned the contractor told that he and his elder brother were earlier labourers like others however gradually they have started bringing labour from their region in Bihar and providing to industries. His brother has a knack of industries requiring labour in different regions and accordingly they keep on moving as per his directions. The contractor and the workers had no clue of any social security scheme or insurance scheme for the workers. One of them however narrated an incident of accident with a fellow worker in Karnal, Haryana, in which the local police there mingled up with the owner and forced the worker's family to leave for home with little compensation.



Photo-4

On collective bargaining and union formation, the workers viewed that such a formation was not possible in theirs' type of irregular mobile work, moreover most workers opined that as they worked in a group and being from the same region/ village they work in tandem with each other and may strike work if one among them is insulted or mistreated by the owner. However still they said, as being from a distant land sometimes the owners collude with the local workers and police to usurp their genuine rights, for which some mechanism of support was necessary.

Management View: The principal employer or the owner in this case was a middle aged entrepreneur (*see, photo.4*) who was also an office bearer of the Kumaon Garhwal Chamber of Commerce and Industry (KGCCI), a powerful organization of entrepreneurs and heads of industries in the region with headquarters at Kashipur and branch offices at Dehradun and

Rudrapur¹⁶. Being in the family business and also an office bearer of the KGCCI, he could explain the things in a wider perspective. When asked for labour registration papers of the firm and the contractor, he said that they are not readily available. Oblivious of the state of living condition of workers residing in his premises just outside the factory gate, he refused to acknowledge any possibility of exploitation of workers in the region; on the contrary entrepreneurs like him he said were always hard pressed to retain laborers sometimes meeting their uncalled demands. Giving clear reasoning, he viewed that labour is purely dependent on demand and supply; in Rudrapur due to the presence of many industries, labour was free to move to those industries which paid them better or gave better facilities. The government shall leave the labour to the market mechanism and should not interfere. On being questioned on labour laws like, minimum wages; he countered the government policy of paying *aganwadi* workers, home guards¹⁷, etc., below minimum wages, while forcing such a law on the entrepreneur. He viewed that such laws are there to keep the entrepreneur at his toes so that he fulfills the unsolicited demands of government officials, moreover there were so many laws besides labour laws which the entrepreneur was supposed to cater to it was simply impossible to fulfill them. Infact he claimed, it was such a scenario which was forcing entrepreneurs to close down their industries or selling them to MNCs. On a serious note he requested me to look into avenues vide which small entrepreneurs like him can run a seasonal type of business as there were no provision in present labour laws for such an industry¹⁸. As per him, an industrialist takes immense risks to run his business which in turn creates jobs for workers, government shall help in providing ample flexibility in the system to support them.

Collective Bargaining: No organized collective bargaining seen among the workers, however primordial alliances did exist in groups among the workers.

Labour Standards: The company provided living conditions of the workers was found to be deplorable as many workers were sharing the same cramped residential space. Payment of

¹⁶ For information on Kumaon Garhwal Chamber of Commerce and Industry (KGCCI) see their website <http://www.kgcci.in>

¹⁷ On further enquiry one finds that the home guards are not provided social security coverage (ESI/ EPF) in many states of India. Like the *aganwadi* and mid-day meal workers, the home guards are considered as voluntary service.

¹⁸ As per Contract labour (R&A) act, the act applies to every establishment which is in operation for more than 60 days in a year, even though having seasonal character (Section 1(5)). The EPF act requires deduction to be made even for a workman employed for one day.

minimum wages and hours of work could not be established¹⁹. No social security benefit found provided to the workers. The workers being mobile in seasonal nature of industry, ‘security of tenure’²⁰, was not material.

None of the workers interviewed or the contractor were aware of any labour laws. The employer was found to have a fair idea of the laws but preferred to bypass them on the pretext of ‘seasonal’ and ‘agricultural’ nature of his industry. The practice of putting up a shadow contractor helped the employer to offset risks of direct engagement besides maintaining flexibility and profit margin.

A.2. Large Scale FMCG Industry: Parle Biscuits Pvt. Limited is part of multi-million



dollar Parle Products Ltd., which is the leading fast moving consumer goods (FMCG) brand name in biscuits and confectionary sector in the country²¹. It has 14 self owned and 75 biscuit manufacturing units on franchisee-basis in different regions of India. Parle has two manufacturing plants in the Rudrapur region one at Sitarganj and

other in the SIDCUL Rudrapur industrial area. Parle plant in the SIDCUL area of Rudrapur is a large employer in the region for contract workers. The company has also a sizable number of regular workers (about 50 percent) who seem to be much better placed than their counterparts on contract²². The company had a no vacancy board hung on the gate to dissuade job seekers who

¹⁹ Even when calculated with the FCI rates (based on some of the tender documents) for loading and unloading, the individual payments to the workers could not be ascertained with respect to the number of hours labored.

²⁰ ‘Security of tenure’, in the case of contract workers can be termed as ensuring continuity in the case of change of contractor. In many organizations one can see the same workers continuing inspite of change of contractor, but whereas in employer controlled settings the workers are forced to continue on the terms of the contractor, in the workers’ controlled settings ensured through collective bargaining the workers continue on mutually agreed conditions. Security of tenure for contract workers in seasonal industries can be considered as assurance of getting job in next season.

²¹ For details see Parle website; http://www.parleproducts.com/about_parle/overview.php

²² It was told that the Parle Rudrapur plant employs about 500 workers in total. The quantum of contract workers keeps on changing due to seasonal variations in the demand of biscuits, on an average it was conveyed that the ratio of regular workers to contract workers remains 50:50.

(as told by the guard) keep on visiting the company on regular basis. Long queues of contract workers could be seen waiting for their shift to enter in the company premises (*see, photo.5*). There are five contractors supplying workers to the company who control these workers' entry at the company gate.

State Of Labour: It was told that most of the workers engaged in the plant were *paharis*²³. The contractor and the workers evaded speaking to a stranger in front of the company gate, however they opened up when taken aside (*see, photo.6*). The workers told that earlier in 2011 there was some strike by the regular workers in which some of the contract workers also participated after which about 300 contract workers and regular workers were removed by the company. Since then, the company keeps a strict watch on the workers. The contract workers interviewed complained of little incentive to work for the company and were willing to shift to better companies if opportunity arose. The contractor exploited the workers by cutting their salary on minor reasons; also he does not disclose EPF or ESI contribution details though these are deducted from the salary of the workers²⁴. The workers also complained of working for 12 hours for the wages of 8 hours. There was no job security or paid leave and the contractor could simply ask them to leave on raising an issue.

On collective bargaining, the contract workers viewed that the contractor or the company may fire anybody found to indulge in union activities. Earlier due to union formation some privileges were eschewed from the management, but with the break-up of union due to inner wrangles, each worker is left to fend for himself.

Management View: The management of M/S Parle Biscuits SIDICUL plant is professionally managed through policy directives from headquarters and regional unit. The management



Photo-6

²³ Though not very obvious, but at the ground level one can feel workers distinguished on being *pahari* (of the mountains) or *maidani* (of the plains) crossing state boundaries.

²⁴ The Contractor agency found working in Parle was a renowned Pune based manpower agency providing manpower to organizations all over India, including some of the top establishments of the country.

representative (*see, photo.7*) assured that all attempts are made by the management to fulfill the requirements of labour laws but they are unable to stop the dealings of the contractor. Contract labour law provisions stop the management to directly deal with the workers or interfere in the affairs between the contractor and their workers. Moreover he said that it was not clear in law that contract workers can be engaged for which type of jobs and for how long. On the need of contract workers, he viewed that in industries like Parle the demand of labour keep on fluctuating thus the management cannot afford to hire full time workers on regular basis. Later, while an on-site visit at the biscuit manufacturing plant he showed me contract workers working alongside regular workers but only in unskilled manual side jobs like packaging and segregating. On being questioned for the reason behind not engaging contract workers in machine operation and other skilled jobs, he stated that there was a severe problem of irregularity and absenteeism among



Photo-7

contract workers. Most contract workers did not last more than a month and the company had a regular problem of training new-new workers.

On the issue of grant of collective bargaining rights to contract workers, the management representative viewed that though this kind of rights with responsible working may help the cause of workers in the long run, but in general it has been seen that worker unions are hijacked by

unscrupulous agents to cater to their interests which causes problems to the management. Since the labour unrest of 2011, the management has shown zero tolerance towards union related activities in its' campus.

Collective Bargaining: The contract labourers have no union and are not represented by the union of regular workers. In the past collective bargaining did take place but was dismantled by the management by all means²⁵.

²⁵ It was told by some contractual employees who were earlier working as regular employees of the company that Parle management took the help of police, and even local goons provided by the contractors, to physically remove the workers from protesting against their dismissals.

Labour standards: It was found that the minimum wages, ESI/EPF of the contract workers were not being met²⁶. Working hours are much longer²⁷ than prescribed provisions. No paid weekly off, holidays, or transport facilities were seen to be provided to contract workers as being provided to regular workers. However some incentives in the form of biscuits were given as reward for good or exceptional work.

None of the contract workers interviewed had any knowledge of labour laws. The management personnel were however found fully conversant with the labour laws, but they cited inadequacies within the laws which prevented them to directly engage with the workers. In the given situation, the workers are left to the mercy of the contractors who exploit them in all possible ways.

A.3. Heavy Automobile

Industry: With worldwide presence in 40 countries, Mahindra Tractors Pvt. Ltd. claims to be the largest tractor manufacturer in the world volume-wise²⁸. Part of the well known Mahindra group, Mahindra Tractors Pvt. Ltd is a major brand name in the farm automobile sector in India. The Rudrapur plant is one of the largest manufacturing factories of Mahindra tractors in the country (*see,*



photo.8). It was told that Mahindra Rudrapur plant has 450 regular workers and 258 contractual workers. On preliminary inquiry I got to know of high status of contract labour at the Mahindra Rudrapur plant due to joint collective bargaining efforts. What evoked my interest to do an in-depth study of this factory was the healthy environment prevailing in the campus among all section of the employees, and also between the employer and the employees inspite of the strong undercurrents of collective bargaining.

²⁶ The minimum wages w.r.t. the prescribed hours of work.

²⁷ As told by most workers, they worked for 12 hours and paid for 8 hours of work.

²⁸ For details see, <http://www.mahindractorworld.com/> (accessed on 9.02.14)

State Of Labour²⁹: The state of contract labour appeared comparatively better at Mahindra tractors due to several reasons as understood during the course of research. Firstly, the company provides meals and snacks to all the employees including contract workers at very nominal cost. The workers feel elevated to the fact that the company didn't distinguish between them and even the top management, as the same food is served to everybody at the canteen moreover all are supposed to queue up and take meals together at the same table. Secondly, it came to be known that the same contractors and workers were engaged in the factory since many years and the contractors and workers enjoyed a healthy relation between each other. Also when I did not notice the same uncertainty in the eyes of the contract workers at Mahindra as I saw in contract workers waiting at the gates of other factories in Rudrapur, on inquiring further it came to my knowledge that due to the combined efforts of national and local chapter of Bhartiya Kamgar Sena³⁰ and the *Netas* (self proclaimed leaders) within contract workers, the management had signed an agreement a year back (2013) that gave many benefits to contract workers at par with regular workers and also safeguarded them from removal till they attain the age of 58 years, subject to good conduct. It was told that with the signing of the agreement, absenteeism and irregularity among contract workers has greatly reduced and they keenly participate in the affairs of the factory as done by regular workers.

Further the company seemed to follow a strict policy in implementing labour laws. All the relevant laws like the Contract labour (Regulation & Abolition) act, 1974, the Industrial disputes act, Factories act, etc., were prominently displayed at the entry of the premises alongside the mandatory display of the rates of minimum wages. The contractors we interviewed showed us the EPF deposits list, pay slip and ESI smart cards which they had kept at the company gate for information of the workers. On being questioned on his status as a contractor now as an agreement has been signed between the management and the workers, the contractors replied that though his status has now become obscure as they have little control over "hire and fire" of the workers however still as they were retained by the company they manage all the affairs of the workers and for all legal purposes the workers remain his employees. Moreover this

²⁹ Data was collected on the state of labour from the factory gate itself by interviewing the workers who came out in-between their work-shift. No permission was granted by the Mahindra management for the fieldwork inspite of repeated persuasion²⁹.

³⁰ BKS is a Mumbai based union see, <http://www.suryakantmahadik.in/>

agreement was applicable only on the older workers and not on the few new workers who have joined after the signing of the agreement.

Management View: The Sr. manager who kindly gave the interview said that Mahindra tractors ltd. understands its responsibilities towards its workers and provides all benefits to its' workers as available as per the law of the land. On collective bargaining agreement signed with the contract workers, he stated that such an agreement has been also signed at other plants of Mahindra in the country, moreover the management has not signed any direct agreement with the workers but the contractor has complied with some of the demands raised by the workers with our concurrence. He laid emphasis on the 'productive clause' incorporated in the agreement and stated that any collective bargaining effort can only be sustainable in the long run if the productivity concerns of the management is taken into consideration. On specifically been asked on the effects of the collective bargaining agreement on production, he stated that collective bargaining have benefitted all including the production, also absenteeism and indiscipline among the contract workers have greatly reduced. On the role of the contractor after signing of the agreement, he answered that the contractor continues to be the real employer of the workers and manage their HR matters.

Collective bargaining: The practice of CB prevailing at Mahindra tractors Rudrapur plant was found to be exemplary in certain context especially in terms of the production concerns covered under the CB efforts and the satisfaction expressed by the workers, contractor, union leaders and even the management on the successful running of the CB arrangement.

Official view: The labour officials of the Utrakhand labour department posted at Rudrapur however viewed that even if such an agreement was signed, it is an illegal agreement and cannot stand the law of the land. The official said that Contract labour (R&A) act under section.10 prohibits contract work in perennial nature of job and if such an agreement is signed which grants job-security to the workers up till the age of 58 years, this is a fit case where 'abolition' clause can be applied.³¹

³¹ Though on a side note the labour official quipped that it was better to ignore such win-win position when nobody complains even if the same is at variance with law.

Who benefits from Law at Rudrapur

It was found during field study at Rudrapur that hopeful workers travel from far flung regions to Rudrapur; find jobs after long parleys, try to settle with their lives initially finding the job very strenuous and low paid; change couple of jobs and find the same everywhere; return back with their hopes shattered with unpaid dues still remaining with the contractors. Most workers in their interviews repeated this same story, only that they were at different stages of the journey. The employers on their part were well conversant of the labour laws so to adopt those provisions which they found to be of their advantage. Some entrepreneurs prefer to remain at the borderline while managing with an informal labour set-up and sometimes even doubling as contractors to raise their profit margins. The labour officials on their part stick to the laws word-by-word and also being understaffed are oblivious of state of things, while the contractors being profit-seeking agent adapted themselves to the industry needs and got their cut both from the employees and the employer.

However unlike most other industries in Rudrapur, the prevalence of collective bargaining at Mahindra tractors has helped raise labour standards of the workers while fulfilling the flexibility needs and production requirements of the employers. It could be fairly established that the labour standards in the Mahindra tractors plant for the contract workers were reasonably good and they were getting benefits like paid leave, medical insurance, and bonus³² at par with regular employees, however the legality of the agreement which bestows all these rights to the contract workers is itself considered unlawful. The workers, union leaders and the management at the Mahindra tractors are now been threatened by law and are forced to keep the agreement in shrouds to escape legal sanctions. The inadequacy of legal provisions to authorize such agreements has prevented the reproduction of such agreements to other establishments and deprived other workers of the region to the benefits of collective bargaining.

B. DELHI METRO RAIL CORPORATION

About DMRC- In 1995, the Delhi Metro Rail Corporation was registered as a joint venture (equal equity) company of Government of India and the Delhi Government for running

³² On bonus howsoever there exist some grievances of the contract workers that they do not get at par with contract workers.

an integrated Mass rapid transit system (MRTS) for the commuters of the National capital region (NCR). Commissioned in 2002 with a short stretch of about 8.5 kilometers in the first phase, the corporation now runs metro trains on a combined route of about 198 kms through more than 140 stations, and



boasts of running one of the most modern elevated and underground Metro rail network in the World. The DMRC is one of the few metros in the world which has shown operational profit since its very day of operation. With an impeccable track record of before time completion, world class infrastructure, and spot-less services, the Delhi metro represents the face of modern India. The DMRC has around 7000 regular employees, 10,000 contract workers in regular work and 30,000³³ contract workers in construction work³⁴.

Management view: Most of the officials in their responses (*see, photo.9*) stated that the DMRC as a principal employer is very strict on labor laws, some even produced documentary evidence like terms of engagement, penalty imposition clause, etc., to support their claims and viewed that if ever there was some lacuna left on the part of contractor the same is fixed immediately when

³³ The number of contract workers in construction varies as per the ongoing work. As informed by the nodal officer during discussions the existing strength of these workers were about 30,000, however during peak construction period in the first phase the number touched even 80,000. The number is however only indicational as many contractors hire sub-contractors or manpower contractors for short durations to complete their work.

³⁴ The annual report of DMRC speaks of “7035 highly dedicated personnel, 1124 in Project and 5911 in Operation & Maintenance Wing”. Also it talks of itself as a ‘caring organization’ with a ‘people’s first policy’ towards its’ employees. However there is no mention of the contract employees anywhere in the report or the website of the DMRC. See, DMRC annual report, 2012-13 at, http://www.delhimetrorail.com/OtherDocuments/DMRC_Annual-Report-2012-2013.pdf

found. The DMRC enjoins each of its construction contractors to have a labor welfare officer³⁵ on its site and follows a policy of zero-tolerance on labor matters; moreover labour matters are also monitored by DMRC labour welfare inspectors³⁶. One of the senior HR official interviewed stated that cleanliness at Metro station could only be maintained due to contract labour system, as it was rather difficult to maintain high cleanliness standards with regular workers.

State of labour: In between interviewing the officers of the DMRC, during lunch hours and free time I did try to interact with some of the contract workers engaged in the premises in sanitation and canteen related work. I initially adopted a policy of confidence building with the contract workers by meeting them at the bathrooms, pantry and corridors and informing them on my intent. Most contract

workers were too scared to speak. After pestering for several days I did manage to talk to some workers during lunch hours and took their interviews. Some of the workers hushedly voiced their dissatisfaction with the contractor in payment of their dues; though one



or two workers among them did praise the contractor. On being questioned on their EPF/ESI deposits, the workers stated that most of them were not provided with any EPF/ESI details. None of the workers acknowledged of getting minimum wages for their work.

After interacting with DMRC officials and workers at the Metro bhawan for few days, I was taken to some of DMRC metro stations and construction sites by the labor inspector of DMRC (*see, photo.10*). The construction sites which I visited were large hubs engaged in construction of stations and tunnels and were employing hundreds of workers. As I was accompanied by the

³⁵ As per clause 6.1.2 of “Conditions of Contract on Safety, Health and Environment, Version 1.2” of civil tender document of DMRC. See <http://www.delhimetrorail.com/tenders.aspx>

³⁶ As informed two Labour welfare inspectors assist the Nodal officer(Labour) in monitoring work.

DMRC labor inspector, the officials of the construction contractor were cautious in dealing with me. The contractor company had site office built on temporary structures for officials; while the workers were employed in construction sites located at different premises, some far away from the office. Each construction company had a Labor welfare officer (LWO) with a formal degree in labor affairs who watched over the labour supervisors present at different construction sites. On being asked, the LWOs produced documents on labor compliances, however informally they admitted that the primary concern of the construction company (and the DMRC) was timely



Photo-11

completion of construction project whereas all other matter including labour remained sidelined. Other officials interviewed in the premises of the construction contractor largely expressed concern on, strict or impracticable laws, poor skill set of the works, etc. I was also shown different construction sites where the workers were found to be engaged in trenching, mixing, iron binding, and similar other activities. I was not taken to the underground tunneling sites as this required special permission.

The supervisor followed me everywhere and on seeing him the workers were found reluctant to speak to me. Apparently they replied to my most questions in the affirmative without much thinking. On one or two occasions after 5 pm when the supervisor left and asked me to also leave, that I could again interact with the workers freely (*see, photo.11*). Almost all the workers were found to be from outside Delhi and were brought by labour contractors after negotiation on fixed wages. Among the workers there were groups specializing in iron-binding, electric-welding and similar work who took part-contract on piece rate basis from the contractor. Most

workers I interviewed said that they were not provided with EPF or ESI numbers/cards by the contractor but instead were engaged on piece rate basis. On records and muster roll with the main contractor, they said that they were largely concerned with their sub-contractor and labour supervisor and had no dealings with others. Also as the workers were found to be less educated, temporary, insecure and migrant and hence were reluctant to indulge themselves in uncertain futuristic ventures. Most replied that “*kaun sarkari dafter ke chakkar katega*” (Who would go again and again to government offices) for claiming benefits and viewed that it was better to take what the contractor gives in hand rather than getting into this “*jhanjhat*” (trouble). On being questioned on the need of old-age, illness and family requirements, the workers recounted numerous instances (sometimes of past jobs) of ill treatment by the contractors and sought better policies in which direct benefit could be granted by the government. In between while travelling to different locations in Delhi Metro I also interacted with some of the sanitation workers, security guards and TOM operators (ticket vendors) working on contract basis at different metro stations. It was observed that the Delhi Metro have hired multiple contractors for employing these workers. Mostly young in the age group of 20-30 years, these workers work under strict supervision and are rarely found resting. While story of the sanitation workers and security guards were similar to the workers at the Metro Bhawan, the TOM operators were found to be a better organized group. Most TOM operators interviewed acknowledged getting EPF/ ESI benefits but decried their continuous engagement on contract basis. Some operators were however satisfied with their nature of work and said that they were sometimes even recognized by the DMRC for exceptional work.

Official view: The labour enforcement officials whom I spoke to were in general praiseworthy of the DMRC efforts to enforce labour regulations. The labour department officials of the Delhi Government when confronted with the question on resistance being faced by DMRKU³⁷ in getting registration, they on their part expressed their readiness to register any workers’ group be it regular on contractual as and when they fulfill all the required conditions as per the Trade union act, 1926. The labour officials stated the legal view that the act does not differentiate between the type of workers and that the objections raised by them were required to fulfill the provisions of registration.

³⁷ Delhi Metro Rail Kamgar Union, the unregistered union of contract workers of Delhi Metro.

Collective Bargaining: There is officially no union of either regular or contract workers at the DMRC. An unregistered union named Delhi Metro Rail Kamgar Union (DMRKU) does claim to represent the contract employees. However the DMRKU was seen to espousing the cause of mostly the TOM operators who were themselves educated and aware whereas the bulk of the construction and sanitation workers remain unrepresented. Still even for the TOM operators, the unregistered status of the DMRKU creates difficulties in bargaining for their wages and social security benefits.

Who benefits from law at the DMRC?

The DMRC being a state controlled corporation is not a typical case of free market enterprise propounded by liberal economists where demand and supply regulates both inputs and outputs. The technique of the management to offload the work of construction, sanitation and security (part) to manpower contractors is in tandem with the global trend so as to concentrate on core areas of metro train operation. It is in pursuance to labour policies in the private sector that DMRC has introduced labour market flexibility to offload part jobs to third party contractors. Being a government run body the DMRC is however expected to fulfill all labour obligations as provided in the laws of the country. The intent of the DMRC towards engaging contractual manpower in perennial services which is in contravention to labour laws, seem to be guided by cost factors. The only difference in the private sector contract labour system flourishing in Rudrapur, with state led DMRC is that whereas in the former both the employer and the contractor are profit-seeking agent, in the latter it is only the contractor. The lack of recognized collective bargaining has ensured that this sole profit-seeking agent corners the benefits at the expense of the workers. The legal obstacles in the recognition of a union of contract workers working in one establishment through many third-party agencies have prevented the agency workers to group together at DMRC. It has been seen in the case study that aggressive monitoring has not helped the cause of unskilled/ construction workers of DMRC. The failure of multifarious control mechanisms as seen in the DMRC case, belies regulation enthusiasts who put trust on the law and enforcement mechanisms to uplift labour standards on its own.

C. FIELD WORK AT BRICK KILNS OF DANAPUR REGION, BIHAR

About Danapur region: Danapur is located in the Patna District of Bihar in east India on the confluence of river *Son* and *Ganga*. The proximity to the state capital, Patna and being located on the main railway/ road line connecting it to major cities in the states of Uttar Pradesh, Jharkhand and West Bengal; Danapur has immense potential to develop as a satellite city of the region. The comparatively low cost of land and living at Danapur to Patna, makes it an ideal place to set up labour intensive industries like that of brick kilns. Also the region being located at the banks of two major rivers of Bihar has ample flood-land³⁸ and alluvial soil available for the brick making industry. Consequently around 200³⁹ registered and unregistered brick kilns dot the skyline as one approaches Danapur from the cantonment area towards Maner⁴⁰.

Field visit to Brick Kilns: Most *bhattas* (the name vide which the brick kilns are locally called) were found to be located on stretch of land adjoining the Ganges river. Sometimes one



had to cross a rivulet on a narrow bamboo bridge to reach them. A normal size *bhatta* employed around 100 to 200 workers at a given time. On entering a *bhatta* it feels like reaching an ancient world (*see photo.12*). Mud clad men and woman

³⁸ The flood plains which remains submerged (or threatened) during monsoons provide ideal conditions for brick industry as suitable soil, water and open space for making bricks and accommodating workers are available in plenty. While the chimneys are found to be located at high ground, brick-moulding and drying work which requires much open space are spread over all available space. Also being near the river and often cut-off from the main land, the territory mostly inhabited by migrant workers largely remain out of bounds of the district administration.

³⁹ As conveyed by the factory inspector, Danapur region. Also a list of 123 registered brick kilns (under factories act) around Danapur region was obtained from his office.

⁴⁰ Maner is famous for mausoleums of *Sufi* saints, and also for maneri *laddus* which is a sweet delicacy of Bihar.



Photo-13

covered with scant clothing seem to be in a state of urgency while doing their work. We were told that earlier shifting-base chimneys made of steel were used which were replaced with high rise permanent cement ones about two decades back. Normally a family or a family group consisting of parents, grandparents, children (*see photo.13*) are seen working together to add up their joint income. The hutments of the workers were found to be located adjoining the *bhattas*. It was told that the huts along with burning wood, medicines and water was provided free of cost by the owners. No electricity, toilets, bathrooms, dispensary or school was found on the *bhatta* premises. Children of all ages were seen loitering around sometimes assisting their elders in their work (*see, photo.14*). The brick kilns were found to be using still the traditional accounting system where markers are given to the workers as a token for performing a piece rated work. It was told that each worker at the end of the day



Photo-14

work gets the number of tokens received entered in their individual diary by the *munshi* (accountant). On the day of weekly holiday, a worker takes his *khuraki*⁴¹ and gets his account checked and re-entered in her/his diary. At the end of the working season advance paid towards *khuraki* and other expenses are deducted and final payment is made to the worker. In spite of payment ranging from 30 to 50 lakhs (\$45,000 to \$75,000) been made by *bhatta* owners on account of labour wages, no registers on muster-rolls were found being maintained at the *bhattas* visited by me.

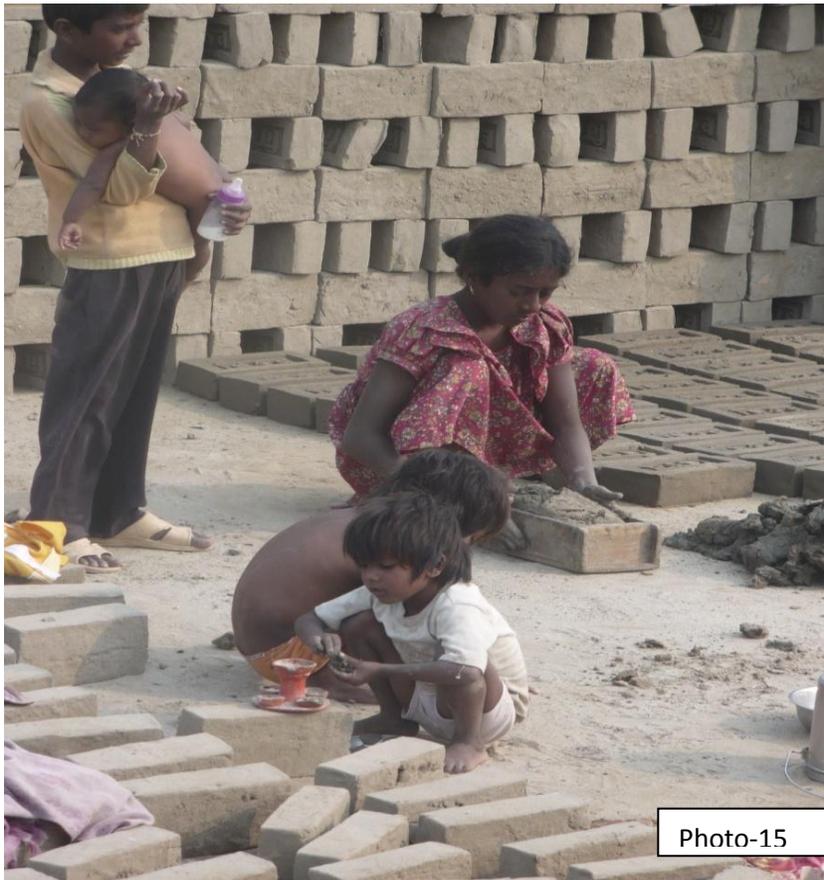


Photo-15

State of labour: The workers interviewed in the premise were too busy with their work and were reluctant to speak much. Some workers who were found to be waiting for employment around the premises were more forthcoming for the interviews. Ladies were seen fending to house-hold chores, children, besides working⁴². The state of workers at the first glance seemed pathetic. Workers were found working and eating at the same work place along with their small

children lying in the open. Most workers seemed to be poor and wretched (*see, photo.15*). However on close inspection it was conveyed that the workers worked as per their capacities as they were employed on piece rate basis. There is a weekly day off in each *bhatta* and it was conveyed that the whole area bears a festive look on the day.

⁴¹ Cost for weekly ration which ranges from Rs 250 to 300 (\$ 4 to \$ 4.6).

⁴² It was difficult to talk to the ladies due to social inhibitions.

On being interviewed some of the worker complained of the strenuous work but avoided any direct reference to the brick kiln owner or their contractor. When especially asked on the rate given for their work and the attitude of the kiln-owner at the end of the season during settlement of their dues, most respondents said that they were satisfied as they had no other option. The *adivasi* workers from Jharkhand cited poor quality of land and irrigation back home for migrating to the brick kiln. On taking advance before coming for the job, the workers again stated that they had no other option. On their kids education the workers stated that they would prefer to send their children to school if the same were located at the *bhatta* premises, as they



were unable to take leave from the work and carry their children to schools which are located far away. Due to the limitation of interacting with workers at their work premises under the watchful eyes of the employers⁴³, the account given by the workers seemed

not very reliable.

Bhatta owners' view: The brick kiln owners (or their sons looking after the business) were found to be local persons engaged in family business (*see, photo.16*)⁴⁴. The owners in their interviews denied any exploitation of the workers at their *bhattas*, but admitted that in old days

⁴³ There was no way to interview the workers outside the brick kilns as the workers reside with their families in the *bhatta* premises only and rarely ventured outside.

⁴⁴ No *bhatta* owner was found to be a new entrepreneur.

bonded labour system did prevail in some of the *bhattas*⁴⁵. They argued that brick manufacturing is an ongoing work and their reputation carried to the workers when they make a decision to work at a particular *bhatta* in a season. Most owners said that managing workers was a difficult task and keeping the flock together was their primary duty. One of the owners recounted how he had to spend sleepless nights when the *nikasi* workers (loaders) did not arrive from Jharkhand for a full season and he had to get the work done from available labour at three times the normal rates. The brick kiln owners engaged contractors (*sirdars*) to fetch labourers from remote tribal villages who were duly compensated by way of percentage of every earning of the worker he had brought. Most owners seemed comfortable with the *sirdars* who managed their labour. No payment records were produced by the owners instead they said that the workers themselves maintained the record of work done duly countersigned by the *munshi*. The owners decry drinking habits of workers for their poor conditions, otherwise each worker earn enough for themselves and their family in a season which can carry them throughout the year. Few brick owners acknowledged that they have an association in which they jointly decide on piece rate of different jobs on starts of a season⁴⁶, others said that rates were decided on the basis of rates declared by the biggest *bhatta* in their region. On legal issues, the owners opined that having a factory license completes all their legal requirements. Overall the *bhatta* owners appeared to be men with muscle and power⁴⁷ who could manage many affairs single-handedly. Their capacity to dole out advances (through labour contractors) in lakhs to perspective workers at their homes, exemplified their risk taking abilities.

Official view: I learnt that Brick Kilns fell into the administrative jurisdiction of the mining and labour inspectors, besides the factories inspector; and the brick kiln owners have to seek registration from all these departments⁴⁸ after getting ‘NOC’ from the environment ministry. The officials of the factory department in their interviews stated that their work was only to look at the welfare and safety measures prevailing at the *bhatta* premises as given in the factories act, while for the rest of the matters the inspectors of other departments were responsible.

⁴⁵ Few owners and their *munshis* in their interviews informed of bonded labour still being practiced in one of the neighboring (may be rival) *bhatta* and asked me to check myself and write a report about the ill-doing in my work.

⁴⁶ Though the fact of the association could not be independently verified.

⁴⁷ No-doubt during field work it was seen that most people identified brick kilns by the names of the owners (and not by the company name) who were often politicians.

⁴⁸ During field visit only license under the factories act was produced by the owners. The factory license has the number of workers permitted to be employed stated on it.

Some of the officers of the agriculture department (labour) viewed that though the workers took advances before coming to work at the brick kilns, however they work by choice and were free to move elsewhere⁴⁹. The officials accepted that due to the very nature of work which continues for more than six months, workers took advance before temporarily shifting with their families to the working sites and that the working conditions were filthy; however they argued that the rates paid to the workers were much higher than the minimum wages⁵⁰ fixed by the Bihar government. Other officials of same department however differed with their colleagues and viewed that exploitation did occur at the brick kilns but the workers were too fearful to complain against their employers. As per rule, the brick kilns should be registered under Contract labour (R&A) act, as the industry operated invariably for more than six months in a year and also engage large number of workers⁵¹; however none of the *bhattas* are registered nor do the owners care to follow the law. On being asked on the action being taken by his department, the official expressed his helplessness as such attempts to implement laws in the past were projected as obstruction of work by the *bhatta* owner followed by manhandling of labour officials and even blockage of roads for several days jointly with other brick kiln owners. The official stated that all workers were in the clutch of the employers and even taking a statement from a worker proves an uphill task due to which he has lost many cases in the past.

Collective Bargaining: I also traced two union leaders at Patna to know of their work on brick kilns, however none seemed to be actually working in the brick kiln region. The union leaders cited lack of awareness among workers, remoteness, resistance from brick kiln owners, besides the seasonal nature of brick industry as the reason behind lack of collective bargaining in the industry⁵². No Non-Government Organization (NGO) was seen working for the brick kiln workers though I got to know that some NGO do work on child labour in the area. No collective bargaining efforts were noticed at the *bhattas* visited. Also, neither the labour officials

⁴⁹ As per the Bonded labour system (abolition) act, 1976, an advance payment in cash or kind in lieu of forced labour is considered 'bonded labour' and is abolished. See the full act on [http://www.labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheBondedLabourSystem\(Abolition\)Act1976.pdf](http://www.labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheBondedLabourSystem(Abolition)Act1976.pdf)

⁵⁰ The minimum wages fixed by the Bihar government has separate section for brick making industry in which both daily wage rates and piece-rated rates for different categories of work are fixed. (it was seen that the government also fixes rates for domestic servants on hourly and monthly basis) See notification dated 1.4.14 at **annexure** .

⁵¹ Contract labour (R&A) act, applies to every establishment employing more than 20 workmen and in operation for more than 60 days in a year even though having seasonal character (Section 1(5)).

⁵² A former worker of ILO working in the Bihar region told about some union leaders working among brick kiln workers, however the same could not be substantiated during the field visit.

interviewed nor the workers themselves reported of collective bargaining practices at the brick kilns.

Labour Standards: As per the discussion held with the workers, labour officials, owners and contractors; and as assessed based on labour profile in the region, the minimum wages are being paid⁵³ to *mistris* (skilled) and *patheras* (semi-skilled). However the Minimum wages of “*Nikasi*” workers and “*Bozai*” workers from Jharkhand could not be established and seem doubtful. Equal remuneration of men and women for the same hours of work was not found. Men are better paid. Working hours are long and self driven. No social security (ESI/ EPF) or BOWCESS⁵⁴ benefits are available to workers. Unpaid weekly off is however given at almost all *bhattas*. The migrant workers from Jharkhand are not granted the benefits of the Inter-state migrant workers act. Working conditions are very poor. No toilets canteens rest rooms, crèches, first-aid facility seen at work site. No safety features noticed. Child labour is unchecked. No separate facility for women & children noticed. Sexual exploitation though not seen during field visit but was told⁵⁵ to be rampant.

None of the employers or the contractors were found to be having much knowledge of labour laws. Even if the employers were aware of the legal provisions, they preferred to put an ignorant face and managed to benefit from the legal void created by themselves.

Who benefits from law at brick kilns of Danapur?

The Brick Kilns of Danapur region are like isles of independent territories with its own rules and regulations in which the reign of *bhatta* owners is supreme. In spite of being registered under the Factories act; and engaging more than hundred workers during most part of a year, brick kilns of Danapur remain in the informal labour sector. No registration of contractors or *bhatta* owners was seen under the Contract labour (R&A) act, though no exemption is provided as per law. The lack of social security provisions reinforces the informal nature of the sector. In spite of legal

⁵³ As per minimum wages as fixed by the Bihar government for piece rated work at brick kilns. In fact the rates fixed for moulding work (*pathai*) @Rs 230 per thousand bricks, by the Bihar government vide notification dtd. 1.4.14 was found to be much lower than the prevailing rates of around Rs 430/ thousand, prevailing in the region.

⁵⁴ Though some confusion prevailed earlier, but it has been generally accepted by the government to grant benefit under the BOWCESS act to brick kiln workers by registering them either at their work place or native place. See, 44th report of the Standing committee on labour, Lok Sabha (Chp.2) at <http://www.prsindia.org/uploads/media/Construction%20workers/SCR-%20Building%20and%20Other%20Construction%20%20Laws.pdf>

⁵⁵ as mostly reported by the enforcement officials in their interviews.

jurisdiction of departments concerning factories act, mining, and the pollution board; while entering into these *bhatta* territories one gets the feeling of ‘absence of law’. The nonexistence of collective bargaining in the kiln territories only helps the *de-facto* rulers to maintain their control. With negligible government labour enforcement machinery present for the vast territory, and more so the compartmentalization and confusion prevailing with respect to respective jurisdictions, ensures that the will of the brick kiln employers face no challenge. It was found that the ability of the brick kiln owners in evading the laws by dubious methods, keeping collective bargaining at bay and in keeping the employment relations informal; has helped them in keeping their profit margins exorbitantly high inspite of many concurrent downward pressures. However with the ‘state of lawlessness’ benefitting the employers the most, the employers are bound to oppose any attempt to bring the brick kilns within the ambit of law. The failure on the part of the law enforcement agencies in regulating the *bhattas* and on the part of unions in organizing the workers is jointly responsible for the state of affairs at the brick kilns of Danapur. Absence of safety and welfare measures in spite of the presence of large number of women and children in the kilns and the sheer depravity of these workers were awful reminiscences of the fieldwork.

DEVELOPMENT FOR WHOM?

The elaborate provisions made in the labour laws as laid out in the first section on “Acts and statutes in India concerning contract labour” and their ground implementation as detailed in the preceding section on case studies, clearly projects the wide gap existing between the provisions made in law and their ground realization. The case studies depict that in the actual process of deliverance most labour laws are openly flouted especially in the case of poor contract workers who are the most marginalized segment at the workplace. Part of the problem seems to be in the structure of the laws themselves which leaves ample scope for contravention (for details see, Kumar, 2013), further, the inability on the part of the agency workers to formulate their own ‘voice’ within the contract labour system so to enable them to claim their legal entitlements at the workplace has been found to be the prime cause for the disarray. Even in those cases (eg. Mahindra tractors) where contract workers could enter into collective bargaining and formulate an agreement to their advantage, the failure of the legal system to honor such agreements has made the whole legal framework questionable on the benefits it actually serves. Another deterring factor towards the disadvantage of the workers is the delay in adjudicating labour cases

by the courts and the long channels of appeal and review to seek legal remedy. The delay in judicial adjudication (see, CAG (2007)) and its implications on the livelihood of the workers is one of the major reasons for the disinclination of the workers towards seeking legal remedy. It has been thus argued that the limited penetration of law and the lax practice in application even in those limited section of population, makes the labour law system for all intent and purpose a “non-functioning system” (Mitchell, Mahy & Gahan, 2012, p.47).

Rudrapur industrial area and Delhi Metro which came up in the liberalization period are the hallmarks of developing India. Industrial development was expected to create quality jobs in the country and even upgrade labour standards in traditional industries like brick kilns which hover between the lines of formality and informality. However, as seen in settings like Rudrapur with abundant supply of labour, precarious workers who fit-in get only subsistence wages while the bulk of the profit of production is pocketed by the employers, investors and labour suppliers who split among themselves the surplus value generated. Though jobs are created but these jobs donot provide succor to the holders in the long run. The net result of development is increased precariousness, inequality, industrial unrest and problems like social disharmony and naxalism. Likewise in the traditional contract labour system in brick kilns, the depravity of the workers is the reflection of their poverty and the resistance (to change) of the employers who benefit from the huge profits generated from their labour.

Thus to conclude, all legal and policy discourse concerning industrialization and development shall start with the basic question, *Development for whom?* Will the development effort benefit few industrialists, white collar workers of the region or couple of investors abroad; or shall it benefit the numerous workers who will find-in jobs, and the area as a whole. The development efforts founded on increased precariousness and contractualization of workers are lopsided. Only when laws contain required flexibility, accessibility and provisions for collective bargaining, employment security and redistribution, then benefits of development can fall upon all.

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