

HELPING THE HELPLESS

Small tweaks to the Contract Labor Act could end the criminal and political nexus that exploits blue collar temp workers

Government statistics put temporary and contract jobs at 21% of India's labor force; an astounding 80 million people. Given that the organized temp sector employs only 175,000 people, most sides of the usually polarized labor debate agree that the "legislation created" exploitation of 98% of contract labor in the unorganized sector needs to end.

The irrational, idealistic and unenforceable provisions of the Contract Labor Regulation and Abolition Act (CLRA) ensure that the only capability required of the unorganized temping sector is providing employers with "regulatory arbitrage" in avoiding labor laws via strong political, criminal or regulatory connections.

The Unorganized temping sector has a well earned reputation for exploitation. No health, safety or minimum wage laws apply. There is no leave with pay. There are no defined contribution savings (EPFO), pension participation (EPS), health insurance (ESI), death coverage (EDLI) or gratuity. Where these deductions are made, they are often not deposited to the credit of individuals. Most dangerously, there is no transparency around contractor service fees that could reach a usurious forty or fifty percent of wages (relative to eight to fifteen percent for the organized sector). The positives of organized temping like the apprentice effect (45% find permanent jobs within a year) and portal effect (disproportionate representation of labor market outsiders) are missing. The CLRA also creates a 20% wage differential between perm and temp blue collar workers that is missing in white collar temping. All this is compounded by diminished organizational and human capital since contractors rotate blue collar temps among different entities just as they approach random dates in legislation (182, 240 days) that accrue permanency claims.

These unintended and tragic consequences have four roots. First is the impotence of CLRA arising from considering contractors unaccountable flow-through entities. They are not the "principal employer" and there are no licensing, net worth, or other barriers to entry. This lack of accountability creates incentives and opportunities for exploitative contractors and short-term players that do not make investments in processes, infrastructure, people or liquidity abilities. Second are random dates in legislation (182, 240 days) that violate the sanctity of fixed term contracts (i.e. a 90 day job ends in 90 days and does not accrue permanent employment rights). The CLRA's light touch on



Putting India to Work

permanency is amplified by court judgments but this legislative and judicial combination requires blue collar contractors to suppress permanency demands by tactics at the edge of the law (if you ask for permanency I'll break your legs!). Third is the enforcement subjectivity arising from an unqualified restriction on using temps in core and perennial work. Fourth is a nightmarish licensing regime that requires separate licenses for every client location.

What needs to be done? We need a licensing regime for contractors that make them the principal employer. We need to legislate the legitimacy of fixed term contracts. In a world of outsourcing, we need to remove restrictions on temping in core and perennial work. And we need simplification and transparency in licensing.

Most reform attempts are sunk by the exploitation argument. But drunk driving is not an argument against cars just as the shenanigans of Global Trust Bank are not an argument against SBI. Unorganized sector abuses should not hold back reform that would neutralize the potency of regulatory arbitrage and create an effectively supervised and well capitalized temporary staffing industry that competes on service, technology, compliance, and reputation.

Blue collar temp workers suffer from information asymmetries, low labor mobility and weak bargaining power. They need an effective regulatory and industry framework more than white collar workers. The CLRA fails to reduce exploitation and may increase it by making outsourcing to the informal manufacturing or service sector more attractive than hiring a temp in the formal sector.

Today the CLRA hurts the very blue collar workers it masquerades to protect. But can we force powerful vested interests to put aside private good for the greater good? Probably not. But it's time to overrule them to help those in the labor market that cannot help themselves.