



Law, Skills and the Creation of Jobs as ‘Contract’ Work in India: Exploring Survey Data to make Inferences for Labour Law Reform

Deb Kusum Das, Jaivir Singh and
Homagni Choudhury



Motivation/Introduction



Large literature and policy rhetoric feeds the discourse that Indian labour laws stifle employment and output. However in our opinion, there is some cause to take a more nuanced view for two reasons:

- One, while regular workers are covered by these stringent laws, sizeable sections of the workforce working in the formal manufacturing sector is not subject to the labour laws.
 - (i) There has been a change in law – in that the Supreme Court has interpreted legislation governing contract labour (labour not directly employed but through a labour contractor) to say that employers have no obligation to offer regular terms of employment. This has resulted in an expansion in the employment of this category of labour and a jump in the numbers of ‘contract labour’ can be dated from the judgment.
 - (ii) Looked at broadly, this change in the law is a part of a larger trend, which has had a legislative component as well. For example most recently some states have initiated state-level changes to ensure that less and less workers are covered by labour legislation.



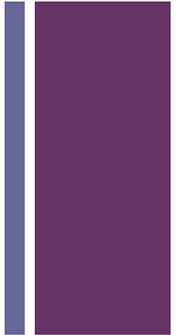
Motivation/Introduction (contd.)



- Second there is also a large concern (expressed in various ways by the Government as well as Employers) that the Indian Labour force is not skilled. So there has been a change to the Apprentice Act, 1961 accompanied by a 'Skill India' Policy. The changes in the *Apprentice Act* is aimed to encourage improvement in the skill level of the Indian Labour force.



Motivation/Introduction (contd.)



- To look at these changes – expansion of contract labour use & a desire to ‘Skill India’, particularly together - cant use traditional economic models. Traditional models used to look at labour markets, including many of those used to look at the Indian scenario assume perfect markets and no market failure. This pushes them to
 - (i) Pose the central problem as one of fairness versus efficiency. They typically say an easing of the requirements of law may reduce fairness but will increase efficient allocation of resources – perhaps even create much larger overall fairness and vice versa.
 - (ii) Ignore the role of models that emphasize institutional features prevalent (such varieties of labour laws in our case) in a market are often a response to some market failure that is sourced in some externality. The presence of labour law in this respect can be seen as a source of generating some efficiency.



Motivation/Introduction (contd.)



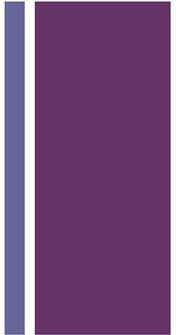
- It can be asked whether the direction of labour law reform already in place is beneficial? To answer this we proceed with a mix of empirical and theoretical tools, regarding which, we raise the following preliminary points:
 - Qualitative accounts suggest employers though 'happy' with flexibility of the contract labour system, but also 'unhappy' that trained labour does not stay. Reflects that there are *Costs and Benefits* associated with the 'contract' labour system. So our answer to the above question involves looking at some of the costs
 - Best approached using frame of *incomplete contract* models because the listed *unhappiness* is of consequence when the departing worker is not easily substitutable by another worker. For the worker to stay, she needs to invest in the relationship, and she will not do so if she feels that her employer will act opportunistically. It is impossible to write an ex-ante efficient contract to cover this situation (ex. too complex to contract for the schooling of workers children!) and both employer and worker suffer from the under provision of relationship specific investment and productivity generated thereof.
 - While clearly important cant easily see and measure the underinvestment of relationship specific investment and therefore we need to look at proxies and indications present from indirect evidence as a first step in this direction. Our survey provides us with some information to make some inferences in this regard.



Motivation/Introduction (contd.)

Paper in four parts

- Review of law and changes in interpretation, broad consequences and questions raised thereof
- Empirical Findings
- Theoretical Structure of Incomplete Contracts framework and its relevance for important questions raised in relation to labour markets and the law.
- Directions for future Labour Law Reform



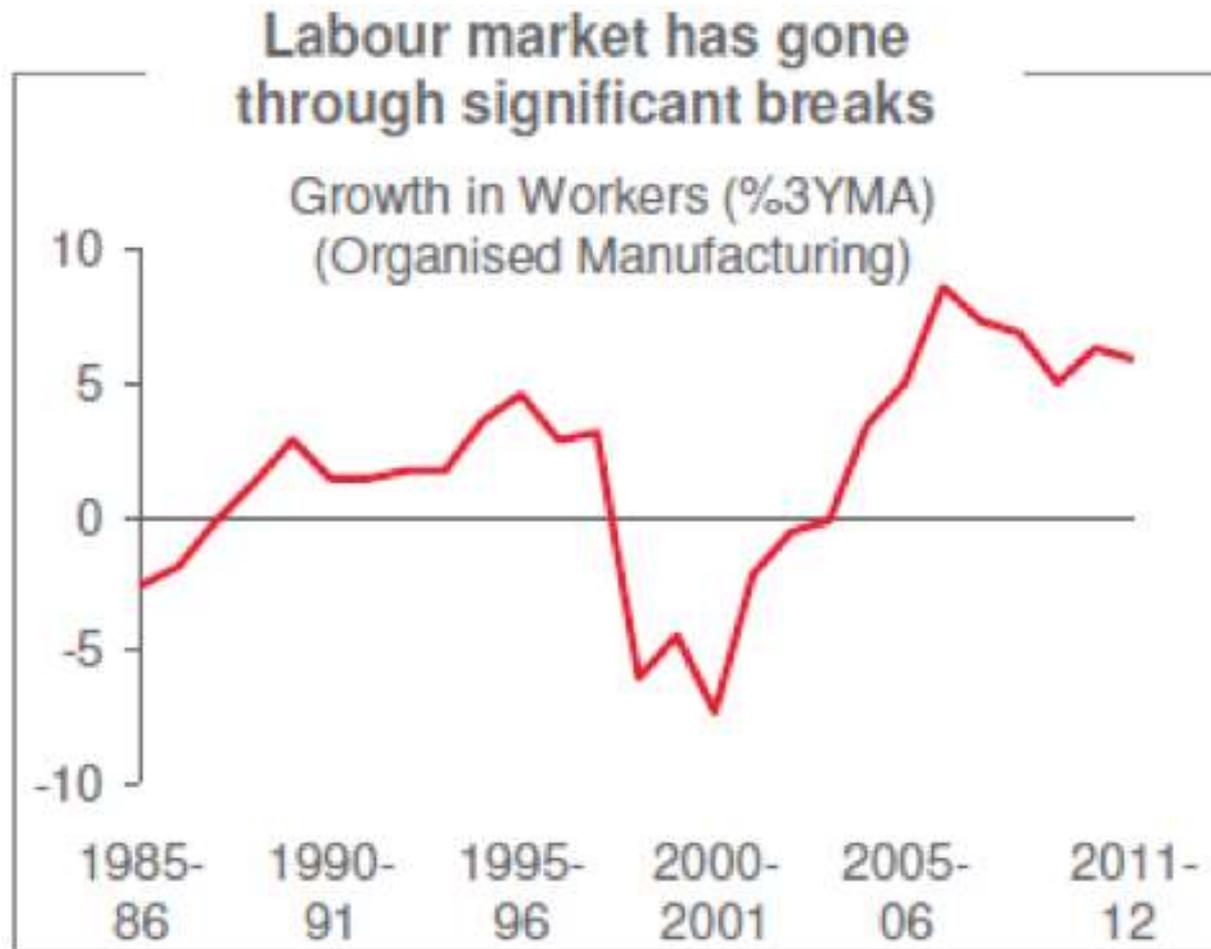


Review of Indian Labour Law, Changes & Questions Raised (1) ...



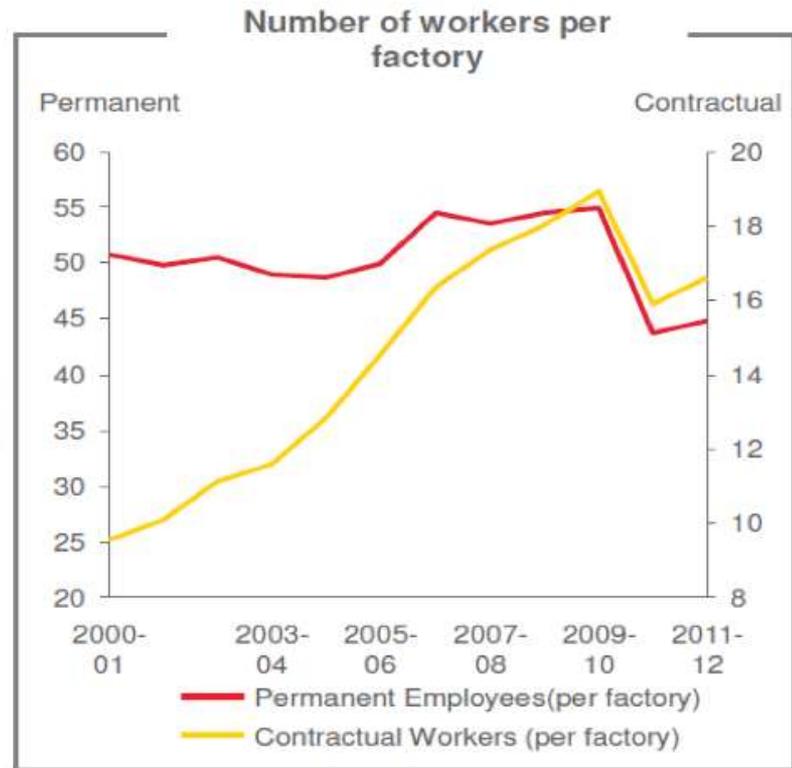
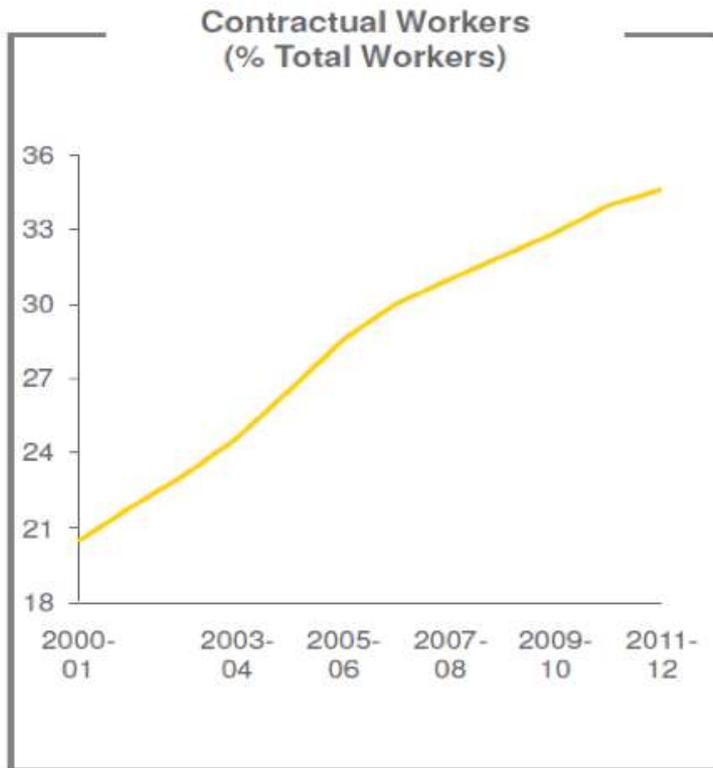
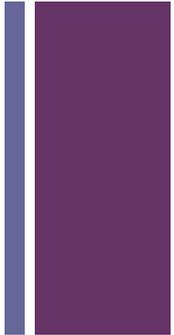
- *Steel Authority of India v. National Union Water Front Workers* AIR 2001 SC 3527 said that there was no obligation on employers to absorb abolished contract labour as regular workers. Set the stage for expansion of the use of contract labour... If the contract is a sham (regular work being done by contract workers) that should be addressed as an independent dispute.
- Dealing with just such a dispute, down the line in *International Airport Authority of India v. International Air Cargo Workers Union* and another (2009) 13 SCC 374 it is said if the contract is for the supply of labour then the labour will work under the ‘directions, supervision and control of the principal employer’ but since the salary is paid by the contractor the “ultimate supervision and control lies with a contractor”
- *Uttar Pradesh Rajya Vidyut Utpadan Board v. Uttar Pradesh Vidyut Mazdoor Sangh* (2009) 17 SCC 318 Wage Parity for the same work not upheld **de-facto**, particularly if placed next to *Hindustan Steelworks Construction Ltd. v. Commissioner of Labour and Others*, 1996 LLR, 865(SC), which said no liability on principal employer if there is a shortfall in wages paid to contract labour by the contractor.

+ Review of Indian Labour Law, Changes & Questions Raised (1) ...





Review of Indian Labour Law, Changes & Questions Raised ...





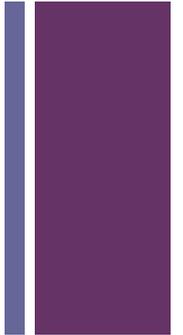
Review of Indian Labour Law, Changes & Questions Raised (1)...



- Apart from our work (Deb Kusum Das, Homagni Choudhury and Jaivir Singh 'Contract Labour (Regulation and Abolition) Act 1970 and Labour Market Flexibility: An Exploratory Assessment of Contract Labour use in India's Formal Manufacturing' ICRIER Working Paper 300 June 2015)
- Recent work Rahul Suresh Sapkal 'Labour Law, Enforcement and the Rise of Temporary Contract Workers: Empirical Evidence from India's Organised Manufacturing Sector.(Forthcoming in European Journal of Law and Economics, 2015) among other things, empirically establishes that contract workers have swollen particularly in states that are 'pro-labour' ...



Review of Indian Labour Law, Changes & Questions Raised (2)...



- Self certification on compliance to labour laws
- Prominently the content of the labour legislations have not been changed but coverage has been changed –

Rajasthan: CLA coverage changed from 20 to 50 workers, IDA V B Coverage changed from 100 to 300, Factories Act to cover only establishments employing 20 or more workers (with power) 40 or more workers (without power)

Madhya Pradesh: IDA V B Coverage changed from 100 to 300



Review of Indian Labour Law, Changes & Questions Raised (3)...



Major desire for a skilled labour force – manifest, among many others in statement made by Narayana Murthy, the Skill India Policy and so on

Legal Manifestation is changes in Apprentice Act 1961,

Act regulates apprentices, demanding that establishments hire apprentices

Many changes – all largely to encourage employers to use apprentices – flexibility + easing red tape + attempt at more utilization of ‘seats’ + new trades

...

Interesting change: It appears that the number of apprentices per firm is worked out in ratio to the number employed – so the definition of worker has been changed to include contract labour in the new Act.

No change from the viewpoint of labour except an ‘opportunity to get skilled’, except perhaps to enhance stipend. A large case law has the Courts clarifying that apprentices have **NO** claim on any job....

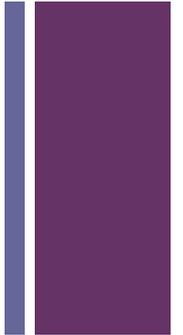


Review of Indian Labour Law, Changes & Questions Raised Sumup

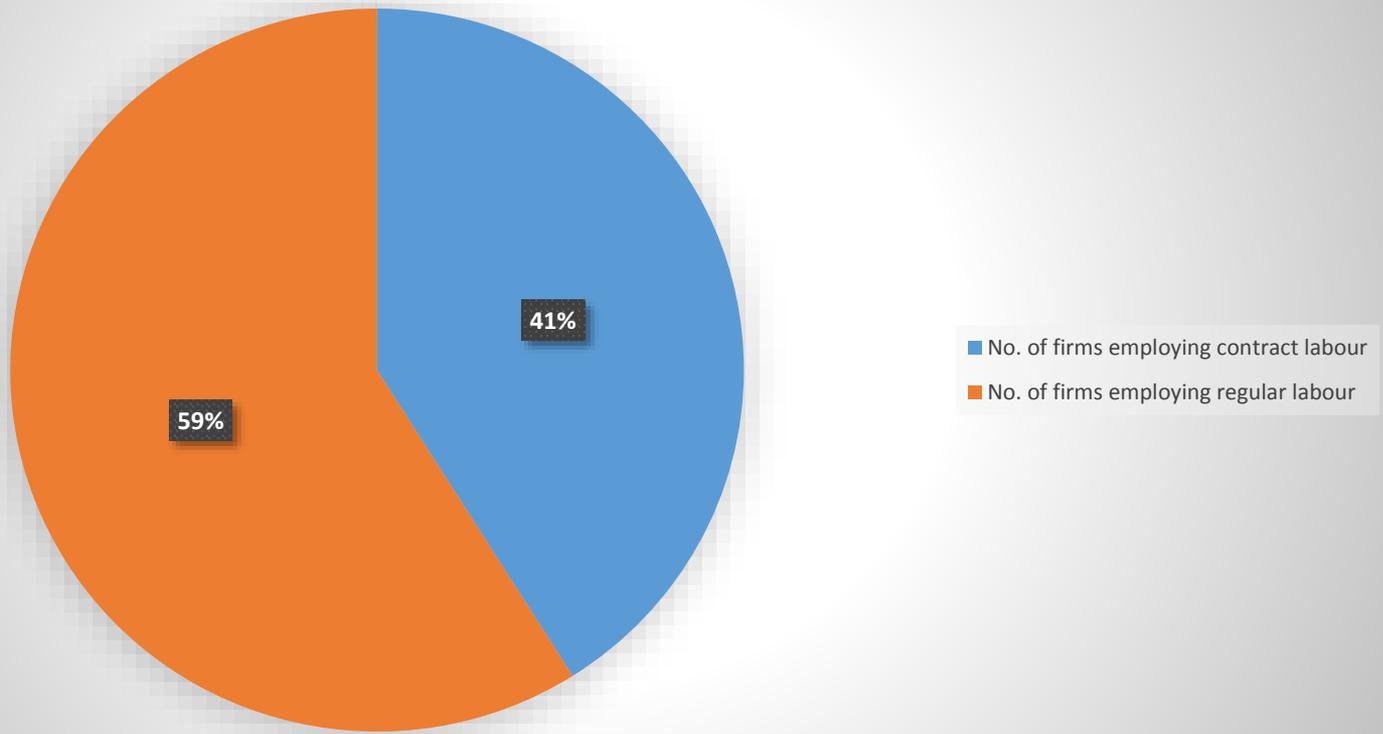


- Look at this desire for flexibility (and its consequences) and the desire to 'Skill India' simultaneously – the former impulse creates a labour force subject to 'employment at will' & the desire for skilled work force demands some investment from the employer and some investment from the worker but at both ends (employer and employee there is the hazard of opportunism.)
- After worker has invested in a relationship, the employer can renege & after an employer has invested in a relationship the worker can renege... Predicts a less than optimal investment in value generating relationship specific human capital.

+ Survey – Descriptive Statistics

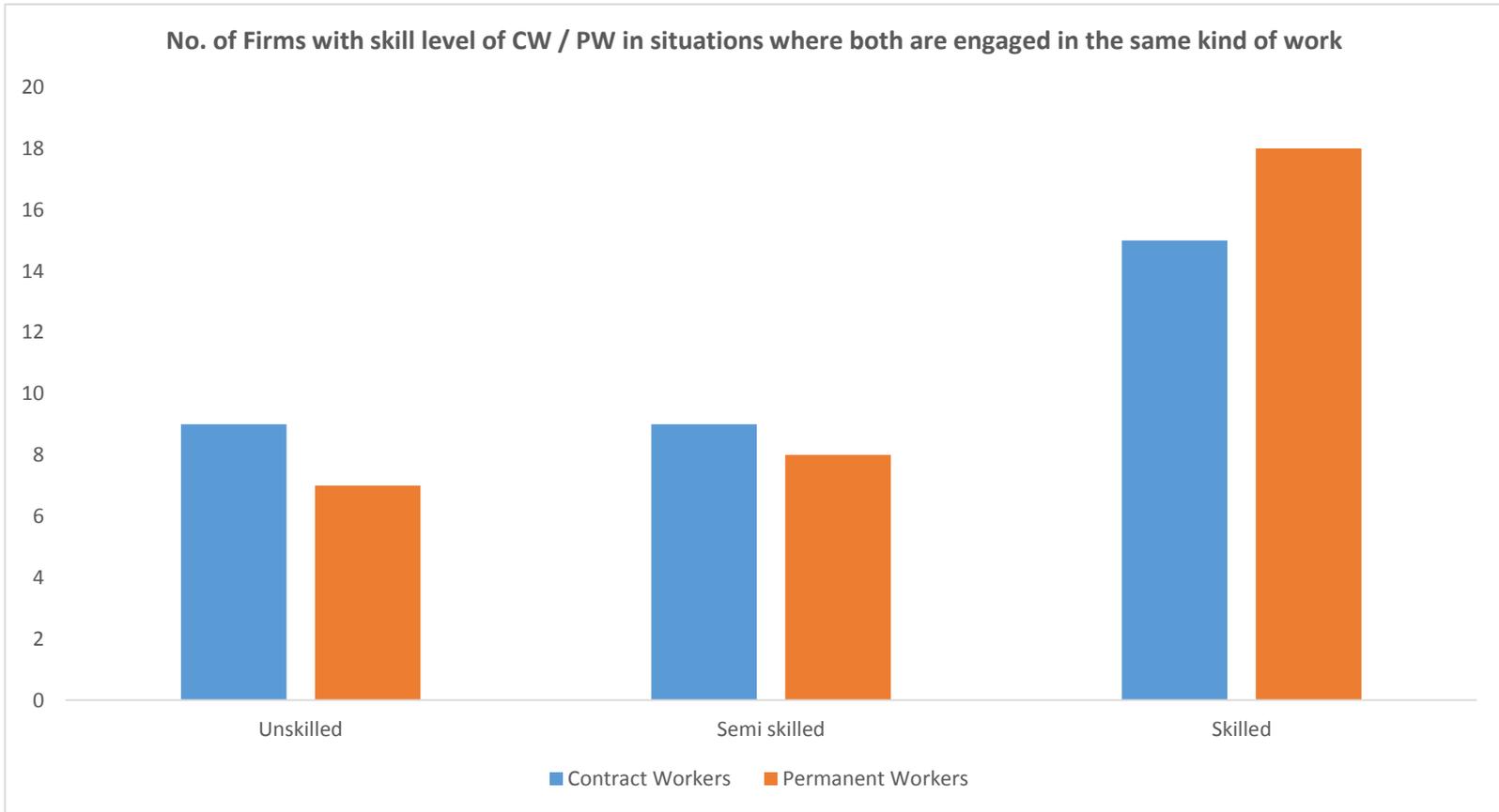
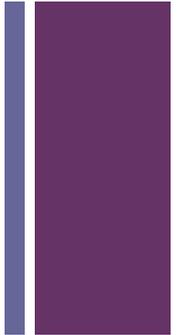


Regular Workers VS Contract Workers



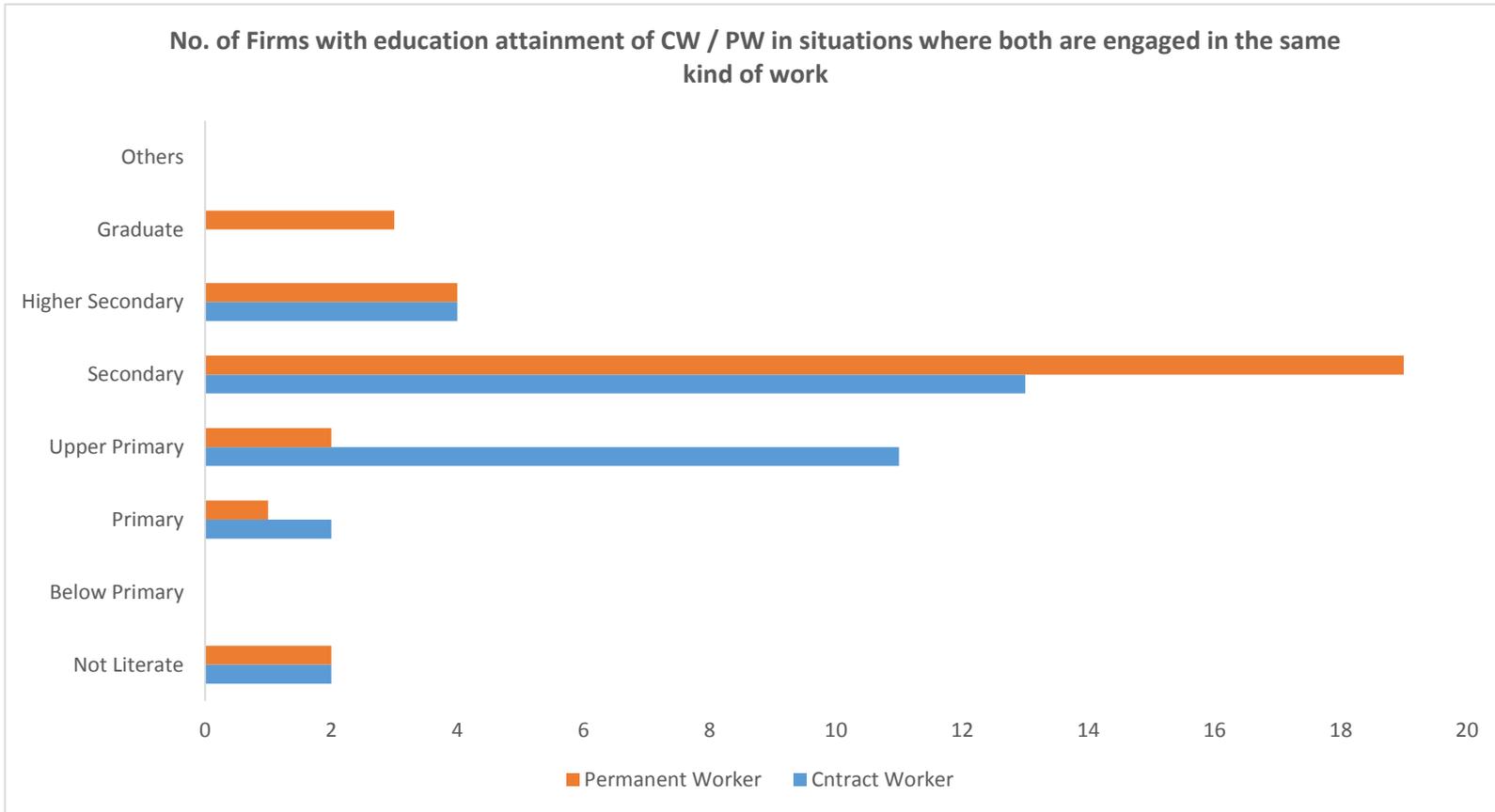
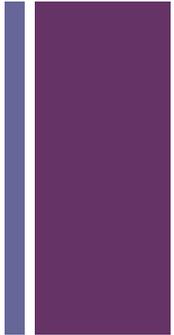


Survey - Descriptive Statistics (contd.)

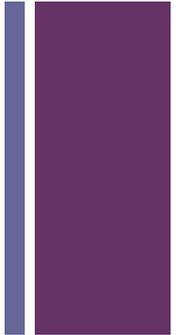




Survey - Descriptive Statistics (contd.)



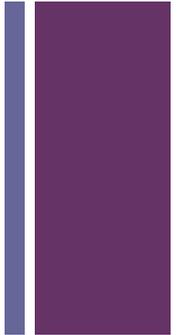
+ Survey Findings



- Broadly speaking Survey findings tell us that if not perfectly, then to a good degree there is substitution of contract workers for regular workers (both categories seem to do the same task)
- Qualitative responses say that the ‘Costs’ of the contract labour system is that “we do not get skilled labour under this system”



Case Study



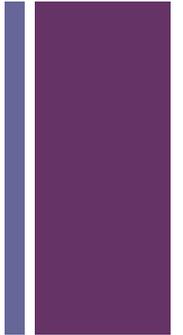
- Pankaj Kumar in 'Who Benefits from the Law? Reminisces from Fieldwork on Contract (Agency) Workers in India' Paper presented at Labour Law Research Network Conference University of Amsterdam 25-27 June 2015
- Rudrapur Concentration of New Industries, drawing labour from the hinterland and therefore labour is mobile. Case of a heavy transport manufacturer. 450 R 258 CL Apparently CL and R (unlike other places) treated with equality. Interesting thing is that they have 'signed' a collective bargaining agreement which trades productivity of contract labour against fair treatment – particularly safeguard tenure till 58 years subject to good behaviour. Labour machinery calls this illegal (on account of abolition clause of Contract Labour Act).

+ Incomplete Contracts

- To discern Costs and Benefits go to 'Incomplete Contracts' - lots of development, but will confine myself to the insights of the seminal work by Klein, Crawford and Alchian (1978) .
- Broad insight: Ex- ante contracts do not cover risks that show up ex post. Solution: Vertical Integration
- In Terms of Labour: A worker with special ability to service an asset cannot be fired easily and therefore can appropriate some quasi rent. To resolve the problem cant vertically integrate in terms of employer 'owning' her on account of slavery laws. So some form of vertical integration such as having a long term relation – a franchise agreement is more vertically integrated than a worker who can be fired at will.



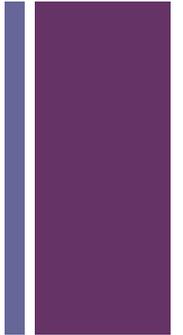
Incomplete Contracts (cont.)



- Consider appropriation of quasi-rent by employers when workers have invested in specific human capital & employers opportunistically fire workers nearing retirement disabusing them from enjoying the returns to investing in the job. Trade unions plays an important role in monitoring and enforcing long term contracts to help preserve returns to employees with investments in specific human capital.
- Next consider appropriation of quasi rent by workers when employers invest in specific human capital. Workers can quit; causing firms to push up wages to retain workers, but that is no guarantee of staying on and complex wage schedules are atypical, causing wage rigidity. There are wide variety of systems of quantitative adjustment.
- Efficiency is thus contextual –' employment at will' fine if one worker is substituted for another but not if there is value to be generated from ex-ante investment. Here labour law has a vital role to play ...



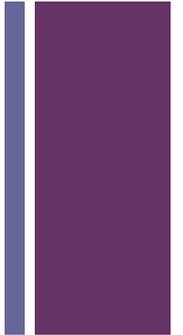
Directions for Labour Reform



“ However unlike most other industries in Rudrapur, the prevalence of collective bargaining at T & Co 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 T & Co plant for the contract workers were reasonably good and they were getting benefits like paid leave, medical insurance, and bonus 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 T & Co 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.”



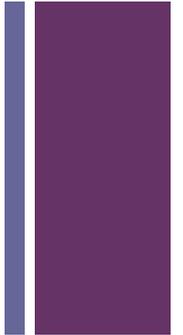
Directions for Labour Reform (contd..)



- Following from MacLeod and Nakavachara 'Can Wrongful Discharge Law Enhance Employment?' EJ 2007 which looks at American use of good faith and other implied contract exceptions to the employment at will doctrine and sees a positive correlation between their use and employment where relationship specific investment by workers is important.
- Emphasizes that while legislation covers the average case, cases that come to be determined in courts on a/c of egregious behavior of employers are crucial marginal cases. These, if not corrected will lead to a preemptive fall in productive relations.



Directions for Labour Reform (contd..)



- Reform needs more of the Law, less of government intervention, like the change to the Factories Act in Rajasthan says that complaints against the employer about violation of this Act would not receive cognizance by a court without prior written permission from the state government. This is a reversal of the State becoming pro-employer rather than pro-worker. RENT SEEKING, CRONY CAPITALISM perhaps?? But if it is efficiency, we want, then law should generate value....
- If Law is (to the extent it is...) relational then Rudrapur example is important to follow through...