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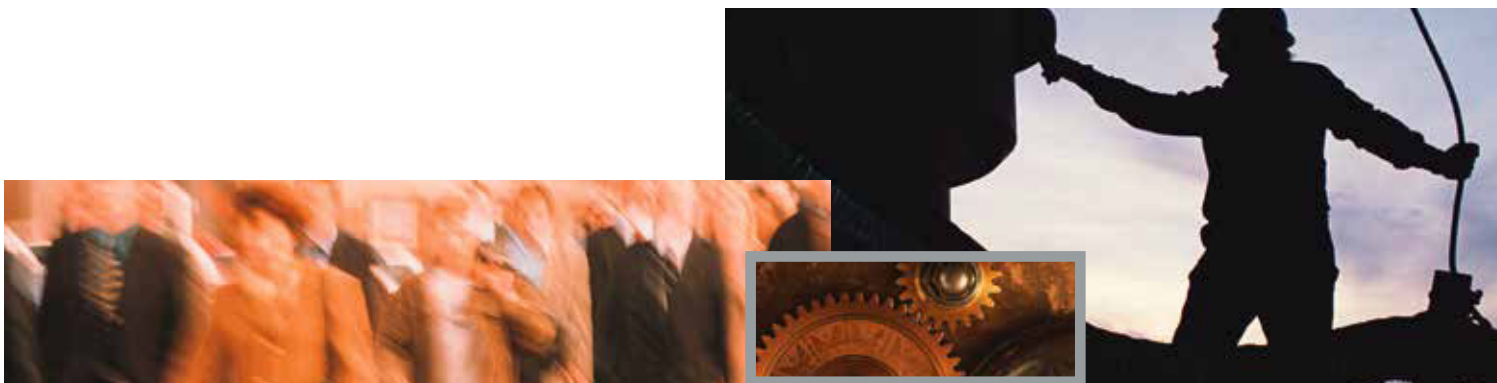


The regulation of non-standard forms of employment in India, Indonesia and Viet Nam

Ingrid Landau,
Petra Mahy,
Richard Mitchell

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***The regulation of non-standard forms of employment
in India, Indonesia and Viet Nam***

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Contents

List of abbreviations.....	v
List of figures and tables.....	vi
1. Introduction.....	1
1.1 Methodology.....	5
1.2 Literature review.....	6
1.3 A note on terminology.....	7
2. The nature and prevalence of non-standard forms of employment in India, Indonesia and Viet Nam.....	8
2.1 What accounts for the prevalence of non-standard forms of employment?	13
3. The regulation of non-standard employment in India	15
3.1 An overview of Indian labour law.....	15
3.2 Forms of non-standard employment recognised and regulated in law.....	16
3.2.1 Temporary employment	17
3.2.2 Sub-contracting and independent contracting arrangements.....	21
3.2.3 Agency work	21
3.2.4 Other forms of non-standard employment.....	25
3.2.5 Summary of rights and entitlements, by type of employment.....	26
3.3 Regulatory debates and initiatives	27
4. The regulation of non-standard employment in Indonesia.....	28
4.1 An overview of Indonesian labour law	28
4.2 Forms of non-standard employment recognised and regulated in law.....	29
4.2.1 Temporary employment	29
4.2.2 Agency work	31
4.2.3 Sub-contracting and independent contracting arrangements.....	33
4.2.4 Honorary public servants.....	34
4.2.5 Summary of rights and entitlements, by type of employment.....	34

4.3	Regulatory debates and initiatives	37
5.	The regulation of non-standard employment in Viet Nam	37
5.1	An overview of Vietnamese labour law	37
5.2	Forms of non-standard employment recognised and regulated in law.....	38
5.2.1	Temporary employment	39
5.2.2	Part-time employment	41
5.2.3	Home-work.....	41
5.2.4	Agency work	41
5.2.5	Sub-contracting and independent contracting arrangements.....	44
5.2.6	Summary of rights and entitlements, by type of employment.....	44
5.3	Regulatory debates and initiatives	46
6.	The impact of non-standard forms of employment and its regulation	46
6.1	The impact of non-standard forms of employment on workers.....	46
6.2	The impact of the regulation of non-standard employment on labour markets.....	49
7.	Discussion and conclusions	50
	List of cases	54
	List of laws and implementing regulations	55
	References	58
	Appendix 1 – Summary of regulation of fixed-term contracts.....	69
	Appendix 2 – Summary of regulation of agency work.....	70
	Conditions of Work and Employment Series.....	71

List of abbreviations

AIOE	All India Organisation of Employers
BPJS	Badan Penyelenggara Jaminan Sosial (Law on Social Security Provider)
CITU/KSPI	Confederation of Indonesian Trade Unions
EPL	Employment Protection Legislation
EPZ	Export Processing Zone
FES	Friedrich Ebert Stiftung
FSPMI	Federasi Serikat Pekerja Metal Indonesia (Federation of Indonesian Metalworkers' Union)
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
KSBSI	Konfederasi Serikat Buruh Sejahtera Indonesia (Confederation of Indonesia Prosperity Trade Unions)
KSPSI	Konfederasi Serikat Pekerja Seluruh Indonesia (Confederation of All-Indonesian Trade Unions)
MOLISA	Ministry of Labour, Invalids and Social Affairs
NCEUS	National Commission for Enterprises in the Unorganised Sector
NGO	Non-Governmental Organisation
NSSO	National Sample Survey Organisation
OECD	Organisation for Economic Co-operation and Development
PKWT	Perjanjian Kerja Waktu Tertentu (Fixed-Term Labour Contract)
PPPK	Pegawai Pemerintah dengan Perjanjian Kerja (Government Workers with Employment Contracts)
SEZ	Special Economic Zone
TUPE	Transfer of Undertaking Protection of Employment
VGCL	Viet Nam General Confederation of Labour
VSS	Viet Nam Social Security

List of figures and tables

Figure 1. Types of employment.....	7
Table 1. Distribution of workers by employment status: male, female and total - India	9
Table 2. Distribution of workers by socio-religious group and work status, 2011-12 - India.....	10
Table 3. Summary of rights and entitlements, by type of employment - India	26
Table 4. Summary of rights and entitlements, by type of employment – Indonesia	35
Table 5. Summary of rights and entitlements, by type of employment – Viet Nam	45
Table 6. Comparison of monthly total wage, based on employment status - Indonesia	47
Table 7. Regulation of fixed-term contracts – India, Indonesia and Viet Nam.....	69
Table 8. Regulation of agency work – India, Indonesia and Viet Nam.....	70

1. Introduction

The issue of employment or work status and associated questions concerning labour protection and security should properly be seen as ongoing matters centrally involving the interests of labour across all societies, throughout different historical time periods, and at all different stages of political and economic development and redevelopment. In other words, the attention in the recent past on the quasi-independence of labour, the employment relationship and labour representative organisations and institutions as a focus for thinking about labour regulation (labour law) is an historically specific focus on what are changing social and economic institutions (Johnstone and Mitchell 2004; Quinlan 2006; Quinlan 2012). This is hardly controversial, but it is important to emphasise nevertheless that discussions about forms of labour relationships and their differences inevitably give rise to many greater problems and issues going to much deeper relations between labour, capital and the state. In this context, the concern with ‘standard’ and ‘non-standard’ forms of employment, and other similar divisions, may be viewed as one of many relevant matters in the history of securing a livelihood through the supply of labour for others. Such a broad perspective is instructive as it reminds us of the importance of adopting an approach to the study of labour market regulation in which the concern of investigation is not simply the form and content of regulation but its role, purpose and effectiveness as a vehicle of providing working people with the means of subsistence and livelihood.

The immediate concerns of this Study are with the **legal regulation of non-standard employment** in three countries: **India, Indonesia and Viet Nam**. The Study has been conducted in the context of a set of activities undertaken by the ILO on Non-Standard Forms of Employment (ILO 2015). It has involved a broad investigation giving rise to issues of the kind indicated in the opening paragraph above. However for sake of drawing together what we have perceived to be the core issues at hand, three main lines of enquiry have suggested themselves in aggregating the questions examined, and consequently have provided us with a general analytical approach. These are as follows. **First**, we have set out **to identify the nature/incidence of non-standard employment and its evolution in our three countries**. **Second** we have sought **to describe and analyse the legal regulation of non-standard employment in our three countries**. And **third**, we have endeavoured to some degree **to examine the impact of non-standard employment on the workforce and on the labour market generally**, and also **the impact of the regulation of non-standard employment on the workforce and on the labour market generally**.

Recent discussion and debate on labour market organisation identifies a contemporary divide between two models of labour ordering and arrangement. The first of these is labelled the ‘standard’ (or sometimes ‘regular’) employment model or relationship. The second model is labelled the ‘non-standard’ employment relationship. The ‘standard’ employment relationship is generally characterised by full-time continuous employment, with a direct employer, and where the work is performed under the direct supervision of that employer, on the employer’s premises. Vosko (2011) identifies three central pillars underpinning this employment model: employee status (i.e. the bilateral employment relationship), standardised working time (normal daily, weekly, and annual hours), and continuous employment (permanency). This specific employment model has described and constructed a particular labour market reality that existed in industrialised countries in the post-World War II period. With the rise and consolidation of Fordist modes of production and the welfare state, came a full employment economy and a ‘social commitment to predominantly full time contracts of indefinite duration’ (Mitchell 1995:xi; see generally Deakin and Wilkinson 2005; Teklè 2010; Vosko 2011).

The term ‘non-standard employment’ (also often referred to as ‘atypical’ or ‘irregular’ employment) does not have a fixed meaning, and the use and scope of the term often varies between countries, regions and academic disciplines. Broadly speaking, the term encompasses various ways in which workers are engaged in the labour market that deviates from the idea of the ‘standard employment relationship’ as defined above. In relation to this model, various working arrangements may be seen as typifying ‘non-standard’ forms of employment. These include, for example, temporary employment, part-time employment and triangular employment. Conceptually these general categories may be broken-down and particularised as follows:

- (i) *forms of employment* that depart from the ‘standard’ employment model (such as casual, fixed-term, project- and task-based employment, all of which are temporary in nature);
- (ii) *working arrangements* that deviate from the ‘standard’ model in terms of working time (i.e. part-time employment);
- (iii) *working arrangements* that deviate from the ‘standard’ model in terms of location of work, such as home-work or out-work; and
- (iv) *modes through which labour is engaged* (whether directly or through an intermediary) whereby a worker is not in an employment relationship (that is, they are independent contractors, semi-independent workers or dependent contractors) or where the existence of an employment relationship is unclear or disguised.

We adopt these dimensions of the non-standard employment definition for the purposes of this Study.

While adopting the conceptual devices of ‘standard’ and ‘non-standard’ employment, we recognise the limitations and inadequacies of these models in describing the world of work. Generally speaking, they describe types of waged employment that are recognised as being within the parameters of existing labour law systems. It is now recognised that great numbers of workers in developing countries, and increasing numbers in developed countries, fall outside the legal coverage of such systems, either as a result of serious limitations in the application of law or because of significant divergences between the legal and socio-economic presumptions that underpin such models, and the realities of industrial and economic development (see Jhabvala 2001; Teklè 2010; Harriss-White 2010; D’Costa 2011; Mitchell et al 2014). As Teklè has pointed out in a recent collection of essays exploring the potential of, and the limits to, labour law as a tool of worker protection in developing economies, ‘[i]n the South, a great part of the active population – which is actually the majority in many countries – has never performed work that corresponds to the industrial employment model around which “conventional” labour law protection is shaped.’ These workers are engaged as ‘self-employed, agricultural workers, homeworkers, contributing family workers, domestic workers, and unpaid care workers within the family and community workers.’ This holds true for each of the three countries in this Study, in which the dominant form of work continues to be own-account work or contributing-family work engaged in informal employment.

In considering the limitations of the ‘standard’/ ‘non-standard’ employment dichotomy, it is also a reality that many workers do not fall neatly into a single legal category of work, but are engaged in a multiplicity of work-statuses and occupations (this is particularly the

case in relation to the intersection between agricultural labour and subsistence work with other forms of work and production).¹

Finally it is necessary for us to make clear what this Study does *not* cover. First, it does not cover certain forms of employment that may be referred to as ‘non-standard’ and/or fall within the working definition offered above, but do not fall within the questions defining the scope of this Study. This includes, for example, domestic work, training arrangements (including apprenticeships and internships) and unpaid work. The Study identifies but only briefly discusses legally recognised forms of non-standard employment that may be less familiar to international audiences, such as ‘scheme’ workers in India and ‘honorary public servants’ in Indonesia.

Second, the Study does not extend to cover or examine working arrangements that fall under the broader rubric of ‘*precarious*’ work. While this term is sometimes used interchangeably with the term ‘non-standard’ work, the former is conceptually broader. Definitions of precarious work generally encompass considerations of both forms and status of employment *as well as* other dimensions of labour market insecurity (such as low pay, lack of employment security and so on)(see Kountouris 2012; Standing 2011) and sometimes other factors such as voluntariness (ILO 2010b: 35) and social location (such as gender and citizenship) (Vosko 2011: 2). While it is recognised that there may often be overlap between non-standard forms of employment and precarious work as defined, (for example, casual employment may be very precarious in nature where it is low paid and deficient in rights and entitlements), they are not synonymous.

Third, the Study does not extend to cover all types of ‘*informal*’ work arrangements. There is a tendency – especially when discussing work arrangements in Asia – for the terms ‘non-standard’ and ‘informal’ to be conflated. As in relation to precarious work, it is our understanding that while there is overlap, the terms are conceptually distinct. Work arrangements may be ‘informal’ in various ways: for example the work may be carried out in the ‘informal sector’ (for example, within unregistered and/or small unincorporated enterprises), or may be ‘informal employment’ in the sense that it is work which is ‘not recognised or protected by legal and regulatory frameworks’ (ILO 2002:3; Meagher 2013:2; see also the discussion in Routh 2014:34–45). Discussions of informality are further complicated by the differing definitions and implications of these terms across national jurisdictions. In India, for example, the term ‘formal sector’ (‘organised sector’)² is generally used to denote government/ public departments and public/private enterprises, and private enterprises that employ 10 or more workers. The term ‘formal worker’ (‘organised worker’) is used to refer to those working in the formal sector with employment and social security benefits provided by employers, and workers in the informal sector who are regular (permanent) workers with social security benefits provided by the employers. The informal sector and informal workers are those enterprises and workers respectively that fall outside these definitions (Institute for Human Development 2014).

It is clear that while concepts of informality and non-standard employment are distinct, there is overlap: for example casual workers engaged for less than a particular duration may be excluded from labour laws, or workers engaged by a firm through a temporary agency may struggle to identify their employer and thus find it impossible to enforce their rights. In India, the situation would appear particularly complex, given that commonly-used definitions

¹ See, for example, Bremen 1999; Jhabvala 2001; Papola 2013.

² In India, the terms ‘organised’ and ‘unorganised’ are often used interchangeably with the terms ‘formal’ and ‘informal’. This Study uses the latter terminology.

of formal sector and formal worker draw upon concepts of ‘regularity’ (permanency) and entitlement to social security that would appear to lead to the automatic exclusion of workers in certain forms of non-standard employment.³

The interaction and relationship between concepts of informality and non-standard forms of employment are complex and beyond the scope of this Study. For present purposes, it is sufficient to note that the two concepts are distinct, and that in many cases, ‘non-standard’ employment is not ‘informal’ **because it is covered and regulated by labour laws** (see the discussion in Routh 2014:60–63), even though the rights and protections afforded to these workers under these laws may be inferior at times to those applying to persons engaged in ‘standard-form’ work. The percentage of persons in informal employment (defined as jobs that lack basic legal protection, or employment or social benefits) constitutes 68.2 per cent of non-agricultural employment in Viet Nam, 72.5 per cent in Indonesia and 83.6 per cent in India (ILO 2012). In a descriptive sense, then, it is plainly formal employment so defined that is ‘non-standard’.

Fourth, this Study focuses on the *legal regulation* of non-standard forms of work. It does not consider more ‘informal’ and *long-standing traditional work arrangements*, such as those based in agricultural communities, in patron-client relationships, kinship, religion and so on. These forms of regulation remain very important in many Asian countries in particular (see, for example, Hart 1986; Otsuka, Chuma and Hayami 1992; Breman 1999; Blackwood 1997; Jhabvala 2001; Harriss-White 2010), but they are not included as part of ‘legal regulation’ as we use that expression in this Study.

This Study is structured as follows. In the remaining part of this introductory section, we outline our methodology and provide a brief literature review. Section 2 examines available data on the nature and prevalence of non-standard forms of employment in the three countries. Sections 3, 4 and 5 describe and analyse the legal regulation of non-standard employment in India, Indonesia and Viet Nam respectively. Each of these sections commences with a brief overview of the labour law system in the relevant country, with a particular focus on the development within each system of regulation concerning various forms of employment. We then outline the main categories of ‘non-standard’ work recognised by labour law, and examine the extent to which the rights and protections accorded to workers depend upon, or are determined by, these categories. In these discussions, we focus on those areas of law in which non-standard workers are accorded different treatment by virtue of their employment status. Each section finishes with a table summarising the extent to which rights and protections afforded to permanent employees are also extended to those in major types of non-standard employment. In contrast to the text of the Study, which, as we have noted, focuses on those areas of law in which workers in non-standard employment are accorded different treatment, the tables provide a more generalised overview of the rights and protections afforded to non-standard workers. It should be emphasised that these tables focus on the extent to which workers in non-standard forms of employment are accorded the same or different rights *when compared with their permanent counterparts* in the same jurisdiction. They do not identify or seek to evaluate the extent to which the laws of general application in the specific country afford adequate protection to workers or to evaluate their content against specific benchmarks (such as international

³ Adopting these definitions, it was estimated in 2011–12 that out of the total 472 million workers in India, around 392 million workers (83 per cent) worked in the informal (unorganised) sector, and around 2 million of these were engaged in formal (organised) employment. Of the 80 million workers in the formal (organised) sector, over half (46 million or 58 per cent) were in informal employment (Institute for Human Development 2014: 34). Around 64.9 per cent of workers employed on a regular (permanent) basis are in the formal sector (Institute for Human Development 2014: 31).

standards). Each of the three sections finishes with an overview of the extent to which, and how, issues around non-standard employment have featured in recent regulatory debates in each country. In Section 6 of the Study, we summarise the literature on the impact of non-standard forms of employment on workers and on the labour market more broadly. Section 7 contains some broad observations and conclusions.

1.1 Methodology

The Study is based on a systematic examination of the regulation of non-standard employment in the three national jurisdictions of India, Indonesia and Viet Nam. It draws upon two principal sources of data: (i) primary legal material: legislation (and subordinate legislation), case law and (to the extent possible) other sources of regulation such as collective agreements; and (ii) academic and non-academic (such as media and non-governmental organisation (NGO)) material on the subject, from a range of disciplines.

It is important to note our approach to several challenges we encountered with respect to the jurisdiction of India. The first is in relation to variations between labour laws at the federal and state level. As labour law is on the ‘concurrent list’ in the Indian Constitution, it is a matter over which both federal and state jurisdictions exercise legislative competence. As it is simply not feasible to include in a study of this length, a description or analysis of the regulatory frameworks in the central jurisdiction and all the states and territories, our Study focuses largely (but not exclusively) on laws made by the central government and applicable to the whole of India. The second challenge is in relation to the scope of Indian labour laws. The Indian labour law system is distinguished by its fragmentation and restrictive coverage, with many laws limited in their application by factors such as size of establishment,⁴ type of establishment, sector, geographical location,⁵ salary-level, and type of worker.⁶ Indeed, once this myriad of exclusions is factored into account, only a very small percentage of workers in India (generally conceded to be less than 10 per cent) is even formally protected by the major labour laws (see further Papola 2013). Indian labour law is also distinguished by its complexity, with a multitude of statutes regulating employment in various sectors of the economy, and many statutes adopting different definitions of a worker (or ‘workman’, person employed etc.) and ‘employer’ for the purpose of determining the scope of the protections afforded by the law. So as to render the task before us feasible, our general approach has been only to identify and examine distinctions in the application of statutes – or of particular provisions within statutes – that are directly based on the type of work contract. This approach has also been taken in relation to Indonesia and Viet Nam. In doing so, however, we are cognisant that there may be a range of exclusions inherent in the labour laws of each

⁴ Most of the labour laws in India dealing with conditions of work and social security only apply to establishments with a minimum of 10 or 20 employees; those laws dealing with retrenchment, lay-off and closure only apply to establishments with even high numbers of employees (see, e.g., Industrial Employment (Standing Orders) Act 1946 and Industrial Disputes Act 1947). Most establishments fall below these threshold employment limits (Sankaran 2010: 229). Papola and Pais (2007: 197) observe that an estimated 84 per cent of all wage earners work in establishments with fewer than 10 workers. As Sankaran (2010: 230) explains, these exclusions only exacerbate the lack of clarity between the formal and informal economy: an enterprise may be covered by the law due to its size or sector (and thus be part of the formal economy), however a number of workers engaged to work within that enterprise may still fall outside the scope of the law due to the nature of the work performed or other exclusionary criteria – thus it is possible to talk about informal employment within a formal enterprise.

⁵ E.g. the Factories Act 1948 applies to factories and other specified establishments only.

⁶ E.g. the definition of ‘workmen’ or similar terms in various statutes excludes certain categories of workers, such as those engaged in domestic work, those in managerial or supervisory positions, and public servants.

country that operate *indirectly* to impact disproportionately on workers engaged in certain forms of non-standard employment. For example, many labour statutes only apply to enterprises with a minimum number of employees or to certain sectors of the economy. It may well be that, as smaller enterprises or certain occupations are more likely to engage workers on a casual basis, these exemptions operate to exclude a disproportionately large numbers of casual workers in practice.

1.2 Literature review

Overall, there is surprisingly little academic literature on the subject of the regulation of non-standard work in the three countries that form the focus of this Study, particularly when contrasted with the extensive academic and policy attention devoted to non-standard work in developed countries (see, e.g. Vosko 2011; Stone and Arthurs, eds., 2013).

As the contract labour system in India has featured as one of the most fiercely contested issues in debates over labour market reform in recent decades, there is a significant body of literature examining the regulation of this form of labour engagement, its advantages and disadvantages, and the specific experiences and vulnerabilities of this class of workers in that country (see, e.g. Shyam Sundar, ed., 2012; IndustriALL 2012; Rajeev 2009; 2006; Das and Pandey 2004). A few of these studies also extend to examine other forms of non-standard employment (e.g. Gopalakrishnan and Mirer 2014). Second, there is a small body of literature examining judicial approaches to labour-related issues, such as the regularisation (that is, transition to permanency) of casual workers (see, e.g., Cox 2012; Gopalakrishnan 2010). Finally, Shyam Sundar has examined organisational and bargaining strategies and practices among non-standard workers in India (Shyam Sundar 2011).

In Indonesia, the concept of non-standard work is not clearly defined (Marasigan and Serrano 2014; Tjandraningsih 2012; Anwar and Supriyanto 2012) and, to our knowledge, there has as yet been no comprehensive review of the regulation of the various forms of non-standard employment in that country. Non-standard forms of employment have tended to be overlooked or only mentioned in passing in most relevant English and Indonesian literature (e.g. Kartasapoetra et al. 1992; Fehring and Lindsey 1995; Edwards 1996; Arnold 2008). In more recent years, however, there has been more focus on non-standard employment, in the context of ILO efforts to measure decent work in the country (ILO 2011a; 2013), and increasing attention has been given to the issue by trade unions and labour activist NGOs, specifically in relation to fixed-term employment and agency work (Tjandraningsih 2012; Herawati et al 2011; Marasigan and Serrano 2014; Anwar and Supriyanto 2012).

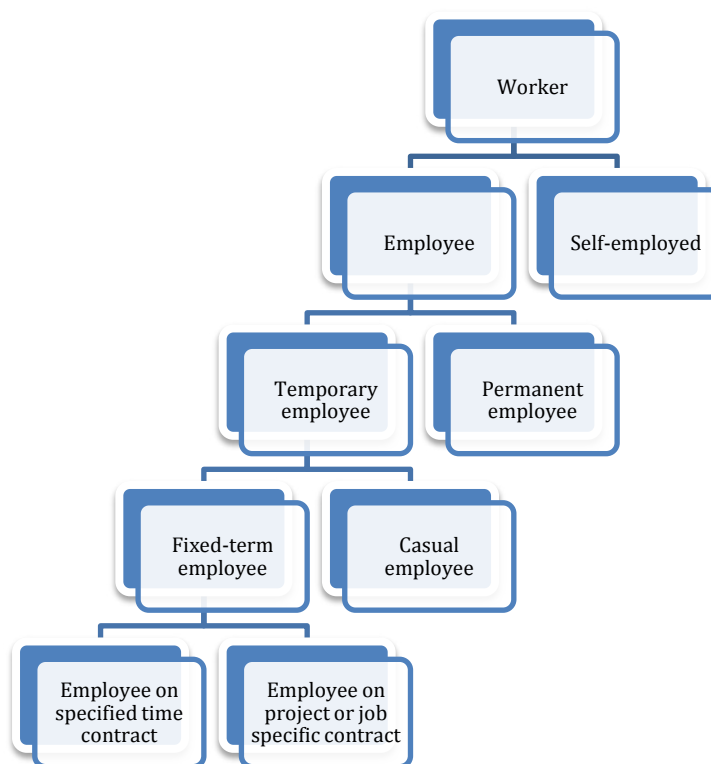
The literature on this issue in Viet Nam appears even more limited (in English and in Vietnamese). There are only a small number of publications in the English language focusing on the evolution of Vietnamese labour law (e.g. Nicholson 2002; Qi, Taylor and Frost 2003) and industrial relations (e.g. Chi 2011; Collins 2011; Le and Truong 2005). Where the country has been included in relevant comparative analyses, such studies tend to be brief (e.g. Casale et al 2011) or quantitative in nature (e.g. World Bank Enterprise Surveys, various years). The exception to this appears to be a recent overview of the regulation of temporary agency work (Pupos 2014). There is also some, although limited, consideration of the incidence of, and factors contributing to the incidence of, non-standard work to be found within other strands of literature on labour in Viet Nam, such as scholarship on changing industrial relations practices in the country (e.g. Chi 2011; Collins 2011; Le and Truong 2005), precarious work (Arnold 2013), migrant workers (e.g. Le et al 2011) and the informal economy (Cling et al 2014).

1.3 A note on terminology

It is also useful for us to clarify a number of terms used in this Study. First, the term **legal regulation** is used to denote legislation, case law and other state-based or state-recognised forms of regulation (such as arbitrated agreements and collective bargaining). Second, the Study adopts a fairly broad definition of **labour law**, understood to include not only those rights, standards and procedures concerned with regulating individual and collective labour relationships but also employment-based social security protections.

A clarification with respect to the use of the term **temporary employment** is also warranted. Our Study uses the term broadly, to encompass all those forms of employment (understood as waged work performed pursuant to a contract of employment) that are limited either in time or by the completion of a set project or task. Where possible, temporary employment is further categorised into its different forms, such as **fixed-term** and **casual employment**. This conceptual framework is illustrated in Figure 1 below.

Figure 1. Types of employment



Finally, different jurisdictions use different terms to describe triangular employment relationships: that is, arrangements whereby a worker is employed by an agency, and then hired out to perform his/her work at (and under the supervision of) a third party. This Study uses the generic term ‘agency work’ to describe such arrangements, along with the related terms ‘agency’, ‘agency worker’ and (to denote the client enterprise that engages the worker through the agency), ‘principal employer’. As above, however, where specific national regulations are being discussed, this Study uses the (English) terms customarily used in that context.

2. The nature and prevalence⁷ of non-standard forms of employment in India, Indonesia and Viet Nam

It follows from some of the reservations set down in Section 1 that obtaining an accurate picture of the nature and extent of non-standard employment in India, Indonesia and Viet Nam is a challenging task. The limitations of national labour market statistics in the three countries, and the tendency for each jurisdiction to use categories for statistical data collection that do not correspond (directly or through any kind of reliable proxy) to legal categories of employment, render it impossible to measure, or estimate with any precision, the proportion of the wage-earning population engaged in non-standard forms of employment in each of the three countries or to comment on trends in these types of employment over time.⁸ Studies in other relevant disciplines, such as economics and social science, tend to use categories that do not correspond to legal ones. Nonetheless, the fragmented and incomplete data available suggests that workers engaged through these forms of employment constitute a significant number of waged workers in each of the three countries, and that the proportion of workers engaged in these types of work has increased in recent decades.

In all three countries, a significant proportion of workers are engaged in *temporary employment* as we have defined it above (see Figure 1 and associated text). In India, as Table 1 indicates, casual workers constitute just under a third (32.79 per cent) of workers, with the majority of workers being self-employed (50.58 per cent), and only 16.63 per cent of workers being ‘regular’ (permanent) employees. Interestingly, the greatest shift between categories over the past several decades appears to be from self-employment to casual employment, with the share of regular employees remaining fairly constant (Papola 2013: 8; see also Institute for Human Development 2014: 38, 49). As Papola observes, this data suggests a relatively high degree of segmentation between ‘regular’ (permanent) work and the other two categories, and a relatively low degree of segmentation between self-employment and casual work, with a significant proportion of workers holding both statuses simultaneously or alternately (2013: 8). As can also be seen in Table 1, while females continue to be over-represented in casual work and self-employment, there has been a significant increase in the percentage of women workers engaged in ‘regular’ (permanent) employment (from 6.4 per cent in 1993–94 to 11 per cent in 2009–10).

⁷ By ‘prevalence’ we mean extent, or something that is in common or general usage.

⁸ In India, it appears that national data is collected under the categories of casual worker, self-employed and ‘regular’ (permanent) employees (Papola 2013: 6). The NSSO has also collected data on home-based workers (Raveendran et al 2013). In Indonesia, both the National Labour Force Survey (Sakernas) and the RAND Indonesian Family Life Surveys collect information on status in employment according to the following categories: self-employed; self-employed assisted by family member/ unpaid helper; employer with permanent worker; employee (this category includes permanent and fixed-term employees); casual employee in agriculture; casual employee not in agriculture, and unpaid worker. In Viet Nam, national data is collected under the following status-in-employment categories: wage and salaried workers, self-employed and contributing-family workers. The category of self-employed workers is further subdivided into employers; own-account workers and members of producers’ cooperatives. Data is also collected on the type of the contract under which wage and salaried workers are employed, according the following categories: permanent contract; fixed-term contract; verbal agreement; no contract; and other (ILO 2010c: 9–14). There are some signs, however, that improvements in the collection of statistical data on non-standard forms of employment are being made (e.g. ILO 2010c: 14).

Table 1. Distribution of workers by employment status: male, female and total – India

Gender	NSS Year	Self-employed	Regular employees	Casual labour
Male	1993–94	53.75	16.95	29.29
	1999–00	51.28	17.86	30.86
	2004–05	54.17	18.34	27.49
	2009–10	49.57	18.81	31.52
	1993–94	56.65	6.44	36.91
Female	1999–00	55.53	7.54	36.92
	2004–05	60.99	9.10	29.91
	2009–10	52.95	10.97	36.08
	1993–94	54.70	13.53	31.77
Person	1999–00	52.61	14.65	32.75
	2004–05	56.38	15.35	28.72
	2009–10	50.58	16.63	32.79

Source: Papola (2013:8), based on various rounds of National Sample Survey Organisation (NSSO) Employment and Unemployment surveys and Central Statistical Organisation (CSO) *National Account Statistics* (various years).

A ‘creeping casualization’ of the workforce has been noted in Indonesia (De Ruyter and Warnecke 2008: 730; ILO 2011a; Matsumoto and Verick 2011). Overall, the proportion of casual workers in total employment increased from 6.7 per cent in 2001 to 11 per cent in 2009, before falling to 10.1 per cent in 2010. The greatest increase in casual employment during this period appeared to be among male workers: from 7.3 per cent in 2001 to 13 per cent in 2009 (Matsumoto and Verick 2011). The proportion of people working as ‘regular’ employees (both permanent and fixed-term) has also been increasing, particularly during the 2009–2013 period (ILO 2013: 12).

There is evidence of high levels of temporary employment in Viet Nam, though it is not possible to say conclusively whether this is in the form of casual or fixed-term employment (or a combination of both). From their analysis of social security data, Castel and To (2012) estimate that short-term employment (under three months in duration) represents an average of 23.9 per cent of total employment in Viet Nam.⁹ The World Bank has reported that 35.8 per cent of workers in the private sector in Viet Nam were/are engaged in temporary work,

⁹ Note, however, that this estimate is reached by comparing the total number of employees working in the enterprises paying contributions with the number of registered employees recorded with the VSS. As enterprises are not required to register workers on employment contracts with a duration period of three months or less, it is presumed that this final number equates to the percentage of short-term employees.

which is much higher than the regional average of 9.7 per cent (World Bank various years).¹⁰ Qualitative studies have also found high levels of temporary employment in case-study enterprises (see, e.g., Zhu 2005).

Huynh and Kapsos (2013) provide some insight into the economic status of workers engaged in casual waged work in the three countries, finding that in India and Indonesia, the share of casual waged workers notably declined as economic class status increased. For example, while more than 46 per cent of all extremely poor Indian workers were engaged in casual wage employment, this share dropped to around 20 per cent for the moderately poor and only 5 per cent for the middle class. In Viet Nam, a significant proportion of migrant workers are engaged on temporary work contracts (Le et al 2011: 8). In India, over a third (36 per cent) of casual workers have an income below the officially fixed poverty line, compared with 24 per cent of self-employed and 9 per cent of regular (permanent) workers (Institute for Human Development 2014: 36).

In India, there is also data indicating that, consistent with their more vulnerable position in the labour market generally,¹¹ disadvantaged socio-religious groups including those formally designated as ‘Scheduled Castes’, ‘Scheduled Tribes’ and large sections of ‘Other Backward Classes’, are more likely to be engaged in casual work and self-employment than in permanent (‘regular’) employment (in either the organised or unorganised sector). In contrast, ‘Upper Hindus’ and ‘Others’ have a higher proportion of workers in permanent (‘regular’) employment, in comparison to their overall share in the workforce (see Table 2 below).¹²

Table 2. Distribution of workers by socio-religious group and work status, India, 2011–12

Socio-religious group	Share of Workforce (2011–12)	Self-employed	Regular worker	Casual labour
Scheduled Tribes	10.2	10.4	5.0	12.8
Scheduled Castes	19.3	13.6	16.5	30.4
OBCs	43.5	46.1	38.5	42.0
Upper Hindus	19.4	21.4	31.7	8.6
Upper Muslims	5.9	6.5	5.5	5.1
Others	1.8	2.1	2.8	0.7
Total	100.0	100.0	100.0	100.0

Source: Institute for Human Development (2014: 79), based on NSSO 68th Round.

¹⁰ The enterprise surveys are administered to a representative sample of firms in the non-agricultural formal private economy. Temporary workers are defined as workers that are ‘paid short-term (i.e. for less than a fiscal year) employees with no guarantee of renewal of contract employment and work 8 or more hours per day’.

¹¹ See generally Deshpande 2011; Attewell and Thorat 2010; Thorat and Newman 2010; and Vaid 2014.

¹² For earlier data indicating similar patterns, see NCEUS 2007: 22.

There are no accurate figures on levels of fixed-term employment in Indonesia (Osterreich 2013:284). In Viet Nam, according to the results of the National Labour Force Survey 2009, 25.8 per cent of waged workers were engaged on fixed-term contracts, compared to 29.4 per cent of workers on permanent contracts. There was a slight increase in the proportion of workers on fixed-term contracts between 2007 and 2009 (from 24.7 per cent to 25.8 per cent) and a slight decrease in the proportion for workers on permanent contracts (from 31.8 per cent to 29.4 per cent)(ILO 2011b). Qualitative studies of Vietnamese enterprises also suggest that the proportion of workers on fixed-term contracts is high: for example, a 2000–2001 study of seven manufacturing companies in Ho Chi Minh City found that four of the seven companies had over two-thirds of their employees on fixed-term contracts (Zhu 2005: 1270).

Agency work is a prevalent form of non-standard employment in India (where it is commonly referred to as ‘contract labour’), and this method of engaging labour has increased significantly since the 1990s in both the public and private sectors (see, e.g. Sankaran 2010; Ahsan et al 2008: 261; IndustriALL 2012). It has been estimated that the proportion of contract labour in the formal factories sector increased from approximately 12 per cent in 1985 to 23 per cent in 2002 (Ahsan et al 2008: 261, based on Annual Survey of Industries data). Statistical analyses also strongly indicate that the increase in contract labour has corresponded with a decline in direct employment (Shyam Sundar 2012a: 17–18; Sood et al 2014: 59–60). There have been, and continue to be, however, great variations in agency work across different industry sectors, establishments of various sizes and various state economies. In 2009–10, for example, 64 per cent of Indian workers in the tobacco sector were contract workers, 40 per cent in refined petrochemicals and non-metallic mineral products, but less than 15 per cent in textiles, wearing apparel and publishing industries (Sood et al 2014: 60). While the share of contract labour appears to have declined in some states (such as Assam and Karnataka), it has increased in most others, with Andhra Pradesh recording the greatest increase in the share of contract labour in the formal sector from 33.8 per cent in 1985 to 62 per cent in 2002 (Papola and Pais 2007: 190). According to trade unions and researchers, the overall statistics tend significantly to under-estimate the prevalence of agency work, with agency workers now outnumbering directly employed workers in many establishments and sectors (IndustriALL 2012; Shyam Sundar 2012a: 18; Maiti 2012). A recent study of non-standard work in several automobile factories in Chennai (Tamil Nadu) found an increasing use of contract workers and a corresponding decrease in the use of casual employment (Gopalakrishnan and Mirer 2014). Surveys of contract workers have found a very high proportion of inter- and intra-state migrant workers among those engaged by agencies (Gopalakrishnan and Mirer 2014: 26; Rajeev 2009: 178).

In Indonesia, agency work (commonly referred to in English translations as ‘labour outsourcing’ or simply ‘outsourcing’) reportedly began to emerge in the 1990s (Darma 2014: 252). However it was not until the practice was legally recognised in the Labour Law of 2003 that it became prevalent across different industry sectors (Tjandraningsih 2012). Indonesian trade unions report a very high incidence of labour outsourcing: up to 40 per cent of workers in the metalworking industry and more than 60 per cent of workers engaged in the textile industry. According to the KSBSI in 2010, 65 per cent of the total estimated 33 million workers in formal employment were engaged in temporary work (that is, were fixed-term contract workers and outsourced workers), compared with 30 per cent in 2005 (ITUC 2014: 26). A study of labour outsourcing practices in the manufacturing sector found that many workers had been shifted from permanent employment contracts to engagement through labour supply companies (Tjandraningsih 2012) and that workers engaged through labour supply agencies are more likely to be non-managerial, technical and support staff (Tjandraningsih et al 2010).

While the move to regulate agency work in Viet Nam (commonly referred to as ‘labour outsourcing’) in recent years has been viewed as an indication of the increasing prevalence of

this practice (Pupos 2014), there are no national data available confirming that analysis. Surveys conducted by the Ministry for Labour, Invalids and Social Affairs (MOLISA) and the ILO between 2009 and 2011 found 59 labour hire agencies operating in Ho Chi Minh City, some of which engaged thousands of workers (Tran 2012). Case studies suggest that agency work and subcontracting is common, with an Oxfam-commissioned study of Unilever operations in Southern Viet Nam finding that over half (53 per cent) of workers, most of whom were migrant workers, were engaged by a third party (Wilshaw et al 2013).

Home-based work is a further category of non-standard employment that is found across the three countries. However its ‘invisible’ nature renders the task of collecting data on this type of work very difficult. In India, home-based workers constitute a significant share (15.2 per cent) of the total non-agricultural workforce (Raveendran et al 2013: 3). Women are more likely to be engaged in home-based work than men: just under a third (31.7 per cent) of all females employed in non-agricultural work were engaged in home-based work in 2011–12, compared to 11 per cent of males (Raveendran et al 2013: 3). Most home-based workers are in rural areas, although recent years have seen a significant increase in the number of urban home-based workers (Raveendran et al 2013: 4). Home-based workers are concentrated in manufacturing and trade and repair services (Raveendran et al 2013: 5). Common types of home-based work include beedi work, stitching garments, making craft products, processing and preparing food items; assembling or packaging electronics, automobile parts and pharmaceutical products; selling goods or providing services; and clerical work (Chen et al 2014). Much of this work is remunerated on a piece-rate basis (Sankaran 2010: 256–7). In India, home-based workers may be independent self-employed workers, and dependent workers, who rely on a firm or its contractors for work orders, supply of raw materials and sale of finished goods. The latter category of home-worker is referred to in India as a sub-contracted worker or homemaker. In 1999–2000, the last year of which reliable statistics are available, around one third (33.4 per cent) of home-based workers were sub-contacted workers (Raveendran et al 2013: 4). It is noted that while these sub-contracted workers are sometimes classified as self-employed and sometimes classified as waged workers, ‘[i]n reality, ‘sub-contracted home-based workers – or homeworkers – occupy an intermediate status in employment between fully independent self-employed worker and fully dependent employee’ (Raveendran et al 2013: 2; Chen et al 2014: 136).

Home-based workers are not included as a statistical or legal category in Indonesia and there is no clear definition of this type of worker (ILO 2013: 52). Nonetheless, according to Oey-Gardiner et al (2007:259) home-based work has long existed in Indonesia, particularly in the textile and handicraft industries, and despite a lack of official statistics confirming this fact, home-based work is a significant phenomenon in the Indonesian labour market. Oey-Gardiner et al cite an ILO-DANIDA project in Tasikmalaya District in West Java that found that homeworkers represented about one in five of all workers. However, Oey-Gardiner et al.’s own surveys cover informal home-based workers – and consequently it is unclear to what extent formal home-based work may exist in Indonesia. Under the law, it would appear that home-workers would most likely be classified as independent contractors.

The dearth of data prevents even an overview of other types of non-standard employment in the three countries. It has proven difficult to find data on **part-time employment**. In Indonesia, there is data indicating that approximately 22 per cent of workers were engaged in part-time work (defined as work of less than 35 hours per week irrespective of employment status), and that this type of work is most common among women workers, especially those in rural areas with low levels of schooling. The industries with the highest proportion of part-time work include agriculture, trade and community/personal services sectors (ILO 2011a: 12; BPS 2014:96–97). In Viet Nam, approximately 11 per cent of employed persons in 2007 worked part-time (defined as work of less than 35 hours per week, irrespective of employment status)(ILO 2009:21). ‘Disguised’ or sham contracting is by its nature very difficult to identify and measure, however anecdotal and case

study evidence suggests that the practice is common in certain sectors in India, such as automobile manufacturing (Gopalakrishnan and Mirer 2014: 29)

2.1 What accounts for the prevalence of non-standard forms of employment?

This Study does not provide an extensive analysis of the factors contributing to the rise of non-standard work in developing and/or developed countries. Rather, the following discussion briefly identifies the key themes that have emerged from the literature specific to the three countries.

In all three countries, the use of non-standard employment is linked to efforts by business to reduce labour costs and achieve greater flexibility in their utilisation of labour. In recent decades, these efforts have intensified due to heightened competitive pressures and exposure to global managerial trends, arising from increased international economic integration. In this context, there are two principal ways in which businesses may seek to achieve the objectives of lower labour costs and higher numerical flexibility. Where existing labour laws are viewed as unduly constraining, changes may be sought to the legal rules under which the business operates. Where changes to legal and institutional frameworks cannot be achieved, or not achieved to the desired extent, a business may seek to reduce labour costs or achieve greater flexibility by circumventing those existing laws that are seen as problematic. This may include through the greater use of non-standard employment arrangements.

The precise nature of the legal/economic advantages offered by non-standard employment vis-à-vis standard arrangements depends upon the jurisdiction and the type of work engagement involved. However, the advantages generally arise directly as a result of differences in legal rights and entitlements formally accorded to different legal categories of workers (e. g. temporary employees may not be eligible for termination of employment protections or redundancy entitlements, nor for employer-funded social security contributions) and/or differences that arise in practice (such as lower wages, reduced likelihood that workers in these types of arrangements will be willing or able to pursue entitlements, lower levels of unionisation and dispute propensity and so on)(see, e.g., Rajeev 2009; Ahsan et al 2008; Pupos 2014; and for a summary of this view specifically in relation to contract labour in India, Shyam Sundar 2012a: 22–23). Employers may also perceive there to be less administrative and procedural burdens with respect to certain types of labour engagement. In the case of agency work, employers may also be attracted by the appeal of ‘legal distancing’ (the capacity of the principal to disown liability in litigations arising with respect to agency workers) and ease with which they may dispense with a worker’s services even for reasons that are prohibited by law (Shyam Sundar 2012a: 22–23; Tjandraningsih et al 2010).

The view to the effect that the increase in non-standard work can be attributed to overly inflexible rules applying to standard employment is most pronounced with respect to the regulation of standard work in India, although it is also advanced in Indonesia. In India, it is argued that ‘rigidities’ in labour laws governing standard contracts (largely with respect to constraints imposed on the capacity of employers to dismiss workers found in the Industrial Disputes Act 1947) have acted as a disincentive to engage workers on permanent contracts and contributed to a growth of non-standard forms of employment, including temporary employment, agency work and subcontracting (Ahsan and Pagès 2007; Dougherty 2009; AIOE undated; Suresh Sapkal 2014; see also a summary of this view in Shyam Sundar, ed.,

2012: 21–22).¹³ By engaging workers through arrangements other than the standard employment model, employers have been able to achieve labour flexibility despite limited changes to labour laws (Papola and Pais 2007: 192; Sankaran 2014: 36). In Indonesia it has been argued that generous severance entitlements with respect to permanent contracts have led to the widespread use of fixed-term contracts (Brusentsev et al 2012). It may also be the case that other labour laws of more general application have an unintended effect of increasing the prevalence of non-standard work. For example, in India, it is likely that the common use of a minimum number of workers as a threshold for determining coverage of a particular statute operates to provide a strong incentive for employers to engage workers indirectly, such as through agency arrangements (Papola and Pais 2007: 188).¹⁴

The proposition that high levels of non-standard employment arrangements are due to inflexible or overly burdensome labour laws concerning standard employment is not uncontested.¹⁵ Scholars point to a range of ways in which, under the Indian labour law system, employers are able to access significant flexibility in practice irrespective of these perceived rigidities. This includes, for example, the very limited formal application of various labour laws, weak enforcement, and practices designed for avoiding the application of legislation such as splitting up of larger firms into smaller units which are not captured by the regulation or the use of ‘voluntary’ retirement schemes to effect what are in reality non-voluntary redundancies (Shyam Sundar 2010; Mitchell et al 2014; Hill 2009; Warnecke and De Ruyter 2012; Maiti 2012). This ‘inflexibility’ line of argument also fails to recognise the longstanding and entrenched nature of specific types of non-standard work practices.¹⁶

With respect to India and Indonesia, a number of commentators have observed that the greater use of non-standard work arrangements has been facilitated by recent legal and policy developments which have increased the scope for employers to engage workers in these types of arrangements. In India, these developments include state-level amendments to the

¹³ Much of the concern has centred on those statutory provisions that require enterprises employing 100 or more workers to obtain permission from the appropriate government prior to the retrenchment of any worker. Dougherty notes that if this requirement was not in force, India’s rating on the OECD’s Employment Protection Legislation (EPL) Index for regular contracts would fall to the OECD average, and the EPL regime for non-regular contracts is just above the mean for OECD countries (2009: 307).

¹⁴ This seems to be borne out by data indicating a high use of contract labour by enterprises with an employment range close to and just below the threshold of 10 workers: Deshpande et al 2004.

¹⁵ For a more general discussion and critique of the proposition that the use of non-standard forms of employment may be attributed to overly restrictive employment protection legislation, see, e.g., Vosko, MacDonald and Campbell eds., 2009; Lee and Eyraud, 2008, 36–44; Lee and McCann, eds., 2011. More broadly, the assumption adopted in standard economic analysis that the effects of labour laws can be easily predicted has been widely criticised for being overly simplistic. A number of authors associated with the interdisciplinary Regulating for Decent Work Network have drawn on the notion of ‘regulatory indeterminacy’ to emphasise and explore the unpredictability and complexity of regulatory outcomes. See further Lee and McCann, eds., 2011 and McCann et al, eds., 2014.

¹⁶ In the past, labour recruitment would occur through the practice of intermediaries (known as *sirdards*, *sattedards*, *thekedars* among other terms) recruiting workers from rural areas to work as contract labourers. This form of engaging labour was common in tea plantations but gradually spread to mines, textile mills and factories, and was important not only in recruiting labour but also in ensuring labour discipline on the shop floor (Sankaran 2011). The early practice of the contract labour system continued into the industrialising period, principally because of the failure of the Indian economy to match the industrialising patterns of other countries (particularly in relation to manufacturing)(Johri 1990; Kochar et al 2006). As a consequence, whereas most of the Western industrialised countries are since the 1980s seen as reverting somewhat to their earlier forms of labour market organisation (Stone and Arthurs, eds. 2013), India’s extensive pattern of non-standard employment has merely continued throughout its period of industrialisation post-1945 (Mitchell et al 2014).

principal piece of legislation governing contract labour and recent judgments by the Supreme Court which have curtailed the capacity of workers engaged in casual employment and through agencies to secure permanent employment (see, e.g. Sankaran 2014; Sood et al 2014). The proposition that state-level changes to the Contract Labour (Regulation and Abolition) Act 1970 ('Contract Labour Act') may have facilitated the rise in the practice appears to be supported by figures showing that the State of Andhra Pradesh, which has engaged in the most extensive liberalisation of the rules surrounding the use of contract labour, has a share of contract labour in the formal manufacturing sector of around 55 per cent, compared with 33 per cent in the country as a whole (Papola 2013: 22). In India, administrative changes and a 'more relaxed' approach with respect to labour inspection and enforcement is also identified as a contributing factor to the rise in the use of contract and casual labour (Mitchell et al 2014: 440–442; Saini 2010; Papola 2013; Reddy 2008; Sood et al 2014). There has also been a significant reduction in the frequency of inspections of enterprises and the introduction of systems of self-certification; as well as exemptions from certain labour laws for enterprises in Export Processing Zones (EPZs), Special Economic Zones (SEZs) and 'Export-oriented' units (Papola 2013). In Indonesia, the increasing prevalence of agency work has been attributed in part to the explicit legal recognition of the practice, which occurred in the context of efforts by the country to promote a more flexible labour market as a precondition to assistance from the international financial institutions following the 1997 Asian Financial Crisis (Tjandraningsih 2012).

3. The regulation of non-standard employment in India

3.1 An overview of Indian labour law

The formal labour law system in India is to a degree based on Western ideas and concepts, much of which is derived from ILO standards (Mitchell et al 2014).¹⁷ The evolution of labour law in the country is commonly divided into a number of distinct phases, essentially spanning the early penal provisions on labour introduced through British rule in the eighteenth century, the early period of industrialisation (a period which also, relevantly, saw the gradual development of the 'standard' contract of employment in some sectors of the economy), the extension of protective labour conditions at work and the rights of individual and collective labour, and the consolidation and expansion of workers' rights and protections in the post-independence era (see further Mitchell et al 2014; Sankaran 2010; Ornati 1955). The period post-independence saw the adoption of a number of key labour law statutes, including those regulating individual and collective dismissals, as well as certain forms of non-standard employment such as the Contract Labour Act. Most recently, since the early 1990s, there have been increased pressures on the Indian government to liberalise its labour laws in order to facilitate economic growth and enhance the country's international competitiveness. This has included persistent calls to reform laws that impact on the capacity of enterprise to engage labour on more flexible arrangements (World Bank 2013; 190–91; World Bank 2010; Chapter 5; Ahsan et al 2008; Papola and Pais 2007). However, political realities (including strong resistance to proposed reforms by the labour movement) have meant that reforms to liberalise the labour market have been undertaken on a gradual, indirect and piecemeal approach, and largely at the state rather than the central level (Mitchell et al 2014; Sankaran 2010: 242; Jenkins 2004).

¹⁷ It is important to note, however, that this by no means suggests that the labour law system in India has similar 'qualities' to that of its former colonial power (Cooney et al 2014).

Labour law in India today consists of a large number of statutes, each covering a discrete area of law such as minimum wages, payment of wages, conditions of work, occupational health and safety, social security benefits, workers compensation, dispute settlement and so on. As noted in Section 1 of the Study, legislative authority in relation to labour matters in India is shared among the central and state governments. A list of labour laws examined for the purposes of this project is appended to this Study. The Constitution of India also contains a number of protections of labour rights.¹⁸

The common law tradition in India has meant that the courts have played, and continue to play, a major role in determining the scope and application of labour laws (including with respect to non-standard forms of employment). This is particularly relevant given that recent developments in regulation have occurred through the interpretation of particular laws by the Supreme Court which, it is argued, has led to a more permissive climate towards labour flexibilisation strategies.

While collective bargaining remains limited in terms of the proportion of workers covered by collective agreements, it does play a role in regulating non-standard forms of work in certain workplaces, sectors and industries (Shyam Sundar 2011). Recent years have seen an increased focus on the organisation and representation of non-standard workers, particularly contract workers, by Indian unions. Collective bargaining with respect to contract work has involved both formal and informal negotiations by ‘regular workers’ unions’ over limits to contract labour, as well as negotiations by regular or contract workers’ unions on issues concerning the terms and conditions of employment for contract workers (Shyam Sundar 2011: 25). The latter has included provisions within collective agreements with the principal employer directed at securing permanent and direct employment for contract and casual workers and/or securing continuity of employment for contract workers even where the contractors change (for further details, see Shyam Sundar 2011).

3.2 Forms of non-standard employment recognised and regulated in law

This section of the Study summarises the main forms of non-standard employment in India, and identifies those areas of law in which workers engaged through these categories of employment are accorded rights and protections that differ from those accorded to their permanent counterparts. The main forms of non-standard employment in law include temporary employment; casual employment; *badlis* or substitute employment; apprenticeships; and probationary employment.¹⁹ Indian law also recognises fixed-term employment and agency work.

¹⁸ Workers’ rights under the Constitution of India take one of two forms: they may be enforceable ‘fundamental rights’ (found in Part III of the Constitution) or they may be unenforceable ‘directive principles of state policy’ (found in Part IV of the Constitution). See further Gopalakrishnan 2010.

¹⁹ The Industrial Employment (Standing Orders) Act 1946, which defines the conditions of employment of workers engaged in industrial establishments (of a certain size) and requires that these conditions be communicated to those workers, requires employers to classify a workman into one of these six categories. Under the Act, employers are required to submit draft orders for certification, which must include provision for every matter set out in the Schedule that is applicable to the establishment. Classification of workmen is a prescribed matter under the Act (s.3 (3)), and failure to classify a workman has been held to violate s. 4 of the Act and gives rise to an industrial dispute: *Workmen v. Hindustan Lever Ltd* (1984) 4 SCC 392. The six types of employment are specified in the Industrial Employment (Standing Orders) Central Rules 1946.

3.2.1 Temporary employment

Casual employment

In India, the terms ‘casual’ labour, ‘temporary’ labour and ‘daily wage’ labour appear to be used interchangeably, with the term *badlis* used to denote a temporary replacement for an absent permanent employee. There are very few explicit exclusions from statutory rights and protections of workers based on the type of contract and there is a significant body of case law confirming that casual employees are not precluded from eligibility to specific statutory entitlements simply because their employment is temporary in nature.²⁰ While casual workers were originally specifically excluded from coverage under India’s principal workers’ compensation statute – the Employees’ Compensation Act 1923 – this exclusion was removed in 2009.²¹

Many statutes, however, contain eligibility requirements based on minimum periods of service that in practice render temporary employees ineligible. For example, workers must have been in continuous service for not less than one year to access the protections against termination of employment found in s. 25-F of the Industrial Disputes Act 1947. These include protection against arbitrary dismissal, notice of termination or payment in lieu thereof, and rights to severance pay based on years of service. A worker will be considered to have met the ‘continuous service’ requirement if he or she has actually worked for at least 240 days in the preceding 12 months.²² Importantly with respect to this service threshold, while some court judgments appear to have placed the burden of proof on the employer, recent decisions of the Supreme Court have held that the burden of proving 240 days service lies on the worker, despite the obvious practical difficulties this may pose (Sood et al 2014: 66).²³ Furthermore the courts have held that, in most cases, a casual worker, upon successfully making out a claim under s. 25-F of the Industrial Disputes Act 1947, will be entitled to compensation only, not reinstatement.²⁴ The approach taken by the courts to these issues in recent years has proven contentious, with a number of commentators criticising the court for its ‘pro-capital’ stance (see, e.g. Cox 2012; Sood et al 2014: 65–66).

²⁰ See, e.g., *G. Yaddi Reddi v. Brooke Bond India Ltd.*, (1994) LLR 328 (AP)(DB)(with respect to the Industrial Disputes Act 1947); *HP State Forest Corporation Ltd & Anr v. Mohan Singh & Anr.* 2014 Lab IC 155 (with respect to the Payment of Bonus Act 1965); and *Royal Talkies, Hyderabad v. Employees State Insurance Corporation* [1978] MANU 0282; *Siddheswar, Hubli v. ESI* (1998) Lab IC 212 (Orissa) and *Regional Director, Employees State Insurance Corporation v. Suvarna Saw Mills* (1979) Lab IC 1335 (Karnataka) (with respect to the Employees’ State Insurance Act 1948).

²¹ See s.2(n) of the former Workmen’s Compensation Act, 1923. This statute was renamed, and definition of ‘employee’ amended, in 2009 through Act 45 of 2009 (w.e.f. 18-1-2010).

²² Section 25-B.

²³ See, e.g., *Range Forest Officer v. St Hadimani* (2002) 3 SCC 25; *Rajasthan State Ganganagar S Mills Ltd. v. State of Rajasthan and Anr.* (2004) 8 SCC 161. For a recent example in which a part-time sweeper’s claim failed on the basis that she was unable to provide 240 days service, see *Simla Devi v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and Another* (P&H High Court), 2014 LLR 482. Note also that the employment of a casual employee in different establishments, even if under the control of the same entity, will not constitute ‘continuous service’: *Haryana State Co-op. Supply Marketing Federation Ltd. v. Sanjay*, 2010 (1) SCC (L&S) 308.

²⁴ *Baljeet Singh v. State Farms of India Ltd.* (2009) 120 FLR 127 (Del). For a discussion of how the court’s approach to this issue has shifted in recent years, see *Telegraph Deptt. vs. Santosh Kumar Seal* (2010) 6 SCC 773, at p. 777.

The entitlement to notice of termination or payment in lieu thereof and to paid leave found in various state-level Shops and Establishments Acts is also determined according to a service threshold, rather than type of contract.²⁵ While a casual employee generally falls within the scope of the Employees' State Insurance Act 1948,²⁶ the entitlements of such workers for the various benefits under that Act may be significantly less than those accorded to permanent workers. For the purposes of qualifying for sickness or maternity benefits, for example, a worker will only be entitled to the benefit where he or she has made a certain number of contributions as an employee during the preceding 'contribution period'. A worker who has not been in regular employment and therefore has not paid contributions regularly during this period will have his or her benefits reduced accordingly (Malik 2011: 1371–2).

Fixed-term employment

The status of fixed-term employment in India is somewhat unclear. Unlike other major categories of employment found in the country, fixed-term employment is not a category explicitly recognised in the Industrial Employment (Standing Orders) Act 1946 and subordinate regulations. Furthermore, it seems that this type of employment was inserted in the Industrial Employment (Standing Orders) Act 1946 in 2003, only to be removed four years later. In 2003, a central government order inserted fixed-term employment into the Act, defining a worker on a fixed-term contract as one '... who has been engaged on the basis of a contract of employment for a fixed period. However, his working hours, wages, allowances and other benefits should be no less than that of a permanent workman. He shall also be eligible for all statutory benefits available to a permanent workman proportionate according to the period of service rendered by him even though his period of employment does not extend to the qualifying period required in the statute'.²⁷ This order, however, was withdrawn in 2007, following trade union opposition (Shyam Sundar 2011: 4). The opposition to this amendment by the union movement appears somewhat perplexing, given that, on the face of it at least, the provision appears to be directed at securing equal treatment for workers on these types of contract.

On the other hand, the Industrial Disputes Act 1947 appears to (albeit indirectly) recognise the existence of fixed-term contracts, through providing an exemption for these types of contracts from the operation of certain provisions of the Act. In addition, it appears that Indian courts, based on the common law approach of looking to the substance of the contract of employment in question, recognise that a contract of employment may be for a fixed-term. In *Bhavnagar Municipal Corporation v. Salimbhai Umarbahi Mansuri*,²⁸ for example, the Supreme Court held that despite a contract of employment referring to a worker as a 'daily wager', the fact that two successive contracts provided for the appointment of a worker for fixed-periods meant that non-renewal of a second contract did not constitute retrenchment for the purposes of the Industrial Disputes Act 1947.

In contrast to many other jurisdictions, Indian law does not impose restrictions on the purposes for which fixed-term employment can be used or the number of successive fixed-

²⁵ See, for example, ss. 2(7), 22, and 30 of the Delhi Shops and Establishments Act 1954.

²⁶ See *Shalimar Tanning Co. v. ESI Corporation and Another* (1999) the High Court of Madras, LLJ, Vol. II, 2000, pp. 937–941.

²⁷ G.S.R. 936(E), dt. 10-12-2003 (w.e.f. 10-12-2003) and G.S.R. 655(E), dt.10-10-2007 (w.e.f. 10-10-2007) respectively.

²⁸ (2013) 14 SCC 456.

term contracts permitted. However the engagement of a worker on successive fixed-term contracts may in certain circumstances constitute an unfair labour practice (see below).²⁹

As they are engaged through an employment relationship, employees on fixed-term contracts are entitled to the same protections of their fundamental rights at work and to many of the same minimum rights and entitlements as their permanent counterparts. A clear exception to this generalisation, however, lies in relation to statutory protection against termination of employment. Under the Industrial Disputes Act 1947, following amendments introduced in 1982 and 1984,³⁰ the termination of the service of a worker as a result of non-renewal of a fixed-term contract does not constitute ‘retrenchment’, and so such workers are not entitled to the protections under s. 25-F of that Act.³¹ The Courts will, however, not accept an employer’s reliance on this provision where there is evidence that it has engaged in an unfair labour practice by engaging a worker on successive fixed-term contracts.³² It also appears to be the case that ‘seasonal work’ is recognised by the courts as a form of fixed-term appointment that also falls within the exception in s.2(o)(bb) of the Industrial Disputes Act 1947.³³

Legal avenues to permanency in employment for temporary workers

In India, there are several different legal avenues through which temporary workers may be ‘regularised’: that is, awarded permanent status by operation of law. First, it appears that, until relatively recently, the courts were willing to order the ‘regularisation’ of casual workers engaged for long periods of time by the state on the basis that this would promote the constitutional goals of equal pay for equal work, non-discrimination and security of employment found as Directive Principles of State Policy in the Constitution of India.³⁴ In the case of *Secretary, State of Karnataka & Ors. v. Uma Devi & Ors*³⁵ (‘Uma Devi’), however, the Supreme Court of India significantly narrowed, if not removed, the prospects for casual workers employed by the state to seek permanency. Overruling earlier judgments, the Constitutional Bench held that casual workers employed by the state on a continuous basis for a number of years had no right to permanency because they were not hired in accordance with proper selection procedures. For the courts to award them permanency would effectively be enabling their recruitment by ‘the back door’ and violate article 14 of the Constitution. The Court emphasised that the interests of those in temporary employment needed to be weighed against those consequently deprived of the opportunity for public employment, and also emphasised the financial implications for the state in the event that such claims for permanency were successful. The Court reasoned that a person who accepts a

²⁹ *Regional Manager, State Bank of India v. Raja Ram* (2004) 8 SCC 164.

³⁰ Sood et al 2014: 63.

³¹ *Harmohinder Singh v. Kharga Canteen, Ambala Cantt.* (2001) 5 SCC 540. In *Kishor Chandra Samal v. Divisional Manager, Orissa State Cashew Development Corporation* 2005 (10) SCC 46, the Supreme Court held that this subsection of the Act applies even in cases of workers being employed on successive fixed-term contracts.

³² *Haryana State Electronics Development Corporation v. Mamni* (2006) 9 SCC 434.

³³ *Morinda Co-operative Sugar Mills v. Ram Krishna* (1995) 5 SCC 653.

³⁴ See, e.g., *Dhirendra Charnoli & Anr. v. State of U.P.*, [1986] 1 SCC 637; *Randhir Singh v. Union of India & Ors.* [1982] 1 SCC 618; *Daily Rated Casual Labour Employed Under P & T Department v. Union of India & Ors.*, [1988] 1 SCC 122; and *Dharwad District PWD Literate Daily Wage Employees Association v. State of Karnataka* (1990) 2 SCC 396.

³⁵ (2006) 4 SCC 1.

temporary or casual engagement does so ‘with open eyes’, and arguments based on the relative bargaining power of the prospective parties, while perhaps true, do not justify an order of permanency. This decision has been the subject of considerable criticism on the basis of its inconsistency with earlier judgments and its failure to recognise the vulnerabilities faced by casual workers (Cox 2012).

Second, the practice of employing ‘workmen as *badlis*, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workmen’ is recognised as an unfair labour practice under the Industrial Disputes Act 1947.³⁶ Where such a claim is made out,³⁷ a Labour Court or Tribunal may order relief to the worker in the form of ‘regularisation’.³⁸ The types of practices that have been found by the courts to constitute unfair labour practices in this context include, for example, engaging workers on a rotation basis as *badlis* for a number of years,³⁹ or repeatedly appointing and terminating workers so as to avoid liability under s. 25-B of the Industrial Disputes Act 1947.⁴⁰ The Supreme Court has held that the powers of the industrial and labour courts to pass appropriate orders requiring employers to offer permanency to workers who have been victims of such unfair labour practices has not been curtailed by *Uma Devi*.⁴¹

Third, there are laws in some states that confer permanent status on workers who have been engaged by an employer for a certain period of time. Under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act 1981, for example, temporary and contract workers in industrial establishments⁴² are automatically entitled to permanency where they have worked continuously for a minimum of 480 days in a 24-month period.⁴³ The Rules issued under the Act requires employers to whom the Act applies to maintain a register listing the names of the workers, their status and the date on which they complete 480 days service. This list must be updated twice a year, displayed prominently in the establishment and be sent to the labour inspectorate. Fines may be imposed for non-compliance with the Act.⁴⁴

³⁶ Industrial Disputes Act 1947, s. 25-T and Item 10 of Schedule 5. The statute also provides for a penalty for committing an unfair labour practice of imprisonment for up to six months or a fine of up to 1000 rupees or both: IDA, s. 25-U. Similar provisions are found in statutes at the state level (see, e.g, the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971).

³⁷ The onus of proving the unfair labour practice lies on the worker: *Gangadhar Pillai v. Siemens Ltd* (2007) 1 SCC 533.

³⁸ For the scope of this power and the circumstances in which it may be exercised, see *Maharashtra State Road Transport and another v. Casteribe Rajya Parivahan Karmchari Sanghatana* (2009) 8 SCC 556; and *Hari Nandan Prasad v. Food Corporation of India*, (2014) 7 SCC 190.

³⁹ *H.D. Singh v. Reserve Bank of India* (1985) 4 SCC 201.

⁴⁰ *Ferozapore Central Co-operative Ban v. Labour Court* (1986) 1 LLN 204 (P&H); *Regional Manager, State Bank of India v. Raja Ram* (2004) 8 SCC 164.

⁴¹ *Maharashtra State Road Transport & Anr. v. Casteribe Rajya Parivahan Karmchari Sanghatana* (2009) 8 SCC 556.

⁴² Note that the Act is limited in its scope to industrial establishments and workers that meet certain criteria: see s.2.

⁴³ The statute specifies that certain interruptions in service (such as various forms of leave or strike action) will not constitute a break for purposes of calculating continuous service: s.3.

⁴⁴ For further discussion of this Act and relevant jurisprudence, see Gopalakrishnan and Mirer 2014: 60–61.

3.2.2 Sub-contracting and independent contracting arrangements

There are very few examples of Indian labour law extending to cover workers engaged through sub-contracting arrangements. The Contract Labour Act extends to cover those that supply labour through sub-contracting arrangements: art. 2(c) of the Act defines a contractor as ‘a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor’. The Beedi and Cigar Workers (Conditions of Employment) Act 1966 was introduced to address **sub-contracting arrangements in the beedi industry** in which it was considered that commercial arrangements were being used to obscure employment relationships (Sankaran 2014: 44). The Act confers employee status on workers in the beedi industry by adopting a definition of an employee that includes a person employed directly or through any agency, whether for wages or not, who is given raw materials by an employer or a contractor for making into beedi or cigars (or both) at home.

The Indian legal system has established judicial rules for cases in which it may be **unclear whether an employment relationship exists between two parties**, or where one party may have attempted to **disguise an employment relationship as a contracting one**. As a common law jurisdiction, India relies on the notion of a ‘contract of service’ as the basis for determining the existence of an employment relationship. As the line between such a contract and a ‘contract for services’ (a commercial contracting arrangement) is often difficult to ascertain, the courts have applied a number of tests to determine whether a specific working relationship constitutes one of employment.⁴⁵ A number of factors are taken into consideration to establish whether an employer-employee relationship exists, such as the power to appoint and dismiss the worker; payment of salary/remuneration; the right to take disciplinary action over the worker; whether there is continuity of service; and the extent of control and supervision exercised.⁴⁶ As in other jurisdictions, the application of the common law tests in relation to whether an employment relationship exists leaves significant scope for parties to manipulate the indicia examined by the courts so as to minimise the risk of a worker being held to constitute a direct employee, rather than an independent contractor.

3.2.3 Agency work

In India, agency work (referred to as ‘contract labour’) has a long history and is regulated by common law and statute. Legal intervention in relation to contract labour was considered at least as early as the Royal Commission on Labour (1929–1931) and subsequently in the wake of Indian independence in 1947. However it was not until several decades later, following a series of developments including a large number of industrial disputes concerning contract labour arrangements, a landmark Supreme Court case,⁴⁷ tripartite discussions and the recommendations of a National Commission on Labour in 1969, that the Contract Labour (Regulation and Abolition) Act 1970 (‘the Contract Labour Act’) was enacted.⁴⁸ This Act, supplemented by rules and regulations, has sought to limit and

⁴⁵ See *Workmen of Nilgiri Coop. Mkt. Society Ltd v. State of Tamil Nadu* (2004) 3 SCC 514. For further discussion, see Casale et al (2011).

⁴⁶ See, e.g., *Dhrangadhra Chemical Works Ltd. v. State of Saurashtra*, AIR 1957 SC 274; *Ram Singh v. Union Territory, Chandigarh*, (2004) 1 SCC 126; *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.*, (2004) 3 SCC 514; *Bengal Nagpur Cotton Mills v. Bharat Lal*, (2011) 1 SCC 635.

⁴⁷ *Standard Vacuum Refining Company v. Their Workmen and Others* (1960) III SCR 466.

⁴⁸ See Shyam Sundar 2012: 13; and Ramanujam 2004.

control the use of contract labour, as well as to regulate conditions of work for contract workers.

Consistent with the approach taken in other Indian labour laws, the Contract Labour Act includes a number of very significant limitations on its scope: for example it excludes establishments or contractors employing fewer than 20 workers; establishments in which the work performed is only of an intermittent or irregular nature;⁴⁹ and certain groups of workers (including workers engaged mainly in managerial or administrative capacities and outworkers).⁵⁰ While the Contract Labour Act is a law of the Indian central government, there is scope for Indian state governments to modify a number of its provisions so as to extend or limit the operation of the Act. Some states have extended the application of the Act to establishments employing five or more contract workers (e.g. Andhra Pradesh) or 10 or more contract workers (e.g. Gujarat). Maharashtra has deemed certain ancillary services (like canteen, gardening, cleaning and security services) performed in Special Economic Zones (SEZs) as ‘temporary and intermittent’, with the effect of removing these sectors from the purview of the Act.⁵¹

Restrictions on the use of agency work

Under s. 10 of the Contract Labour Act, the appropriate government (central or state) may, after consultation with the relevant Advisory Board established under the Act, prohibit employment of contract labour in any process, operation or other work in any establishment. The Act lists a number of criteria that should be considered by the relevant government when deciding upon any such prohibition. This includes (1) the conditions of work and benefits provided for the contract workers in the establishment concerned; and (2) other relevant factors such as (a) whether the process, operation or work is incidental to, or necessary for the industry; (b) whether the work is of a perennial nature (that is, of sufficient duration having regard to the nature of the industry, trade etc.); (c) whether the work is ordinarily performed by permanent (‘regular’) workers in that or similar establishments; and (d) whether it is sufficient to employ considerable number of permanent full-time workers.

In practice, the power to prohibit contract labour in certain areas has not been exercised widely (Papola 2012: 81). Moreover, a number of states have modified the operation of the statute in their jurisdiction with the effect of minimising its impact. Andhra Pradesh, for example, as the state that has engaged in the most extensive liberalisation of the Act, has included most activities in a list of ‘non-core’ activities in which contract labour is permitted. Even within those activities designed as ‘core’ activities, contract labour can be used in certain circumstances, including where the activity is normally done through contractors, or where there is a sudden increase in the volume of work that needs to be accomplished in a specified time.⁵² State amendments have also removed those provisions of the Act that

⁴⁹ This is defined as establishments where work was performed for fewer than 120 days in the previous year or where work of a seasonal character was performed for fewer than 60 days in a year: s.1.

⁵⁰ An outworker is defined in s.2(i)(C) of the Act as ‘a person to whom any articles or materials are given out by or on behalf of the Principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer’.

⁵¹ Mah. Act 13 of 2006, s.2.

⁵² A.P. Act 10 of 2003, s. 4.

provide for a relevant advisory board, assigning decision-making power with respect to 'core' and 'non-core' activities to the relevant government.⁵³

Rights and protections of agency workers

The Contract Labour Act and accompanying Rules contain a number of provisions directed at protecting and promoting the rights of contract workers. The Act requires the agency ('contractor') to ensure the provision of minimum amenities (canteen facilities, rest rooms, fresh drinking water and first aid facilities), and for the principal employer to do so where the contractor fails to within the stipulated time. The principal employer may then recover any expenses incurred from the contractor.⁵⁴ There is a statutory duty on the contractor to pay wages in a timely manner, and in the presence of the principal employer so to ensure that the amounts paid meet legal requirements. In cases in which the contractor fails to make full and timely payment of wages, the principal employer is liable for any shortfall but may recover the amount so paid from the contractor. Both the principal employer and the contractor are required to maintain registers and records, providing the particulars of contract workers, the nature of work performed, wage rates and other details, and to exhibit notices giving details of hours of work, nature of duty and other particulars. Other rights for contract workers are found in the Contract Labour (Regulation and Abolition) Central Rules 1971. Under Rule 25, a contractor must fulfil certain conditions for the grant or renewal of a relevant licence, and this includes payment of minimum rates of wages and hours of work as provided in the Minimum Wages Act 1948, and provision of facilities as required in the principal Act. Rule 25(v)(a) stipulates that 'in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours 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 of the establishment on the same or similar kind of work...'⁵⁵ The Rules also set out administrative processes for determining the 'equivalence' of work where dispute arises.⁵⁶ However it appears that, where non-compliance with the wage parity principle is established, there is no obligation on the principal employer to make up any shortfall in payment.⁵⁷ Finally, a number of labour and labour-related laws of more general application explicitly cover agency workers, such as the Factories Act 1948; the Employees' State Insurance Act 1948; and the Employees' Provident Fund Act 1952.

Rights of agency workers to direct and permanent employment

In India, until relatively recently, it appears that it was possible for contract workers to secure direct and permanent employment with a principal employer as a consequence of contract labour being abolished under s. 10 of the Contract Labour Act. In *Air India Statutory Corporation v. United Labour Union*⁵⁸ ('the *Air India Case*'), the Supreme Court held that, upon abolition of contract labour consequent to the issue of a notification prohibiting the employment of contract labour in any process or establishment under s. 10(1) of the Act, the

⁵³ A.P. Act 10 of 2003, s. 3.

⁵⁴ Labour Contract Act, ss. 16–20.

⁵⁵ See also BHEL Workers' Assn. v. Union of India (1985) 1 SCC 630.

⁵⁶ These rules differ between jurisdictions: see further Shyam Sundar 2012: 16.

⁵⁷ Hindustan Steelworks Construction Ltd. v. Commr. of Labour (1996) 10 SCC 599.

⁵⁸ (1997) LLR 288.

contract workers were to be ‘absorbed’ by the principal employer (that is, to be employed on a direct and permanent basis). The court reached this conclusion by interpreting the relevant statutory provisions in light of the Directive Principles in the Constitution, finding that it could not have been the legislature’s intent to deprive those workers engaged through the contract system of their livelihood. However in 2001, the Supreme Court in *Steel Authority of India Ltd. & Others v. National Union of Waterfront Workers*⁵⁹ essentially reversed its earlier position on this issue, holding that it could not read into a statute a remedy that it did not provide for. It followed that there could be no ‘automatic absorption’ of contract workers upon the issue of a notification under s. 10(1) of the Act. The implications of this shift have proven significant and contentious, with unions abandoning their strategic use of s. 10(1) of the Act as a means of securing permanency for contract workers, and a significant increase in the use of contract labour (Shyam Sundar 2012b: 10; Sankaran 2012: 39–40). The recent approach of the Supreme Court has been described as a form of ‘de facto de-regulation’, in which the labour laws are not amended legislatively but reinterpreted so as to introduce greater flexibility for employers (Sankaran 2012: 39–40; Cox 2012).

The effect of this shift in the approach of the Supreme Court to the interpretation of section 10 of the Contract Labour Act appears to be to leave the common law as the primary, if not the only, avenue through which it may be possible for contract workers to secure permanency with their principal employer. It is possible for contract workers to raise an industrial dispute under the Industrial Disputes Act 1947 claiming that they are in fact employees of the principal employer. In determining whether a direct employment relationship exists between a contract worker and a principal employer, the industrial tribunals and courts will look to the facts of the arrangement, and apply the common law tests as to whether a contract of service exists between the parties.⁶⁰ The courts have proven willing to recognise and reject ‘sham and bogus’ contracts that have been put in place to ‘disguise’ or obscure employment relationships, including where an intermediary has been placed between a principal employer and a worker.⁶¹ Where such a case is proven, the court may grant relief to the employee by holding that he or she is the direct employee of the principal employer.⁶²

In the recent case of *Balwant Rai Saluja & ANR. v. Air India Ltd. & Ors*⁶³ the Supreme Court of India clarified its approach to determining in what circumstances a principal employer may be recognised as the direct employer of workers provided through an agency.⁶⁴ The Court was asked to consider whether workers in a canteen maintained at Air India’s premises were to be treated as employees of Air India or as employees of the contractor running the canteen (which was a wholly owned subsidiary of Air India). Building upon a test applied in earlier cases, the Court held that the fact that a principal employer controlled and directed the work to be done by a contract worker was not sufficient to establish the existence of an employment relationship. The question was where effective and absolute control over the workers lay. On the facts, the fact that the principal employer exercised control over the working of the canteen did not mean that the workers constituted direct

⁵⁹ (2001) 7 SCC 1.

⁶⁰ See above Section 3.2.2 of the Study.

⁶¹ *Calicut v. The Allath Factory Thezhilali Union, Kozhikode and Others* (1978) 4 SCC 257.

⁶² *General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal*, (2011) 1 SCC 635, at [10].

⁶³ (2014) 9 SCC 407.

⁶⁴ See also *National Aluminium Co. Ltd. v. Ananta Kishore Rout & Ors.* (2014) 6 SCC 756.

employees. The lack of parity in the nature of work and the mode of appointment between the permanent employees and the contract workers was taken to lend further support to the conclusion that the workers were not direct employees. The Court further emphasised that the Court's power to 'pierce the veil of incorporation' so as to determine that the principal employer is the direct employer of workers engaged through a contractor '*must be exercised sparingly*', and only in those cases where it was evident that the company was '*a mere camouflage or sham deliberately put in place to avoid liabilities arising from the employment relationship*'.⁶⁵ This emphasis on the need for absolute control and for evidence of a deliberate and calculated attempt to engage in sham arrangements would appear significantly to limit the potential for workers to succeed in arguing the illegitimacy of certain contract arrangements (for a similar view based on earlier decisions, see Sankaran 2014: 37–38 and Gopalakrishnan and Mirer 2014: 58).

Regulation of establishments using contract labour and agencies

The Contract Labour Act and accompanying Rules also establish a regime of registration and licensing of relevant business establishments. Businesses engaging contract labour must be registered with the relevant authorities, and, in applying for such registration, the employer must disclose information about the total number of workers directly employed in the establishment, the nature of the work in which contract workers are to be employed, and the maximum number of contract workers to be employed. Agencies must be licensed, with a number of requirements attached to the issuance of a licence including studying requirements and obligations concerning the rights of contract workers. Contraventions of provisions regarding employment of contract labour in the Act and Rules may result in imprisonment for a term up to three months or a fine of R1000.⁶⁶ The Act also provides for an inspection regime.

3.2.4 Other forms of non-standard employment

In India, the courts have taken the approach that, in the absence of explicit exclusion from the relevant statute, labour laws apply to part-time employees.⁶⁷ Beyond this, there appears little direct or explicit regulation of part-time employment. The High Court has considered the application of the Employees' State Insurance Act 1948 to home-workers, and concluded that so long as the workers fall within the definition of an 'employee' (applying the common law test), then they are covered by the Act.⁶⁸ The Minimum Wages Act 1948 extends to cover outworkers in certain types of activities (Papola 2013: 11). The Contract Labour Act does not apply to outworkers.

'Scheme' work is a further category of non-standard work in India that should be noted. Workers in this category provide various forms of government assistance⁶⁹ and number in the

⁶⁵ Balwant Rai Saluja & ANR. v. Air India Ltd. & Ors (2014) 9 SCC 407 at [71].

⁶⁶ Section 23.

⁶⁷ For decisions in which courts have held that a worker employed on a part-time basis fell within the definition of 'workman' for the purposes of the Industrial Disputes Act 1947 see *Coal India Ltd v. P.O. Labour Court* (2001) 2 Cur LR 502 (Del), and *General Manager, Telecom v. Naresh Brijlal Charote*, 2001 Lab IC 2127 (Bom).

⁶⁸ *Prakash Match Industries v. Employees State Insurance Corporation* (1998), the High Court of Madras, LLJ, Vol. 11, 2000, pp.49–52.

⁶⁹ They work, for example, in government of India schemes such as the Mid Day Meal Workers Scheme, the Integrated Child Development Services Scheme, the National Rural Health Mission Programme, and so on.

millions. They are, however, ‘not recognised as workers’ for the purposes of labour law. Rather they are described using a range of other terms such as ‘social workers’, ‘activists’, ‘volunteers’ and ‘friends’. While they receive some remuneration, this is not in the form of a salary or wage, but rather is referred to as an ‘honorarium’ or an ‘incentive’ payment (Tiwana 2013).

3.2.5 Summary of rights and entitlements, by type of employment

Table 2 below summarises the extent to which workers in non-standard forms of employment are accorded equal or different treatment under Indian labour law, when compared with their permanent counterparts.

Table 3. Summary of rights and entitlements, by type of employment – India

Right/ standard	Permanent employee	Casual employee	Fixed-term employee	Agency worker
Freedom of association & collective bargaining	✓	✓	✓	✓
Anti-discrimination /equal employment opportunity	✓	✓	✓	✓
Prohibition on child labour	✓	✓	✓	✓
Prohibition on forced labour	✓	✓	✓	✓
Explicit right to equal treatment with permanent employees	n/a	✗	✗	✓
Occupational health and safety	✓	✓	✓	✓
Workers’ compensation	✓	✓	✓	✓
Social security (<i>social insurance; health insurance; unemployment insurance</i>)	✓	✓	✓	✓
Minimum wage	✓	✓	✓	✓
Protection against termination of employment	✓ subject to minimum service threshold	✓ subject to minimum service threshold	✗	✓ with direct employer, and subject to minimum service threshold
Protections on working hours	✓	✓	✓	✓
Leave	✓ subject to minimum service threshold	✓ subject to minimum service threshold	✓ subject to minimum service threshold	✓ subject to minimum service threshold

Source: Compiled by the authors, based on survey of relevant laws and regulations.

3.3 Regulatory debates and initiatives

In India, the Contract Labour Act has been the source of fierce and extended debate (see, for a comprehensive summary, Shyam Sundar ed. 2012). The statute has been criticised by employer groups and investors who argue that the statute's focus on the restriction of the circumstances in which contract labour may be used is outdated and inhibiting, particularly for enterprises seeking to compete in expanding trade and global production networks as they are unable to use contract labour to manage the significant fluctuations in demand for labour arising from production orders (Papola 2013: 20; Institute for Human Development 2014: 39–40). Employer groups argue for the removal of s. 10 of the Act, and for greater focus on the enforcement of the remaining protective provisions of the Act (see, e.g., AIOE Undated). Trade unions and others have voiced concern over the widespread use of contract labour, including in industries and establishments with reasonably stable demand for labour as a lower cost alternative to regular employees (Papola 2012; Papola and Pais 2007). They argue that this practice has negative implications for non-standard and standard workers. Unions continue to argue for a significant strengthening of the protections afforded to contract workers (in law and in practice), as well as for more accessible and effective routes to permanent and direct employment for temporary and contract workers (Sankaran 2012: 38; Shyam Sundar 2011). Proposals by the central government in 2010–2011 directed at strengthening those protections in relation to equal treatment for contract workers and also potentially to introduce disclosure requirements for companies that use contract labour, while maintaining the status quo in relation to s. 10 of the Act, failed to garner consensus among the social partners (Sen 2010; AIOE undated).

There are several recent legislative developments with particular implications for workers in non-standard forms of employment. First, the many proposed amendments found in the Factories (Amendment) Bill 2014 include a proposal to reduce the service threshold for entitlement to paid annual leave from 240 days to 90 days. This reform would presumably significantly increase the number of temporary workers who are able to access to paid leave entitlements.

Second, the Unorganised Workers' Social Security Act 2008 represents a significant development in the extension of social security protections to groups of workers who have traditionally fallen outside the scope of regulatory frameworks. The statute covers a wide range of benefits including health and maternity benefits, life and disability cover and old age insurance and its scope is cast widely, with the purpose of 'covering those embedded in a relationship of work in the informal economy' (Olivier 2011: 429). An 'employer', for example, is defined as 'a person or an association of persons, who has engaged or employed an unorganised sector worker either directly or otherwise for remuneration.' (art. 2(a)),⁷⁰ and the concept of a worker under the statute encompasses home-based workers, self-employed workers and wage workers. The definition of a 'wage worker' is also very broad: 'a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of the place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.'⁷¹ The statute is concerned solely with social security benefits and does not extend employment

⁷⁰ The 'unorganised sector' is defined as 'an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten' (art. 2(k)).

⁷¹ Unorganised Workers' Social Security Act, s. 2(m).

rights or protections: however, it is widely cited as an innovative example of the extension of protections to a broader range of work relationships (Casale et al 2011: 214–15; Olivier 2011).⁷²

4. The regulation of non-standard employment in Indonesia

4.1 An overview of Indonesian labour law

In Indonesia, the labour law system has been reconstructed over the past fifteen years, replacing a patchwork of Dutch regulations, national laws and ministerial decrees, and decades of labour movement repression under the Suharto regime. The key labour law statutes introduced following democratisation included a trade union law (Law no. 21/2000); a new general labour law (Law No. 13/2003 Concerning Manpower, referred to subsequently as ‘the Labour Law’) which amalgamated many of the existing individual and collective labour regulations and also introduced some novel provisions including legal support for temporary agency work (commonly referred to as ‘labour outsourcing’), and a law on industrial disputes resolution (Law No. 2/ 2004). These laws are implemented through various government regulations and ministerial decrees issued by the Minister of Labour. Protections for certain labour rights are also found in the Constitution of 1945 as amended, and various laws on human rights, non-discrimination and overseas migrant labour. A new social security law was also passed in 2004 (Law no.40/2004) which envisioned an ambitious extension of the existing workers’ social security schemes (*Jamsostek*) from formal sector workers to all citizens. Implementation of this expansion has been slow and the renamed *Badan Penyelenggara Jaminan Sosial* (BPJS) scheme only began to be implemented in 2014.

While there are some regional variations, the main source of labour law continues to be national legislation. Indonesia has a civil law heritage system, and consequently judge-made law has not featured prominently in the development of labour law. There are, however, several recent Constitutional Court decisions that have strongly influenced the regulation of certain types of non-standard employment in the country.

In general, under the Labour Law, an employment relationship exists where there is a ‘work agreement’ between a ‘worker/ labourer’ and an ‘entrepreneur’.⁷³ While the statutory definition of a ‘worker/ labourer’ is broad (‘any person who works and receives wages or other forms of remuneration’), the definition of an ‘entrepreneur’ excludes from the statute’s coverage certain types of workers who are engaged to perform work by individuals who do not own or operate a business, such as domestic workers and traditional agricultural labourers (ILO 2011a). Some general protections are afforded under the law to ‘workers’ but most duties fall on ‘entrepreneurs’ only.

Collective labour agreements in Indonesia are limited in number and often tend to simply reproduce minimum legislative standards (Quinn 2003: 36; Palmer 2009: 14).

⁷² For discussion of some of the limitations of this Act, see Hensman 2010; Routh 2014: 66–67; and Sankaran 2011: 229–232.

⁷³ Labour Law, art. 50. An ‘entrepreneur’ is defined in art. 1(5) to include: (a) an individual, a partnership or a legal entity that operates as a self-owned enterprise; (b) an individual, a partnership or a legal entity that independently operates a non-self-owned enterprise; an individual, a partnership or a legal entity located in Indonesia and representing an enterprise as mentioned in points (a) and (b) that is domiciled outside the territory of Indonesia.

However there is some indication of unions using collective bargaining as a means of regulating non-standard forms of employment (Ebisui 2012).

4.2 Forms of non-standard employment recognised and regulated in law

Indonesian labour law provides for permanent and fixed-term employment (the latter includes the concept of casual day labour or *buruh harian lepas*), as well as for apprenticeships and internships (*pemagangan*).⁷⁴ It also recognises ‘labour supply outsourcing’ (arrangements whereby a business hires out a worker to perform work at the premises of, and under the supervision of, another business) and ‘business supply outsourcing’ (arrangements whereby an enterprise subcontracts part of its work to another enterprise). There are also regulations/ practices concerning ‘honorary public servants’ (*pegawai honorer/ pegawai tidak tetap*). Indonesian labour law does not specifically recognise or regulate part-time work, and the law is unclear as to what conditions and benefits should apply to this category of workers.

4.2.1 Temporary employment

Fixed-term employment

The Labour Law in Indonesia recognises two types of ‘work agreement’ or contract: a permanent (‘unspecified time’) contract and a fixed-term contract.⁷⁵ A fixed-term contract may be based on a term or the completion of a certain job or piece of work, and includes casual day labour (see further below). Prior to the mid-1980s, there were no restrictions imposed on the use of fixed-term contracts.⁷⁶ From 1986, however, such contracts were only permitted for work that could be completed in a short period of time, or which was seasonal, non-routine or related to a new product. A maximum duration of 2 years was imposed on such contracts, with the possibility of extension for up to one year.⁷⁷ An exception from these general rules was carved out for the mining, oil and gas sector, in which fixed-term contracts were permitted when the nature of the work required it.⁷⁸ Further detailed regulations on the use of fixed-term contracts were introduced in 2004.⁷⁹

Today, Indonesian law continues to place restrictions on the types of work for which fixed-term contracts can be used and the maximum length and number of renewals of such contracts.⁸⁰ A fixed-term contract (known as a ‘PKWT’) can only be made for a certain job that, because of its type and nature, will finish in a specified period of time. This includes: (a) work to be performed and completed at once or work which is temporary by nature; (b) work whose completion is estimated at a period of time which is not too long and no longer than three years; (c) seasonal work; or (d) work that is related to a new product, a new activity or an additional product that is still in the experimental stage or try-out phase. There is a general statutory prohibition against using a fixed-term contract for jobs that are permanent in nature. However no sanction is available for an employer who breaches this provision (although it

⁷⁴ Labour Law, art. 56.

⁷⁵ Labour Law, art. 56.

⁷⁶ Civil Code, art .1601a.

⁷⁷ Minister for Labour Regulation Per-05/MEN/1986; Minister for Labour Regulation PER-02/MEN/1993.

⁷⁸ Minister for Labour Regulation Per-05/MEN/1995.

⁷⁹ Minister for Labour Decision no. 100/2004.

⁸⁰ Labour Law, art. 59.

will result in the worker's contract being deemed to be a permanent one). While employment contracts generally may be written or verbal, fixed-term contracts must be in writing, and must not include any trial or probation period. The Labour Law of 2003 provides general rules governing the maximum length and successive use of fixed-term contracts: a fixed-term contract may not be made for a period exceeding two years, can only be extended once and for not longer than a year; can only be renewed after a grace period of 30 days since the contract expires, and a renewal can only be made once and for no longer than two years. Any fixed-term contract that does not fulfil these basic statutory requirements shall, by law, become a permanent employment contract.⁸¹

Further detail is provided in Minister for Labour Decision No. Kep100/Men/VI/2004 on the Implementation of Employment Agreement for a Definite Period ('Decision No. 100'):

- (i) a fixed-term contract for seasonal work or to fulfil particular orders or targets may not be renewed;
- (ii) a fixed-term contract for the completion of a certain piece of work must not be renewed within 30 days; and
- (iii) a fixed-term contract relating to new products may be for a maximum term of two years, with a one year extension.

Employers are required to register all definite-period contracts with the relevant government agency within 7 days.

With the exception of termination of employment protection and some social security coverage, Indonesian labour law affords employees on fixed-term contracts equivalent rights and protections to permanent employees. An employee engaged under a fixed-term contract that is terminated prior to the expiry date of the contract is not entitled to the termination protections and severance payments that are accorded to permanent workers. The law provides that if either party to a fixed-term contract terminates the working relationship prior to the date specified in the contract, the terminating party is required to pay the other party compensation in the amount equal to the employee's salary up until the stated end of the employment agreement.⁸² With respect to social security, while it is mandatory for employers to enrol all fixed-term workers in the injury and death compensation insurance schemes, they are only required to enrol workers in the health and retirement fund schemes in *Jamsostek* and in the current BPJS scheme if employed for three months or more.⁸³

Casual day labour

Under Indonesian law, fixed-term employment also includes casual day labour (*buruh harian lepas*). Specific regulations concerning this form of work were introduced in 1985,⁸⁴ and updated slightly through Decision No. 100 in 2004.⁸⁵ Casual day labour contracts must be in writing, and employers must register a list of workers on casual day labour contracts with the relevant government agency within 7 days of employment commencing. A person

⁸¹ Labour Law, art. 59.

⁸² Labour Law, art. 62.

⁸³ Minister for Labour Regulation PER-03/MEN/1994; Minister for Labour Regulation no. 150/MEN/1999; Minister for Labour Decision no. 196/Men/1999.

⁸⁴ Minister for Labour Regulation no. PER.06/MEN/1985.

⁸⁵ Minister for Labour Decision Kep-100/Men/Vi/2004.

may only be employed as a casual day labourer for fewer than 21 days per month. If a person is employed as a casual day labourer for 21 or more days per month for three consecutive months, they will be deemed to be a permanent employee. In Indonesia, casual day labourers are implicitly excluded from those benefits that accrue over time such as paid annual leave and the Annual Religious Holiday Bonus because they will not have met eligibility requirements (which are 12 months of continuous service and three months continuous service respectively).⁸⁶ While casual day labourers are entitled to workplace injury and death insurance, it has not been mandatory for employers to enrol them in the other aspects of Indonesia's workers' social security program (previously *Jamsostek*, and now BPJS).⁸⁷ It is only if they work for more than three or more continuous months that it becomes mandatory for employers to enrol them in health insurance and retirement benefits programs (and they would be deemed to be permanently employed).

4.2.2 Agency work

Prior to 2003, there was little regulation of agency work in Indonesia although the possibility of such a practice appears to have been recognised in relation to casual day labourers.⁸⁸ Since 2003, the Labour Law has explicitly permitted an enterprise to subcontract part of its work to another enterprise under 'a written agreement of contract of work or a written agreement for the provision of worker/labour' (that is, for business process outsourcing and labour supply outsourcing respectively).⁸⁹ Implementing regulations were issued in 2004, which required labour supply agencies to obtain a license and register outsourcing contracts with the relevant government agency.⁹⁰ Later the same year, a further regulation required that (subject to some exceptions) labour supply agencies be registered legal entities, and that working conditions in outsourcing contracts comply with minimum standards found in labour laws of general application.⁹¹ In 2012, following an important decision by the Constitutional Court and large-scale public demonstrations organised by Indonesian unions calling on the government to restrict the use of labour outsourcing, the Minister of Labour issued Regulation No. 19 of 2012 on Conditions for Outsourcing ('the 2012 Regulation')(ITUC 2014). This regulation clarified and strengthened the regulatory requirements on agencies and those businesses that seek to engage their services. The following discussion focuses on the regulation of labour supply outsourcing. A brief discussion of the regulations as they apply to business process outsourcing can be found further below.

Restrictions on the use of agency work

In Indonesia, since its passage in 2003, the Labour Law has prohibited employers from engaging agency workers 'to carry out their enterprises' main activities or activities that are directly related to the production process, except for auxiliary service activities or activities

⁸⁶ Labour Law, art. 79(c). The Annual Religious Holiday Bonus is paid in full (equal to one month's wages) to those who have worked the full previous 12 months, and paid proportionately to those who have worked between 3 and 12 months: Minister for Labour Decision No. 04/1994.

⁸⁷ Minister for Labour Regulation PER-03/MEN/1994; Minister for Labour Regulation no. 150/MEN/1999; Minister for Labour Decision no. 196/Men/1999.

⁸⁸ Minister for Labour Regulation No. PER.06/MEN/1985.

⁸⁹ Labour Law, art. 64.

⁹⁰ Minister for Labour Regulation Kep 101/MEN/VI/2004.

⁹¹ Minister for Labour Regulation Kep 220/MEN/X/2004.

indirectly related to the production process'.⁹² The original scope of this restriction was ill defined, leading to considerable legal ambiguity around the practice (Manning and Roesad 2007: 73). However the 2012 Regulation explicitly limited the types of work for which labour supply services is permitted to five areas of work: cleaning services; catering services for employees; security services; support services for the mining and oil industries; and transportation services for employees.

Rights and protections for agency workers

Labour supply agencies are required to enter into written employment contracts with their workers (under which the workers are engaged on a permanent or, far more commonly, fixed-term basis). The labour supply agency is responsible for the payment of wages, welfare protection, and working conditions and disputes that may arise (art. 66(2)(c)). The rights, protections and working conditions afforded to agency workers must be at least the same as those provided by the principal employer to its directly employed workers (art. 66(2)(c) elucidation). The labour supplier and principal employer must enter into a written labour supply agreement (art. 66 (2)(d)).

An important protection for agency workers on fixed-term employment contracts arose from a 2012 decision by Indonesia's Constitutional Court. In Case No. 27/PUU-IX-2011, the Constitutional Court held that the engagement of workers by business outsourcing or labour supply companies on fixed-term employment contracts was inconsistent with those articles in the Constitution protecting the rights of workers to work and receive fair and decent benefits to the extent that such contracts failed to include a clause protecting the right of the workers where the company that engages the labour supplier or outsourcing company changes service providers. The Court held that fixed-term employment contracts in the context of labour outsourcing arrangements needed to include an arrangement referred to as a Transfer of Undertaking Protection of Employment ('TUPE'). Under this TUPE principle, in the event that the user company terminates the labour supply contract and transfers substantially the same work to a new labour supplier, arrangements must be in place for the new labour supplier to take on the fixed-term contract workers of the former labour supplier.⁹³

Further protections were introduced in 2012 through Minister for Labour Regulation No. 19 of 2012 on Conditions for Outsourcing. The Regulation requires labour suppliers to register the employment agreements they have entered into with their employees with the local Labour Department. A labour supplier is prohibited from sub-contracting all or part of the outsourced work. The Regulation contains the TUPE principle, outlined above. Where labour supply outsourcing occurs in violation of those statutory requirements found in the Labour Law or in violation of the TUPE principle, the relationship between the principal employer and the worker shall be deemed to be one of direct employment.⁹⁴

Regulation of Agencies

It is a statutory requirement for agencies to be registered and licensed.⁹⁵ In Indonesia, the regulation of agencies increased significantly in 2012, with the passage of the Manpower

⁹² Labour Law, art. 66(1).

⁹³ See also Director General of Industrial Relations and Labour Social Security Circular Letter No. B.31/PHIJSKI/2012 (January 20, 2012).

⁹⁴ Article 66(4) and Minister for Labour Regulation no. 19 of 2012.

⁹⁵ Chapter IV of the Contract Labour Act; Minister of Labour Regulation Kep 101/MEN/VI/2004; in Viet Nam, see Labour Code, art. 54(1) and (3); and Decree implementing Article 54.3 of the *Labour Code* on Licensing of

Regulation No. 19. Such agencies are now required to take the form of limited liability companies, and to be in compliance with general regulations concerning business licensing, labour reporting and taxation.⁹⁶ New maximum durations on licences were introduced, and licences are now only valid for the relevant province rather than nation-wide.

4.2.3 Sub-contracting and independent contracting arrangements

Business process outsourcing

As noted above, Indonesian labour law recognises two basic forms of outsourcing. This section deals briefly with the regulation of business process outsourcing: that is, arrangements whereby an enterprise subcontracts part of its work to another enterprise under a written agreement of contract of work.⁹⁷ Under art 65 of the Labour Law and the 2012 Regulation, a user company can only delegate ancillary work to a subcontractor company, and under certain conditions. Specifically:

- (a) the management and the implementation of the outsourced work must be conducted separately from the main activities of the company providing the work;
- (b) the work must be performed by direct order or indirect order from the user company for the purpose of providing clarity on how to perform the work so that it is consistent with the standards of the user company;
- (c) the work must be supporting activities: i.e. it is necessary to support and facilitate the implementation of the main activities according to the flow chart of the work implementation process stipulated by the relevant sectoral business association; and
- (d) the work must not directly hinder the production process: i.e., it must be an additional activity and if not performed, the production process will still continue as normal.

Prior to engaging a sub-contractor to provide services, the user company must prepare a 'Description' of the type of work that will be outsourced. The user company must also submit a flowchart describing which activities are 'core' and 'non-core' in the specified sector, prepared by the relevant industry association. No work may be outsourced until these documents have been registered with the local Ministry of Labour office. Failure to comply with these requirements will result in, by operation of law, the employees of the subcontractor company automatically being deemed employees of the user company.

The Labour Law and the 2012 Regulation also requires the sub-contractor and the user company to enter into a written outsourcing agreement which must specify the rights and obligations of the parties, and guarantee the protection of work and the fulfilment of all work conditions for the workers according to prevailing laws and regulations. Under the Act, the protections and conditions afforded to workers at the other enterprise must be at least the same as those provided at the principal employer or in accordance with the prevailing laws and regulations (art. 65(4)). There must be a written employment agreement between the other enterprise and the worker it employs. Where these requirements are not met, the enterprise that contracts the work to the contractor will be held to be the direct employer of

Labour Outsourcing Activities, Payment of an Escrow Deposit, and Regulating the List of Jobs for which Labour may be Outsourced, No. 55-2013-ND-CP (22 May 2013).

⁹⁶ Minister for Labour Regulation No. 19 of 2012, and Circular Letter SE.04/MEN/VIII/2013.

⁹⁷ Labour Law, art. 64.

the worker (art. 65(8)). The TUPE principles applying to workers on fixed-term contracts also apply to business outsourcing companies.⁹⁸

4.2.4 Honorary public servants

Honorary public servants' are a further major category of non-standard employment in Indonesia that should be noted. Known as *honorier* or *pegawai tidak tetap* civil servants, these workers do not enjoy the employment security, relatively high wages, access to pensions and other benefits that workers with full civil servant status do. Honorary public servant positions are generally poorly paid with little security but such positions have been viewed as stepping stones to full civil servant positions. Tidey (2012) describes such arrangements as being informal, and indeed it is unclear whether, and if so what proportion of, *honorier* post holders actually have formal contracts. Such workers are not formally on government payrolls or subject to civil service rules. Kristiansen and Ramli (2006) estimated that there were about one million people with *honorier* positions across Indonesia. In particular, there have been many school teachers (*guru honorier*) employed on this basis around the country – but also medical professionals, agricultural trainers and others. Government agencies were first officially permitted to employ non-permanent workers (*pegawai tidak tetap*) and not to raise them to civil servant status in 1999.⁹⁹ The elucidation to this 1999 Law noted that these non-permanent workers could be employed for a fixed-term to undertake development tasks of a technical and administrative nature. No provision was made with regards to benefits or protections. In 2005, a regulation was passed recognising the reality that many government agencies had hired honorary workers, and provided for special procedures and dispensations from minimum age requirements to allow honorary workers to be raised to civil servant status.¹⁰⁰

It was intended that all *honorier* positions would be eliminated by 1 January 2014, although it appears that the process has taken longer than anticipated. Currently, the law recognises two types of government employees; full civil servants and 'government workers with employment contracts' (*pegawai pemerintah dengan perjanjian kerja*) (PPPK). The types of positions that can be filled by PPPK are to be determined in a further regulation which is yet to be passed. PPPK are entitled to 'wages and allowances, leave, protection and professional development'.¹⁰¹ They are excluded from any rights to civil service pensions. A number of challenges to this piece of legislation have been filed in the Constitutional Court, and are on-going.¹⁰²

4.2.5 Summary of rights and entitlements, by type of employment

Table 3 below summarises the extent to which workers in non-standard forms of employment are accorded equal or different treatment under Indonesian labour law, when compared to their permanent counterparts.

⁹⁸ Case No. 27/PUU-IX/2011 and Director of Industrial Relations and Labour Social Security Circular Letter No. B.31/PHIJSKI/2012 (20 January 2012).

⁹⁹ Law no. 43/1999, art. 2(3).

¹⁰⁰ Government Regulation no. 48/2005 as amended.

¹⁰¹ Law no. 5/2014, art. 222.

¹⁰² Nasib Pegawai Honorier Tak Jelas Dalam UU ASN [The Fate of Honorary Officials is Unclear in the Civil Service Law], *hukumonline*, 22 September 2014 <http://www.hukumonline.com/berita/baca/lt541fcd8167ab8/nasib-pegawai-honorier-tak-jelas-dalam-uu-asn>.

Table 4. Summary of rights and entitlements, by type of employment – Indonesia

Right/ standard	Permanent employee	Fixed-term employee	Casual day labourer	Agency worker	Sub-contracted worker
Freedom of association & collective bargaining	✓	✓	✓	✓ (with direct employer only)	✓ (with direct employer only)
Anti-discrimination /equal employment opportunity	✓	✓	✓	✓	✓
Prohibition on child labour	✓	✓	✓	✓	✓
Prohibition on forced labour	✓	✓	✓	✓	✓
Explicit right to equal treatment c/f standard employees	n/a	✗	✗	✓	✓
Occupational health and safety	✓	✓	✓	✓	✓
Workers' compensation	✓	✓	✓	✓	✓
Social security	✓	Accident & death benefits schemes only. Health & retirement schemes subject to minimum service threshold.	Accident insurance & death benefits schemes only.	✓	✓
Minimum wage	✓	✓	✓	✓	✓

Protection against termination of employment	✓	✗ (but right to compensation where contract terminated by employer prior to expiry).	✗ (but right to compensation where contract terminated by employer prior to expiry).	✓	✓
Protections on working hours	✓	✓	✓	✓	✓
Paid annual leave	✓ subject to (12 month) minimum service threshold	✓ subject to (12 month) minimum service threshold	✗	✓	✓
Annual holiday bonus (<i>Tunjangan Hari Raya</i>)	✓ subject to (3 month) minimum service threshold	✓ subject to (3 month) minimum service threshold	✗	✓	✓

Source: Compiled by authors, based on survey of relevant laws and regulations.

4.3 Regulatory debates and initiatives

In Indonesia, the union movement has been a vocal opponent of non-standard work arrangements, emphasising the negative impacts of these arrangements on workers (ITUC 2014; Tjandringsih 2012; Marasigan and Serrano 2014). The union movement successfully opposed World Bank-backed government initiatives in 2006 to introduce further flexibility into the Labour Law, including lowering the level of severance pay and removing restrictions on the use of fixed-term contracts (Manning 2008:8–9). All the major union confederations rejected the proposed changes to the Labour Law and organised mass demonstrations in protest, such that the government was forced to shelve the proposals. The Indonesian government has since appeared reluctant to raise the issue of labour law amendments.

Labour outsourcing has proven particularly contentious. Efforts by the unions to place pressure on the government to clarify the restrictions on the practice have met with some success (Tjandringsih 2012: 416). In October 2012, up to 3 million people throughout the Jakarta area reportedly participated in a protest organised by three major Indonesian union federations (the KSBSI, CITU/KSPI and KSPSI), calling on the government to restrict outsourcing to five key types of work. This protest was one of the factors that led to the promulgation of the Manpower Regulation No. 19 of 2012. Another factor was the successful use of the Constitutional Court by union activists to challenge part of the outsourcing provisions in the Labour Law. While the union movement regarded the 2012 regulations as a significant step forward, they continue to be concerned over ambiguity in the current regulatory framework and to call for further legislative reform (ITUC 2014: 28). Within the business community, concerns have been expressed over the complexity and detail of the 2012 regulations (particularly in relation to the subcontracting of services and relevant flowcharts and descriptions), and the willingness and capacity of companies and relevant industry associations to comply with these procedures.

5. The regulation of non-standard employment in Viet Nam

5.1 An overview of Vietnamese labour law

Since the mid-1980s, Viet Nam has transitioned from a centrally driven economy in which jobs and wages were administratively determined to a ‘socialist-led market economy’ with a labour law system based on legally regulated individual employment relationships. In the socialist period, a regime of employment for life (*‘bien che’*) in the formal economy operated alongside a system of ‘oral and short-term contracts for unstable and casual jobs’ in the informal economy (Collins 2009: 41). Following the series of reforms known as *Doi Moi* in 1986, there were tentative moves by the government to reform employment relations in state-owned enterprises, including through requiring new workers be engaged on fixed-term employment contract and (soon after) for temporary workers to be engaged on employment contracts as well (Collins 2009: 41). In 1994, Viet Nam adopted its first national Labour Code. This Code explicitly sought to ‘institutionalise’ the economic renovation process,¹⁰³ and constituted the first attempt by the socialist government to comprehensively regulate individual and collective employment relations by law (Nicholson 2002; Collins 2011). It provided for permanent (‘indefinite’) term employment contracts, fixed (‘definite’) term employment contracts with a duration of between one and three years; and seasonal or task-specific employment contracts with a duration of less than one year. The Code was subject to

¹⁰³ 1994 Labour Code, Preamble.

significant amendments in 2002 and 2006, and was replaced by a new Labour Code in 2012, which came into effect on 1 May 2013.¹⁰⁴

The current Labour Code ('the Labour Code') provides a minimum floor of individual employment standards pertaining to employment contracts, working conditions, wages, working hours, labour discipline, occupational health and safety, and discrimination. It also provides for collective rights, including workplace consultation and collective bargaining, and provides a framework for the resolution of individual and collective labour disputes. Labour-related matters are also governed by other statutes such as the Law on Trade Unions and the Law on Social Insurance, and these are supplemented by a number of decrees, ordinances and circulars. Under Vietnamese law, all unions must be affiliated to the Viet Nam General Confederation of Labour (VGCL). While unions have sought to adopt a more active role in representing workers in recent years, the VGCL remains formally in practice under the leadership of the Vietnamese Communist Party. While the former and current Codes contain significant ambiguity, jurisprudence on employment matters appears very limited (indeed non-existent in the English language).¹⁰⁵ While efforts have been made in recent years to improve collective bargaining (through reforms to the law and in practice), the regulation of terms and conditions of employment through collective agreements remains under-developed.¹⁰⁶

5.2 Forms of non-standard employment recognised and regulated in law

In Viet Nam, article 22 of the Labour Code specifies that a labour contract must be one of three types:

- (i) an indefinite-term labour contract (*hợp đồng lao động không xác định thời hạn*), defined as 'a contract in which the two parties do not fix the term nor the time of termination of validity of the contract';
- (ii) a definite-term labour contract (*hợp đồng lao động xác định thời hạn*), defined as 'a contract in which the two parties fix the term and the time of termination of the validity of the contract as a period between twelve (12) months and thirty six (36) months; or
- (iii) a seasonal or job-specific labour contract (*hợp đồng lao động theo mùa vụ hoặc theo một công việc nhất định*) with a duration of less than twelve (12) months.

The Labour Code also regulates other forms of employment through providing for trade training contracts, domestic work and home-based work. Since 2012, the Labour Code has also regulated agency employment.

¹⁰⁴ This Study uses the English version of the Labour Code, as translated by Allens Arthur Robinson. However where there is ambiguity, reference has also been made to the Vietnamese language version.

¹⁰⁵ This finding is supported by Casale et al (2011) who observe that '... the literature on Viet Nam and changes to its labour laws in recent years is strikingly devoid of any mention of the roles of courts or tribunals in the determination of the scope of the employment relationship, much less of particular decisions that might have been important in this respect.' (at 206).

¹⁰⁶ It is not possible to obtain data on the incidence and content of collective agreements. According to the VGCL, by 2009 65.2 per cent of unionised enterprises were covered by collective agreements: 96.3 per cent in the state sector, 64.6 per cent in the foreign-owned sector and 59.2 per cent in the private sector. However the VGCL in 2009 also noted that half of these agreements did not provide any benefits superior to those prescribed in the Labour Code. In 2006, MOLISA similarly observed that over 96 per cent of collective agreements merely repeated the statutory provisions (Pringle and Clarke 2010: 97–98).

5.2.1 Temporary employment

Definite-term labour contracts

There are no statutory limitations with respect to the reasons for which a definite-term labour contract may be entered into. Where a definite-term contract expires and the employee continues to work, then the two parties must enter into a new labour contract within 30 days. If a new labour contract is not entered into, then the Code provides that the contract between the parties is deemed to become an indefinite-term labour contract. A definite-term contract may only be renewed once.¹⁰⁷ These restrictions on the successive use of definite-term labour contracts were introduced, in a slightly modified form, in 2002.¹⁰⁸ While the original proposed revisions to the Labour Code developed by MOLISA in September 2009 and released in 2010 contained some reforms directed at providing employers with greater capacity to use definite-term contracts (including the removal of the 36 month maximum term on fixed-term contracts and to permit multiple renewals, with automatic conversion only occurring where the parties fail to extend a definite-term contract within 30 days of its expiry), these amendments were abandoned in the final version of the Code (Chi 2011:290–291; AAR 2010: 3).

With the exception of termination of employment protections, Vietnamese labour law generally accords workers on definite-term labour contracts the same rights and protections as those accorded to permanent employees. The Labour Code contains detailed rules on termination of employment, of which some differ according to the type of contract on which the employee is engaged. With respect to notice of termination, the current Labour Code provides for the first time that, at least fifteen days prior to the date of expiry of a definite-term labour contract, the employer must provide the employee with written notice of the date when the contract terminates (art. 47(1)). The Code sets out four circumstances under which an employer has a right to terminate a labour contract unilaterally (art. 38), under which an employee on a definite-term contract is accorded substantively and procedurally less protection than accorded to those in permanent employment.¹⁰⁹ Entitlement to severance allowance and redundancy pay is based on period of service (at least 12 months) rather than type of contract.¹¹⁰

¹⁰⁷ Labour Code, art. 22(2).

¹⁰⁸ Amendments were introduced in 2002 to provide that when a worker continues to work after the expiry of a definite-term or seasonal/ job-specific employment contract, both parties must agree on a new contract within 30 days. A definite-term or seasonal/ specific job contract may only be renewed once. If no new agreement is entered into or where the contract is renewed more than once, then the contract is taken to be one of indefinite-term (irrespective of whether it was a definite or seasonal/ specific job contract). See 1994 Labour Code (as amended), art. 27(2), and art. 4 of Decree No. 44-2003-ND-CP Decree Making Detailed Provisions and Providing Guidelines for Implementation of a Number of Articles of the Labour Code with Respect to Labour Contracts (9 May 2003).

¹⁰⁹ In circumstances where an employee is ill or injured and is unable to work after having treatment, the Code recognises the right of an employer to unilaterally terminate the labour contract after 12 consecutive months in the case of an indefinite-term labour contract, or 6 consecutive months in the case of a definite-term contract, or more than half the duration of the contract in the case of a seasonal or job specific labour contract with a duration of less than 12 months (art. 38(1)(b)). The Labour Code also requires different periods of advanced notice of unilateral termination of a labour contract by an employer depending on the nature of the contract: at least 45 days' notice in the case of an indefinite-term labour contract; at least 30 days in the case of a definite-term contract; and at least 3 working days in the case of a seasonal or specific job labour contract with a duration of less than 12 months (art. 38(2)).

¹¹⁰ Labour Code, arts. 48 and 49.

Seasonal or job-specific labour contracts

Under the Labour Code, a worker may be engaged on a seasonal or job-specific labour contract with a duration of less than 12 months.¹¹¹ There are no statutory limitations imposed with respect to the reasons for which seasonal or job-specific contracts may be entered into. However the Code prohibits the signing of a seasonal or job-specific labour contract for a term of less than twelve months in respect of work that is regular and has a duration of twelve months or more, except temporarily to replace an employee on leave.¹¹² This prohibition was also found in the original 1994 Code.

The Code contains slightly modified rules with respect to the formation of seasonal or job-specific contracts. First, while labour contracts must generally be in writing, oral contracts are permitted for ‘temporary work of less than three months’.¹¹³ For seasonal work or a specific job with a duration of less than twelve months, a group of workers may authorise a single worker to enter into a written labour contract on their behalf.¹¹⁴ Since 2012, the Labour Code has also prohibited employers requiring probation for seasonal labour contracts. The Code provides that where a seasonal or job-specific labour contract expires and the employee continues to work, then the two parties must enter into a new labour contract within 30 days. If a new labour contract is not entered into, the contract between the parties is deemed to become a definite-term labour contract with a duration of 24 months. Reforms in 2002 provided that such a contract may only be renewed once, after which time it shall be deemed to be a permanent contract.¹¹⁵ This rule was modified in 2012 so as to provide that the contract would, after the second renewal, be deemed a definite-term labour contract with a duration of 24 months.¹¹⁶

According to a Directive issued by the Vietnam General Confederation of Labour (VGCL) in 2004, only workers on labour contracts of six months or more are eligible to join trade unions.¹¹⁷ While this restriction on union membership would appear to be inconsistent with provisions in higher-level documents to the effect that all workers have the right to join the relevant union (such as the recently revised Labour Code, Trade Union Law or the Trade Union Charter), the Directive appears still to be in force.

Workers on seasonal or job-specific contracts have protection against unilateral termination of their contract by the employer; however this protection is weaker than for those on indefinite and definite-term labour contracts.¹¹⁸ While there is no specific exclusion from severance and redundancy pay entitlements for employees on this type of contract, or

¹¹¹ Labour Code, art. 22(1)(c).

¹¹² This includes leave for military service, maternity leave or sick leave, leave as the result of a work-related accident, or leave for ‘other temporary reasons’: art. 22(3).

¹¹³ Labour Code, art. 16(2).

¹¹⁴ Labour Code, art. 2. In previous versions of the Code, this capacity to enter into an employment contract on behalf of a group was not limited to temporary contracts.

¹¹⁵ See 1994 Labour Code (as amended), art. 27(2); and art. 4 of Decree No. 44-2003-ND-CP Decree Making Detailed Provisions and Providing Guidelines for Implementation of a Number of Articles of the Labour Code with Respect to Labour Contracts (9 May 2003).

¹¹⁶ Labour Code, art. 22(2).

¹¹⁷ Directive 02/2004/TTR-TLD, issued by the VGCL on 22 March 2004. See further Chi (ed.)(2006) 7, 22; and Wilshaw et al (2013) 11.

¹¹⁸ See arts. 38 and 111 respectively.

from paid annual leave, there are 12-month service requirements for eligibility for these entitlements that would in practice exclude many of these employees.¹¹⁹ Employees engaged on contracts with a duration of under three months are not eligible to participate in Viet Nam's compulsory social security system, which covers social insurance (sick leave, maternity leave, compensation for work-related accidents and illnesses, retirement and life insurance), health insurance and unemployment insurance. In such cases, the employer is required by law to include the mandatory social security contribution in the worker's salary and the worker has the right to participate in the voluntary social insurance scheme.¹²⁰

5.2.2 Part-time employment

In Viet Nam, there have been recent moves to recognise and regulate part-time employment. Former and current versions of the Labour Code provide that the state shall establish policies to encourage employers to implement conditions conducive to women's participation in employment, including through part-time employment. The right of senior employees to request part-time employment in the final year prior to retirement is also recognised.¹²¹ The current Labour Code goes beyond these provisions to regulate part-time employment in more detail. A part-time employee is defined as an employee with working hours shorter than the average daily or weekly working hours prescribed in labour law, or in the relevant collective agreement or in the rules of the employer (art. 34). The Code provides that an employee may reach agreement with an employer to work part-time when signing a labour contract. There are no statutory provisions regulating the rights of workers to move between full and part-time employment, however presumably such arrangements could be secured via those provisions dealing with amendments to labour contracts. The Code provides that part-time employees are to be accorded equal treatment with full-time employees with respect to wages, rights and obligations, equal opportunity, non-discrimination and occupational safety and hygiene (art. 34(3)). However there are no further details provided in the Code with respect to how part-time employment affects the calculation of entitlements (such as annual leave), which would appear to leave considerable ambiguity in respect to the rights and entitlements of this group of workers.

5.2.3 Home-work

The Labour Code recognises that a worker may reach agreement with an employer to accept regular 'home-based work'. However it excludes these workers from the application of the Code.¹²²

5.2.4 Agency work

In Viet Nam, a new section of the Labour Code dealing with agency work was introduced in 2012. Prior to this, there was no formal recognition or regulation of the practice.¹²³ The Code recognises the right of an employer to recruit labour via a 'labour

¹¹⁹ See Labour Code, arts. 48 and 49.

¹²⁰ Law on Social Insurance of 2006, art. 2(1). This voluntary scheme only covers retirement and life insurance (art. 4(2)) and has a different method of calculating the premium rate and level of social insurance entitlement (art. 5). See also Labour Code, art. 186(3), and Law on Unemployment 2013, art. 43.

¹²¹ See former Code, art. 123.

¹²² Article 158.

¹²³ The exception to this appears to lie with relation to security guards (Wilshaw et al 2013: 39). See further Decree No. 14/2001/ND-CP of April 25, 2001 on the Management of the Security Service Business'.

outsourcing' enterprise (*doanh nghiệp cho thuê lại lao động để tuyển dụng lao động*).¹²⁴ As is the case in Indonesia, in Viet Nam broad provisions recognising the legitimacy of labour outsourcing is found in the principal labour statute, with subsequent subordinate regulation setting out the detailed requirements concerning temporary work agencies and standards.¹²⁵

Restrictions on the use of agency work

In Viet Nam, labour outsourcing is only permitted with respect to a number of specified jobs.¹²⁶ Agency work is further regulated through restrictions on the *duration* of any temporary work arrangement and the *purposes* for which a principal employer may engage workers through an agency. A principal employer may only engage an agency worker for a maximum period of 12 months.¹²⁷ Employers are only permitted to engage agency workers to satisfy temporary requirements where there is a sudden increase in labour requirements for a specified period; to replace a worker who is on maternity leave, who has been involved in a work-related accident, is suffering an occupational disease, is obliged to perform civic obligations or who has had his or her working hours reduced; or where there is a need to employ someone with high technical expertise.¹²⁸ Employers are expressly prohibited from engaging agency workers to replace workers on strike or subject to a decision on resolution of a labour dispute; to replace a worker who has been retrenched; to work in places with harsh living conditions (as defined) unless the employee has already lived in such place for three or more years; or to perform heavy, toxic or dangerous work. A principal employer is also prohibited from engaging an agency worker where it does not reach specific agreement with the agency concerning workers' compensation arrangements.

Rights and protections of agency workers

In Viet Nam, the agency and the principal employer are required to enter into a sublease contract, containing a number of particulars.¹²⁹ This contract must not contain agreement on the rights and interests of the employee that are less favourable than those in the labour contract which the agency has signed with the employee. The Code contains provisions that

¹²⁴ Labour Code, art. 11. This right is also reiterated in art. 6(1) of Decree No. 03-2014-ND-CP, Decree Implementing the Labour Code on Employment (16 January 2014). Labour outsourcing is defined in the Code as an arrangement whereby an employee recruited by an enterprise licensed to conduct labour outsourcing [the agency firm or sub-lessor] thereafter works for another employer [the client firm or sub-leasing employer], and is subject to the management by such other employer but maintains the labour [employment] relationship with the labour outsourcing enterprise (Code, art. 53).

¹²⁵ In Indonesia, see Minister of Labour Regulation Kep 101/MEN/VI/2004, Minister of Labour Regulation Kep.220/MEN/X/2004 and Minister of Labour Regulation No. 19 of 2012. In Viet Nam, see Decree implementing Article 54.3 of the Labour Code on Licensing of Labour Outsourcing Activities, Payment of an Escrow Deposit, and Regulating the List of Jobs for which Labour may be Outsourced, No. 55-2013-ND-CP (22 May 2013).

¹²⁶ Labour Code, art. 53(3), Decree on Labour Outsourcing, art 25 and Appendix 5. This list – which currently stands at 17 types of job – is determined by the Prime Minister following submissions by the Ministry of Labour.

¹²⁷ Labour Code, art. 54(2). There are reports that the original proposed revisions to the Labour Code developed by MOLISA in September 2009 and released in 2010 also proposed that employers be permitted to utilise sub-contracted workers for a maximum ten days per year (Labour Code Revision 1st Draft, art. 43)(Chi 2011:290-291)(AAR 2010: 3).

¹²⁸ Decree on Labour Outsourcing, art. 23.

¹²⁹ Labour Code, art. 55.

seek to clarify the respective rights and obligations of the three parties involved in the arrangement.¹³⁰

The regulatory framework in Viet Nam seeks to secure equal treatment between workers of the agency and those directly employed by the principal employer. It does so by imposing a requirement on the agency to ensure the agency worker receives a wage not lower than the wage of an employee of the principal employer with the same professional qualifications and doing the same job or a job of equal value, and a requirement on the principal employer not to discriminate regarding labour conditions between the sub-leased employees and its direct employees. This would appear to lower the potential for agency work arrangements to undercut wages and conditions of direct employees. However, there does not appear to be any restriction on the ability of the agency to charge its employees for placement services. In practice, this means that the agency workers may receive significantly lower take-home pay, as agencies reportedly charge employees successfully placed with a client firm an administrative fee of between 15 and 25 per cent of the employee's wage (Pupos 2014: 159; Thu 2013).

It would appear that agency workers have the right to form or join the enterprise union within the agency that constitutes their direct employer, but they would not have the right to join a union in the principal employer's enterprise. The legal situation with respect to agency workers and collective bargaining at the principal employer's workplace is somewhat unclear. On the one hand, an agency clearly falls within the definition of an employer and so it is possible for the employees of such an enterprise to engage in collective bargaining with their employer. On the other hand, according to the Labour Code, the agency worker is to perform work in accordance with the labour contract signed with the agency and to comply with the collective labour agreement of the principal employer (arts. 58(1) and (2)). The Code does not refer at all to the collective labour agreement of the agency, nor does it specify what rule is to be applied if both the agency and the principal employer have collective agreements and they conflict. It would also appear that while agency workers are required to comply with the collective labour agreement of the principal employer, they have no right to participate in negotiating, or approving, such an agreement. This is because the rules on collective bargaining envisage agreement making between an employer and a 'labour collective', which is defined as 'an organised collective of employees working together for one employer or within any one section of the organisational structure of an employer.' (Art. 3). Those provisions of the Code providing for workplace consultation (found in Chapter 5 of the Labour Code) also appear to be limited to discussions between the employer and its direct employees.

Regulation of agencies

Decree 55 sets out detailed licensing requirements for a labour outsourcing enterprise, including a requirement that the enterprise has lodged an escrow deposit of VND 2 billion (approx. US 100,000);¹³¹ and has a prescribed minimum legal capital. There are additional requirements for foreign enterprises setting up joint ventures with Vietnamese enterprises. The Decree imposes maximum durations on licences and licence renewals, and sets out

¹³⁰ Labour Code, arts. 56–58.

¹³¹ The purpose of the escrow deposit monies is to make payment of wages to a subleased employee or to pay compensation to a subleased employee if the labour outsourcing enterprise breaches the labour contract or otherwise causes loss to the employee (Chapter 3 of Decree 55).

circumstances under which a licence may be withdrawn. Agencies are required to provide regular reports to the relevant Department of Labour office.¹³²

5.2.5 Sub-contracting and independent contracting arrangements

The Labour Code in Viet Nam only applies to parties in an employment relationship, and establishes the employment contract as the principal means through which such a relationship is established.¹³³ The Code does not extend to workers that are self-employed, although it does recognise some forms of work that are often regarded as being within the ‘grey area’ of employment, such as domestic work, home-work and agency work (see above). Despite the centrality of the employment relationship to the application of the Labour Code, the Code itself does not provide any guidance on the extent to which, and how, an employment relationship may exist in the absence of a labour contract. While, as Casale et al observe, there is some scope for such a question to be ventilated through those provisions of the Code which provide for resolution of individual labour disputes (2011: 206)(in which the question of whether a worker is an ‘employee’ would constitute a jurisdictional issue), there is no evidence of such disputes being conciliated or judicially determined.

Most provisions of the Labour Code apply only to employees. This includes those provisions of the code that recognise the right of workers to organise and bargain collectively. While some provisions within the Labour Code dealing with occupational health and safety extend beyond employers and employees to others ‘involved in labour activities or production’,¹³⁴ most of the explicit occupational health and safety responsibilities in the Code are placed explicitly on ‘employers’ or ‘employees’. Workers who are not employees are excluded from the mandatory social security system, although they are eligible to participate in the (inferior) voluntary one.¹³⁵

The Labour Code contains a provision which appears to be directed at securing the wages of sub-contracted workers secure wages by providing that, in locations where a foreman (*người cai thầu*) or person with an equivalent intermediary role is employed, the principal must ensure compliance by the intermediary with the law on payment of wages and on occupational safety and hygiene. Where the intermediary fails to pay wages in full or at all and fails to ensure other interests of the employees, the principal is responsible for paying the wage and otherwise ensuring the interests of the employees.¹³⁶

5.2.6 Summary of rights and entitlements, by type of employment

Table 4 below summarises the extent to which workers in non-standard forms of employment are accorded equal or different treatment under Vietnamese labour law, when compared to their permanent counterparts.

¹³² Decree No. 03-2014-ND-CP, Decree Implementing the Labour Code on Employment (16 January 2014), art. 8.

¹³³ See Labour Code, arts. 1 and 2

¹³⁴ Labour Code, art. 133.

¹³⁵ Law on Social Insurance of 2006, art. 2.

¹³⁶ Labour Code, art. 99. Where the principal employer has assumed such responsibility, he/she has the right to require compensation from the foreman or equivalent person, or to request a competent state body to resolve the dispute in accordance with law.

Table 5. Summary of rights and entitlements, by type of employment – Viet Nam

Right/ standard	Indefinite - term (permanent employees)	Definite-term employees	Seasonal or job-specific employees	Agency worker	Part-time employee
Freedom of association & collective bargaining	✓	Only for workers on labour contracts of 6 months or more	Only for workers on labour contracts of 6 months or more	✓	✓
Anti-discrimination /equal employment opportunity	✓	✓	✓	✓	✓
Prohibition on child labour	✓	✓	✓	✓	✓
Prohibition on forced labour	✓	✓	✓	✓	✓
Explicit right to equal treatment c/f standard employees	n/a	✗	✗	✓	✓
Occupational health and safety	✓	✓	✓	✓	✓
Workers' compensation	✓	✓	✓	✓	✓
Social security	✓ Subject to three month service threshold	✓	✓ Subject to three month service threshold	✓	✓
Minimum wage	✓	✓	✓	✓	✓
Termination of employment protection	✓	✓ With some variation. Entitlement to severance pay subject to minimum service threshold	✓ With some variation. Entitlement to severance pay subject to minimum service threshold	✓	✓
Protections on working hours	✓	✓	✓	✓	✓
Leave	✓	✓	✓ Subject to three month service threshold	✓	✓

Source: Compiled by authors, based on survey of relevant laws and regulations

5.3 Regulatory debates and initiatives

In Viet Nam, regulatory debates and initiatives surrounding non-standard employment appear to have been focused mainly on the extension of protective frameworks to certain groups of workers. Concern over triangular employment arrangements in which the respective rights and responsibilities of the agency and principal employer were unclear, leaving workers without adequate protection, led to several major industrial disputes in 2010 and contributed to the passage in 2013 of the regulatory framework for agency work (discussed above), which has been clearly influenced by ILO standards (Thu 2013; Pupos 2014). The current regulatory framework, directed at eliminating illegitimate businesses and protecting workers' rights, is widely regarded as a first and tentative step towards the regulation of agency work (Thu 2013; Long 2011), with the potential for moves to expand the types of work for which agency work is permitted as well as to permit the engagement of agency workers on a longer term basis (Long 2011).

There has also been official recognition that the Labour Code does not provide adequate protection to 'casual workers' (that is, workers who do not have a written contract or who have a contract for less than three months). In 2014, amendments were proposed to be made to the Law on Social Insurance so as to extend coverage of the compulsory social security schemes to workers on employment contracts with a duration of under three months. This would be a significant reform as it would mean these workers would be eligible for a range of benefits from which they have to date been excluded, including sick leave, maternity leave, retirement pension, and workers' compensation. Considering the proposed reform, the vice-chairman of the National Assembly's Committee on Social Affairs noted that the reform would address the current practice of many employers engaging workers on contracts of under three months so as to avoid obligations under the social security laws (Bao 2014). The Viet Nam General Confederation of Labour supported the reform, arguing that the gap in coverage causes a loss to the Social Insurance Fund of around VND 56 trillion (US\$2.67 billion) each year. However some employer groups have argued that the government should first focus on reforming the insurance registration and payment procedures before extending coverage of the scheme, as it can reportedly take up to six months to register a new employee in the compulsory system, as well as on encouraging workers on short-term contracts to participate in the voluntary scheme (Bao 2014).

6. The impact of non-standard forms of employment and its regulation

6.1 The impact of non-standard forms of employment on workers

While it is widely recognised that non-standard forms of employment may in certain circumstances be of benefit to workers (for example, where the arrangement serves as a means of gaining specific skills or work experience or earning supplementary income), there is little data available from any of the three countries examined in this Study to indicate the extent to which these forms of employment are preferred by workers over permanent employment. There is anecdotal evidence from Viet Nam that university students and recent graduates use temporary and agency work as a means of generating income during university holidays (especially over the Tet holiday period) and of gaining work experience and a 'foot in the door' in the labour market. Also in Viet Nam, it is argued that the rise of agency work in the country helps create a 'stepping stone' between the large cohort of young graduates through linking them to employment and providing them with on-the-job training. A recent qualitative study based on interviews with temporary and contract workers in the automobile industry in Chennai, India, found that workers often 'swim' between different forms of non-

standard employment, despite the ongoing preference for direct and permanent work (Gopalakrishnan and Mirer 2014:30–31). Overall, however, there is very little quantitative or qualitative data on these issues, and the authors have not identified any empirical studies specific to the three countries examining whether and to what extent these forms of work serve as ‘stepping stones’ for new or returning labour market entrants or are ‘traps’ (that is, with little possibility of transitioning to more secure forms of employment).

There is, however, a significant body of evidence documenting the disadvantages that workers in non-standard forms of employment experience vis-à-vis workers in permanent employment. Unsurprisingly these studies demonstrate that workers engaged in non-standard forms of employment are more likely to receive lower wages, fewer entitlements and to experience poorer working conditions and higher levels of job insecurity than those in standard employment.

With respect to *wages*, Bhandri and Heshmati (2006) have estimated a substantial wage gap of around 45.5 per cent between contract/casual workers and permanent workers in India. Also in India, Rajeev (2009) concluded from his study of contract workers in the state of Karnataka that not only did this group of workers generally receive lower wages than their directly employed counterparts (many below the statutory minimum), but these workers also did not receive commensurate wage increments, allowances, bonuses and overtime payments. It is observed that the statutory provision requiring payment of same or similar wages to contract workers as paid to regular workers ‘remains on paper in the absence of clarity regarding its enforcement’ (Hittanagi 2012: 129). In Indonesia, a study commissioned by the Federation of Indonesia Metalworkers Union (FPSMI) and Friedrich Ebert Stiftung (FES) found a significant wage gap between workers on permanent, fixed-term and outsourced contracts among workers in the metalworking industry (see Table 5 below). The wage gap between fixed-term workers and their directly employed counterparts was around 17 per cent, and between outsourced workers and their directly employed counterparts around 26 per cent. Contract workers often only received the basic wage, and missed out on the benefits and allowances received by their permanent counterparts (Tjandraningsih et al 2010). The study also found that agency workers were more likely to experience discrimination on the basis of age, gender or marital status. In Viet Nam, it has been observed that temporary and agency workers do not receive the allowances and bonuses received by permanent workers, which may constitute up to 30 per cent of permanent workers’ incomes (Pupos 2014: 162).

Table 6. Comparison of monthly total wage, based on employment status – Indonesia

Work status	Monthly wage (Rupiah/ month)	Monthly wage (US\$ equivalent)
Permanent worker	1,731,858	173
Fixed-term contract worker	1,442,365	144
Outsourced workers	1,278,792	127

Source: Tjandraningsih, Herawati and Suhadmedi (2010)

A study from Indonesia found casual workers earned, on average, less than half the wages received by permanent workers (Matsumoto and Verick 2011). Where the agency charges the worker a fee, there are even greater discrepancies in the wages received by agency workers and those directly employed. Charging this type of fee – which may be ‘one-off’ when a worker obtains a contract via an agency or on-going as a percentage of the worker’s regular salary – appears to be a common practice in Indonesia and Viet Nam (Pupos 2014; Tjandraningsih 2012). In Viet Nam, agencies reportedly charge employees successfully

placed with a client an administrative fee of between 15 and 25 per cent of the employee's wage (Pupos 2014: 159).

In India, Gopalakrishnan and Mirer (2014: 32–33) report from their study of non-standard work arrangements in the automobile industry in Chennai that temporary and agency workers are more likely to *work longer hours* without compensation and to *forgo (paid or unpaid) leave entitlements*. In many cases, workers are reluctant to assert their legal rights to refuse to work overtime and/or to adequate compensation for doing so, or leave entitlements, for fear of losing their jobs.

Workers in non-standard employment experience little if any *employment security*. Casual workers by the very nature of their engagement have no guarantee of continued employment. Fixed-term contracts also offer a significantly lower level of protection to workers with respect to termination of their employment. In India, the practice of hiring and firing workers in non-standard forms of employment (including temporary and agency work) at frequent intervals so as to avoid liabilities associated with the coverage of specific statutory provisions is reportedly widespread (Shyam Sundar 2011: 16). Similar practices are identified in Indonesia and Viet Nam (Collins 2009).

Workers engaged in non-standard forms of employment frequently have inadequate employment-based *social security coverage*, either because they are explicitly excluded from receiving coverage by law (such as is the case with workers on short-term contracts in Viet Nam) or because their short tenure, short contribution periods or low earnings may limit access to such entitlements. Even when they are covered by the relevant schemes, low wages and contributions may mean that the benefits they receive are inadequate.

The evidence demonstrates that workers in non-standard forms of work are likely to experience *violation of rights and entitlements in practice*. In Indonesia, a study found that agency workers were more likely to experience discrimination on the basis of age, gender or marital status (Tjandraningsih et al 2010). Even where workers in non-standard forms of employment enjoy rights to organise and collectively bargain under law, they may be expressly forbidden by their employers to do so, or may otherwise be reluctant to exercise these rights for fear of losing their jobs or not having their contracts extended (ITUC 2014; Tjandraningsih 2012; Gopalakrishnan and Mirer 2014: 39–40; Rajeev 2009). In many cases it would appear workers' fears of having their employment terminated for participation in union activities is well-founded: it has been observed that in Viet Nam many unionists on temporary contracts find their contracts simply not renewed (Clark et al 2007), and in India, dismissing or suspending non-standard workers is a common employer strategy to discourage unionisation (Shyam Sundar 2011: 33). The capacity of non-standard workers to exercise rights may also be impeded by a lack of awareness of their rights, a lack of access to legal support, and in the case of agency workers, difficulties identifying and locating the correct party against which to assert these rights (Gopalakrishnan and Mirer 2014; Rajeev 2009). In India, hostility and suspicion from permanent workers engaged in the same establishment is also identified as a factor impeding the capacity of non-standard workers to form or join unions or engage in collective bargaining. In some cases, this may extend to the by-laws of certain enterprise unions expressly preventing non-standard workers in the same establishment from becoming union members (Gopalakrishnan and Mirer 2014).

Non-standard employment may also have a *direct and negative effect on those workers engaged in standard work arrangements*. This includes through exerting downward pressure on wages and conditions of employment. The negative implications of non-standard forms of employment for collective strength and the effective exercise of bargaining rights of standard workers are noted in India and Indonesia. The increasing prevalence of non-standard work has significantly eroded bargaining power, as the types of enterprises and workers that have been traditionally highly unionised are precisely those that have engaged high proportions of

contract labour (Sankaran 2014: 41; Tjandraningsih 2012: 414),¹³⁷ and non-standard workers are widely recognised as being more difficult to organise (Sankaran 2014; IndustriAll 2012; ITUC 2014). In India, the increasing engagement of non-standard workers in certain sectors has reportedly led to greater segmentation and fragmentation of the workforce, with negative repercussions for the exercise of freedom of association and collective bargaining rights of workers (Gopalakrishnan and Mirer 2014).

6.2 The impact of the regulation of non-standard employment on labour markets

Any discussion or assessment of the impact of labour law in developing countries must begin with a note of caution. It is widely recognised that in each of the three countries that form the subject of this Study, as with many other countries of this region (Cooney et. al. 2002), the law only has a limited impact upon the working of the labour market. This law-practice gap is attributable to a number of factors, including legal culture, lack of institutional capacity and resources, corruption and a lack of willingness and/or capacity to enforce the law, and renders the task of seeking to assess the impact of any particularly regulation or set of regulations very difficult, if not impossible.

Nonetheless, it is possible to observe that labour law in each of the three countries has, in establishing certain categories of employment and attaching to these categories differing levels of rights and protections, established hierarchies of employment status that are in practice significant sources of labour market segmentation. At the top of this hierarchy is the permanent employee with a full suite of rights and entitlements as well as job security, followed in turn by fixed-term employment and agency work, and finally casual employment. The nature and degree of this segmentation, however, would appear to differ between countries (and presumably also perhaps between and within workplaces). In Viet Nam, for example, the most significant legally sanctioned shortfalls in rights for workers would appear to lie with those groups of workers who are excluded from the Labour Code's coverage (such as home-workers), as well as with workers engaged on seasonal or job-specific contracts of less than three months as these workers may be engaged on oral contracts, and lack any entitlement to severance pay, paid leave and are not covered by the mandatory social security system.

While legal regulation lays down the basis for this form of segmentation, limited implementation and compliance with the law tends to make it wider and sharper (Papola 2013: 16). While it is true that non-compliance with the law is a general problem that affects workers in *all* forms of employment, the problem appears to be worse for workers in non-standard forms of employment, due to their heightened vulnerabilities (most importantly their lack of job security). Many of the reasons for non-compliance with the law with respect to non-standard employment identified in the literature are the same as those for workers more generally: the provision of sanctions that are insufficient to act as significant deterrents; limited or no labour inspection; and weak law enforcement capacity and/or will to enforce the law (Shyam Sundar 2008; Tjandraningsih 2012: 414; ITUC 2014). Ambiguity and complexity in the relevant legal frameworks are also identified as factors contributing to high non-compliance rates (Tjandraningsih 2012: 414; Kumar 2013). Empirical studies of contract workers in India have found that a range of factors impede the capacity of these workers to secure rights they may be afforded in law. This includes a lack of awareness of these rights, the prospect of losing their jobs if they complain to their employer or to the relevant

¹³⁷ Sankaran (2012: 41) notes that the use of contract labour has been a deliberate strategy to limit union militancy in some states.

authorities, and even difficulties associated with identifying their legal employer (Das and Pandey 2004; Rajeev 2009).

It can also be observed that the statutory norms in each of the three countries directed at restricting or limiting the use of non-standard work appear to have only very limited impact on labour market practice. This may be attributable to the large proportions of each economy that operate informally. There is evidence from each of the three countries of widespread non-compliance with a number of the legal restrictions on the use of non-standard work. In India and Indonesia, agency work is reported to be widespread, including among unregistered/ unlicensed enterprises and for those types of jobs and in those sectors in which it is expressly prohibited (Sood et al 2014: 64; Ahsan and Pagès 2007; Saini 2010; Shyam Sundar (ed.) 2012; Kumar 2013; ITUC 2014; Tjandraningsih 2012; Gopalakrishnan and Mirer 2014). There is also evidence of significant non-compliance with legal restrictions on the successive use of fixed-term contracts in Indonesia (see, e.g., ITUC 2014). The statistical data on temporary work in Viet Nam provided in Section 2 of this Study also suggests widespread and persistent use of these types of contracts.

Finally, and somewhat paradoxically, there is evidence from each of the three countries that the regulatory frameworks governing non-standard forms of employment – and more specifically the exclusionary criteria used – are impacting on the labour market in that they are fuelling certain behaviours among employers with respect to the ways in which they engage workers. In India, for example, the introduction in the early 1980s of a statutory exemption from redundancy protection for workers on fixed-term contracts reportedly led to a direct increase in the number of workers on these types of contract (Sood et al 2014: 63). There is also evidence from India that employers engage in the ‘churning’ of workers or move workers between related enterprises so as to avoid those legal liabilities that come after a worker has reached 240 days service (Badigannavar and Kelly 2012: 458; Sen Gupta and Sett 2000). Similarly, the requirement in Viet Nam that enterprises only sign labour contracts and pay social security for workers who have been employed full-time for more than three months has reportedly led to employers engaging large numbers of seasonal and casual workers (Collins 2009: 133).

7. Discussion and conclusions

At the outset we have noted several difficulties in the preparation of this Study. These have included problems of literature and data: the dearth of information available across a range of areas relevant to assessing the development and impact of non-standard employment and its regulation; the paucity of statistical data available on the various forms of non-standard employment; the lack of detailed historical scholarship on regulation in these types of labour markets; problems with definitions between countries and so on. There is very little research available on the ways in which practices concerning non-standard work may vary between different parts of the labour market (whether industrial sector, political control, geographical location and so on), and ways in which non-standard work contracts may be perceived differently and impact differently, across various groups of workers. Particularly problematic insofar as data/information is concerned is the dissonance between the categories used for the collection of statistical data and the different categories of employment form. Particularly problematic in trying to understand the relevant regulation is the largely unsystematic approach to legal change bearing upon this issue in all three countries.

As a consequence this Study is written in quite conditional language pointing to these and other difficulties as we have set about delivering answers and responses to the various questions and issues addressed, while at the same time presenting a picture of the regulation of non-standard employment in India, Indonesia and Viet Nam.

What have we found?

First, **insofar as the nature and prevalence of non-standard employment is concerned (the focus of Section 2 of this Study), two fundamental outcomes of the research are clear. In all three countries in our survey, workers engaged in non-standard forms of employment (including casual, fixed-term, agency work, home-based work, part-time and others) constitute substantial proportions of the workforce, and these forms of employment have been increasing in recent decades.** The obvious outcome of this is that it produces temporary, unstable, insecure work (and thus income) for a great bulk of workers.

But beyond this generality there are certain points of contention. As we have noted in Section 2.1, the rise of non-standard employment as a model of work arrangement is generally associated with the desire of business to escape the burdens of compliance with the regulation of standard employment contracts, and the costs attached to those forms of employment. The weakening of labour laws (as in some instances, such as India) is seen as responding to this line of perception, and thus as contributing to this pattern of employment structure. One point of contention concerns the economic evidence for this argument. Put simply, the problem of cost to employers of complying with orthodox labour law, and its impact on business competition and the national economy, is strongly debated in the literature, at least in the case of India.

More important, though, is the broader argument about the development of labour market practices and legal response. If the supposition is that, in terms of temporal evolution, the rise of non-standard employment is a relatively recent phenomenon in the process of industrialisation, and one that has brought forth a worker-protective regulatory response, the experiences indicated in the three countries in this study throw up some noticeable differences. In India, it cannot be said that non-standard employment has now ‘emerged’ in the recent industrialisation of the economy, nor can it be said that the trajectory of Indian labour law reform has tended towards a generally restrictive regulation of these types of employment. As we note in Section 3 of this Study, certain forms of non-standard work (especially contract labour) have had a lengthy history in India, and the extensive pattern of non-standard employment has continued throughout India’s period of industrialisation following independence. Key regulatory measures directed at limiting the use of certain types of non-standard employment were introduced at least as early as the 1970s. Recent decades have seen moves towards the deregulation or liberalisation of laws pertaining to non-standard forms of employment, achieved largely through changes to law and implementation practices at the State level, as well as through judicial decision-making.

In contrast, in Indonesia and Viet Nam the legal regulation of non-standard forms of employment (as outlined in Sections 4 and 5 of this Study respectively) is relatively recent, and the trend has been towards greater regulation of these arrangements. In Indonesia, restrictions on the use of fixed-term contracts was introduced in the mid-1980s and consolidated almost twenty years later with the passage of the Labour Law of 2003 and relevant implementing regulations. While the introduction of a regulatory framework for labour supply and business supply outsourcing in 2003 may be seen as a move towards greater liberalisation of the labour market, the regulatory trend since this time has been towards the greater and more detailed regulation of these arrangements. In Viet Nam, where the concept of the standard employment contract itself is relatively new, there is a clear trend towards greater recognition and regulation of non-standard forms of employment. This is manifest in the introduction of stricter rules governing the successive use of definite-term and seasonal or job-specific labour contracts in 2002, and the introduction of more detailed regulation of part-time employment and domestic work and of a detailed regulatory code concerning agency work in the revisions to the Labour Code in 2012.

Next, **when it comes to the content of regulation** (as presented on a country-by-country basis in Sections 3, 4 and 5 of this Study), despite the different historical trajectories, **there is a significant degree of similarity in approach to the legal regulation of non-standard forms of employment across the three countries examined here.** All three jurisdictions recognise and provide for the engagement of workers through various legal categories or forms, and while the number and style of these categories varies among them, there is also a certain degree of convergence. For example all three countries recognise a form of standard, open-ended, employment, fixed-term work contracts, and agency-hire work. Other categories, such as casual employment, part-time employment and home-work are less coherently or uniformly recognised across the three jurisdictions.

We think it important to observe that with respect to the extent to which the legal frameworks afford differential rights and protections, the most noticeable ‘gaps’, or shortfalls, in rights and entitlements are clearly between those workers in an employment relationship (i.e. engaged under an employment contract, whether that be a standard/permanent contract, or a fixed-term or temporary contract), and those workers who are not (such as independent contractors). There are very few examples from our three countries of labour laws which extend rights or protections to workers engaged outside of legally recognised employment relationships. However, this observation should be tempered by another. While the scope of labour laws in all three countries examined here is generally cast to cover those in temporary forms of employment (including fixed-term and casual employees) with many rights and entitlements enjoyed by those in ‘standard-form’ employment, there are important exceptions. These exceptions include, for example, the exclusion from statutory regulation of home-based workers and apparent restrictions on the capacity of employees on short-term contracts to join trade unions in Viet Nam, both which would appear to have serious and far-reaching implications for these groups of workers. Another important exception is that ‘non-standard’-engaged workers in all three jurisdictions have significantly fewer, if any, rights in relation to termination of employment, to accrual-based leave entitlements and to social security benefits, and in themselves these are critical to the protection of livelihood.

A final observation concerns the regulation of agency work. Such work arrangements are the subject of detailed statutory regulation in all three jurisdictions (for a summary of this regulation see Appendix 2). To the extent to which the workers engaged by the agencies are also *employees* of the agency, they are entitled to the rights and entitlements that are accorded to employees under labour laws of general application. All three jurisdictions, however, have sought also to address complexities and ambiguities arising out of the triangular nature of agency work by providing additional statutory requirements with respect to the interlocking respective legal rights and responsibilities in these multi-party arrangements. This includes, for example, provisions in all three countries clarifying that the agency is liable for the payment of wages and other entitlements to the workers. Protection is also afforded to workers through the direct regulation of temporary work agencies: for example agencies are required to take specific legal forms, to be registered and licensed, and to meet reporting requirements. In Indonesia and Viet Nam, these regulatory frameworks are relatively new and clearly influenced by relevant ILO standards. It should be noted, however, that while all three jurisdictions provide detailed regulatory frameworks for agency work— much of which would appear to strengthen the protection of the interests of agency workers in the labour market generally – there is at the same time little indication of any moves to strengthen the collective rights of these workers, so as to facilitate organisation and bargaining beyond the direct employer.

As we have already noted above and outlined in detail in Section 6 of this Study, notwithstanding the existence of some regulatory protection, **the growing prevalence of non-standard forms of employment has had a substantial impact upon workers and labour markets in India, Indonesia and Viet Nam.** Those in non-standard employment

tend to enjoy fewer rights and protections than their permanent (standard-employment) counterparts. They are more likely to receive lower wages, fewer entitlements and to experience higher levels of employment insecurity. Above all else, it is the absence of employment security that appears to render workers in non-standard forms of employment particularly vulnerable. On the other hand the evidence suggests that **the relevant regulation pertaining to non-standard employment is both restrictively applied and limited in impact**. This failure is evident both in respect of restrictions on the use of certain types of employment (such as rules prohibiting the use of contract labour in certain sectors and establishments in India, and rules limiting the successive use of fixed-term contracts in Indonesia and Viet Nam), as well as rights and protections conferred on workers under the various working standards legislation. Where the impact of the regulatory framework dealing with non-standard employment is discernible, this would appear both to have contributed to labour market segmentation (through the establishment of hierarchies in employment status), as well as provided incentives for employers to engage workers in particular non-standard forms. We are not able to say whether, and if so to what degree, the recent regulatory responses to the evolution of non-standard employment, have influenced labour market readjustments between various forms of employment and between various classes of labour market participants.

Finally, consistent with the limited scope set down for this project, the Study has focused on certain types of non-standard employment, rather than on the entire spectrum of such arrangements. There are a range of other non-standard employment statuses in which significant numbers of workers are engaged, and which may be used illegitimately for the purpose or effect of denying workers the rights and protections that are usually attached to standard-form employment. Other relevant work statuses that a broader investigation might look at could include training contracts and probationary employments, as well as country-specific arrangements such as 'honorary' public servants in Indonesia. This is not to mention the countless categories of work relations which occupy the uncertain, ambiguous, border between wage-labour relations and self-employment, and which still characterise large proportions of the working population, especially in some developing countries. In the case of all of these kinds of work 'identity', whether we are speaking of non-standard employment from the specific 'wage-labour' perspective of this project or from a broader work-relations perspective, the associated issue of '**regulation**' adds yet a further layer of complexity. Many forms of non-standard work not regulated by formal labour laws and institutions are nevertheless regulated in important ways by social, cultural and other informal norms (Harriss-White and Gooptu 2001; Harriss-White 2009, 2010). Present developments suggest that there might be a need to incorporate a broader notion of regulation into labour law thinking if we are to fully understand how non-standard work is regulated and what impact this regulation has on the welfare of workers.

List of cases

India

- Air India Statutory Corporation v. United Labour Union* (1997) LLR 288.
- Baljeet Singh v. State Farms of India Ltd.* (2009) 120 FLR 127 (Del).
- Balwant Rai Saluja & ANR. v. Air India Ltd. & Ors* (2014) 9 SCC 407.
- Bengal Nagpur Cotton Mills v. Bharat Lal*, (2011) 1 SCC 635.
- Bhavnagar Municipal Corporation v. Salimbhai Umarbahi Mansuri* (2013) 14 SCC 456.
- BHEL Workers' Assn. v. Union of India* (1985) 1 SCC 630.
- Calicut vs The Allath Factory Thezhilali Union, Kozhikode and Others* (1978) 4 SCC 257.
- Coal India Ltd v. P.O. Labour Court* (2001) 2 Cur LR 502 (Del).
- Daily Rated Casual Labour employed under P & T Department v. Union of India & Ors.*, [1988] 1 SCC 122.
- Dharwad District PWD Literate Daily Wage Employees Association v. State of Karnataka* (1990) 2 SCC 396.
- Dhirendra Charnoli & Anr. v. State of U.P.*, [1986] 1 SCC 637.
- Dhrangadhra Chemical Works Ltd. v. State of Saurashtra*, AIR 1957 SC 274.
- Ferozapore Central Co-operative Ban v. Labour Court* (1986) 1 LLN 204 (P&H).
- G. Yaddi Reddi v. Brooke Bond India Ltd.*, (1994) LLR 328 (AP)(DB).
- Gangadhar Pillai v. Siemens Ltd* (2007) 1 SCC 533.
- General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal*, (2011) 1 SCC 635.
- General Manager, Telecom v. Naresh Brijlal Charote*, 2001 Lab IC 2127 (Bom).
- Hari Nandan Prasad v. Food Corporation of India*, (2014) 7 SCC 190.
- Harmohinder Singh v. Kharga Canteen, Ambala Cantt.* (2001) 5 SCC 540.
- Haryana State Co-op. Supply Marketing Federation Ltd. v. Sanjay* (2010) 1 SCC (L&S) 308.
- Haryana State Electronics Development Corporation v. Mamni* (2006) 9 SCC 434.
- H.D. Singh v. Reserve Bank of India* (1985) 4 SCC 201.
- Hindustan Steelworks Construction Ltd. v. Commr. of Labour* (1996) 10 SCC 599.
- H.P. State Forest Corporation Ltd & Anr v. Mohan Singh & Anr.* 2014 Lab IC 155.
- Kishor Chandra Samal v. Divisional Manager, Orissa State Cashew Development Corporation* 2005 (10) SCC 46.
- Maharashtra State Road Transport and Another v. Casteribe Rajya Parivahan Karmchhari Sanghatana* (2009) 8 SCC 556.
- Morinda Co-operative Sugar Mills v. Ram Krishna* (1995) 5 SCC 653.
- National Aluminium Co. Ltd. v. Ananta Kishore Rout & Ors.* (2014) 6 SCC 756.
- Prakash Match Industries v. Employees State Insurance Corporation* (1998), the High Court of Madras, LLJ, Vol. 11, 2000, pp.49–52.
- Rajasthan State Ganganagar S. Mills Ltd. v State of Rajasthan and Anr.* (2004) 8 SCC 161.

Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126.
Randhir Singh v. Union of India & Ors. [1982] 1 SCC 618.
Range Forest Officer v. St Hadimani (2002) 3 SCC 25.
Regional Manager, State Bank of India v. Raja Ram (2004) 8 SCC 164.
Regional Director, Employees State Insurance Corporation v. Suvarna Saw Mills (1979) Lab IC 1335 (Karnataka).
Royal Talkies, Hyderabad v Employees State Insurance Corporation [1978] MANU 0282.
Secretary, State of Karnataka & Ors. v. Uma Devi & Ors (2006) 4 SCC 1.
Shalimar Tanning Co. v. ESI Corporation and Another (1999) the High Court of Madras, LLJ, Vol. II, 2000.
Siddheswar, Hubli v. ESI (1998) Lab IC 212 (Orissa)
Simla Devi v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and Another (P&H High Court), 2014 LLR 482.
Standard Vacuum Refining Company v. Their Workmen and Others (1960) III SCR 466.
Steel Authority of India Ltd & Others v. National Union of Waterfront Workers (2001) 7 SCC 1.
Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773.
Workmen of Nilgiri Coop. Mkt. Society Ltd v. State of Tamil Nadu (2004) 3 SCC 514.
Workmen v. Hindustan Lever Ltd (1984) 4 SCC 392.

Indonesia

Constitutional Court Decision No. 012/PUU-2003, published 17 November 2004.
Constitutional Court Decision No. 27/PUU-IX/2011, published 17 January 2012.

List of laws and implementing regulations

India

Beedi and Cigar Workers (Conditions of Employment) Act 1966.
Constitution of India
Contract Labour (Regulation and Abolition) Act 1970.
Contract Labour (Regulation and Abolition) Central Rules 1971.
Delhi Shops and Establishments Act 1954.
Equal Remuneration Act 1976.
Employees' State Insurance Act 1948.
Employees' Provident Funds and Miscellaneous Provisions Act 1952.
Factories Act 1948.
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act 1971.
Minimum Wages Act 1948.
Payment of Wages Act 1936.
Payment of Bonus Act 1965.

Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act 1981.

Unorganised Workers' Social Security Act 2008.

Workmen's (Employees') Compensation Act 1923.

Indonesia

Constitution of Indonesia of 1945

Civil Code, Title 7A

Law no. 2/1951 on Bringing into Force Law no. 33/1947 on Accidents from the Republic of Indonesia to the whole of Indonesia

Law no. 18/1961 on the Civil Service

Law no. 8/1974 on the Civil Service

Law no. 1/1970 on Workplace Safety

Law no.4/1997 on Disability

Law no. 39/1999 on Human Rights

Law no. 43/1999 on the Civil Service

Law no. 21/2000 on Trade Unions

Law no.13/2003 on Labour (also known as the Manpower Act)

Law no. 40/2002 on Racial Discrimination

Law no. 2/2004 on Industrial Disputes Resolution

Law no. 39/2004 on the Placement and Protection of Indonesian Workers Overseas

Law no. 40/2004 on Social Security

Law no. 24/2011 on the Social Security Implementation Agency

Law no. 5/2014 on Civil Service Apparatus

Government Regulation no. 48/2005 on the Raising of Honorary Staff to Prospective Civil Servants

Government Regulation no. 84/2013 on the Ninth Amendment to Government Regulation no. 14/1993 on the implementation of the employment social security program.

Minister for Labour Regulation no. PER.06/MEN/1985 on Protection of Casual Day Labourers

Minister for Labour Decision Per-05/MEN/1986 on Fixed-Term Contracts

Minister for Labour Decision KEP-285/MEN/1991 on Implementation of National Apprenticeships

Minister for Labour Regulation PER-02/MEN/1993 on Fixed-Term Contracts

Minister for Labour Decision no. 04/1994 on Annual Holiday Bonus for Workers in Companies

Minister for Labour Regulation PER-05/MEN/1995 on Fixed-Term Contracts in Mining, Oil and Gas Companies

Minister for Labour Regulation no. 150/Men/1999 on the Implementation of Social Security for Casual Day Labourers, Contractors and Fixed-Term Contracts in the Construction Industry

Minister for Labour Decision no. 100/2004 on Fixed-Term Contracts

Minister for Labour Regulation Kep.101/MEN/VI/2004 on License Procedures for Labour Supply Companies

Minister of Labour Regulation Kep.220/MEN/X/2004 on Conditions for Outsourcing Partial Work Implementation to another Company

Minister for Labour Regulation no.21/MEN/X/2005 on the Implementation of the Apprenticeship Programme

Minister for Labour Regulation no. PER.22/MEN/IX/2009 on the Implementation of Apprenticeships within the Country

Minister of Labour Regulation No.19 of 2012 on Conditions for Outsourcing Partial Work Implementation to another Company

Viet Nam

Constitution of Socialist Republic of Viet Nam (2013)

Law on Employment (16 November 2013) LAW 38-2013-QH13

Labour Code (18 June 2012) LAW 10-2012-QH13

Labour Code of 1994 (23 June 1994)

Law on Trade Unions (20 June 2012) LAW 12-2012-QH3.

Law on Social Insurance (29 June 2006) LAW 71-2006-QH11.

Decree 05-ND-CP of the Government dated 12 January 2015 Guiding Implementation of a Number of Items of the Labour Code.

Decree No. 60-ND-CP of the Government dated 19 June 2013 Detailing Clause 3, Article 63 of the Labor Code on Implementing Grassroots Democratic Regulations at Workplaces.

Decree No. 55-ND-CP of the Government dated 22 May 2013 Implementing Article 54.3 of the Labour Code on Licensing of Labour Outsourcing Activities, Payment of an Escrow Deposit, and Regulating the List of Jobs for which Labour may be Outsourced.

Decree No. 03-ND-CP of the Government dated 16 January 2014 Implementing the Labour Code on Employment.

Decree No. 98 ND-CP of the Government dated 24 October 2014 on Establishment of Political and Socio-Political Organisations in Enterprises from All Economic Sectors.

Decree No. 44-ND-CP of the Government dated 10 May 2013 Implementing the Labour Code on Labour Contracts.

Decree No. 43-ND-CP of the Government dated 10 May 2013 Implementing Article 10 of the Law on Trade Unions on Rights and Obligations of the Trade Union to Represent and Protect the Lawful and Legitimate Rights and Interests of Workers.

Directive 02/2004/TTR-TLD, issued by the VGCL on 22 March 2004.

References

- ACTRAV. 2011. *From Precarious Work to Decent Work: Policies and Regulations to Combat Precarious Employment*, ILO, Geneva.
- Agusmidah. 2012. 'Analisis Terhadap Peraturan Menteri Tenaga Kerja no. 19 Tahun 2012 Tentang Syarat-Syarat Penyerahan Sebagian Pelaksanaan Pekerjaan Kepada Perusahaan Lain' [Analysis of Minister for Labour Regulation no. 19/2012 on Conditions for outsourcing partial work implementation to another company]. Presentation to Committee Meeting on Labour Monitoring and Industrial Relations, North Sumatra Provincial Labour Department. <https://www.academia.edu/8088711/Presentasi-agusmidah-outs-21des2012>
- Ahsan, A.; Pagés, C.; Roy, T. 2008. 'Legislation, enforcement and adjudication in Indian labour markets: Origins, consequences and the way forward' in D. Masumdar and S. Sarkar (eds.): *Globalization, labour markets and inequality in India*, International Development Research Centre, Ottawa, 247–282.
- ; Pagés, C. 2007. *Are all labor regulations equal? Assessing the effects of job security, labor dispute and contract labor laws in India*, Social Protection Discussion Paper No. 0713, World Bank, June.
- All India Organisation of Employers (AIOE), n.d. *Industrial Relations & Contract Labour in India*.
- Allens Arthur Robertson (AAR). 2010. *Viet Nam Legal Update*, January.
- Anwar, R.P.; Supriyanto, A. 2012. *Non-standard work, social dialogue and collective bargaining in Indonesia*, ILO Geneva and ILO Regional Office for Asia and the Pacific.
- Arnold, D. 2013. 'Social margins and precarious work in Viet Nam' *American Behavioural Scientist*, 57(4), 468–487.
- Arnold, L. 2008. 'Labour law and practice in Post-Suharto Indonesia' in T. Lindsey (ed.): *Indonesia: Law and Society*, 2nd edition, The Federation Press, Annandale, NSW.
- Asian Development Bank and BPS-Statistics Indonesia. 2011. *The Informal Sector and Informal Employment in Indonesia*.
- Attewell, P.; Thorat, S. 2010. 'Caste is not past: The persistence of discrimination in India's Formal Labour Market' in M.A. Centeno and K.S. Newman (eds.): *Discrimination in an Unequal World*, Oxford University Press, Oxford.
- Badan Pusat Statistik (BPS). 2014. *Statistik Indonesia: Statistical Yearbook of Indonesia*, Badan Pusat Statistik.
- Badigannavar, V.; Kelly, J. 2012. 'Do labour laws protect labour in India? Union experiences of workplace regulations in Maharashtra, India', *Industrial Relations Journal*, 41(4), 439–469.
- Bales, R.A. et al. (forthcoming) 'A comparative analysis of labor outsourcing', *Arizona Journal of International and Comparative Law* v. 31. Draft available on SSRN.
- Bao, V. 2014. 'Viet Nam should expand compulsory social insurance: Experts', *Thanh Nien News*, 2 September. www.thanhniennews.com/society/Viet_Nam-should-expand-compulory-social-insurance-experts-30590.html.
- Benson, J.; Zhu, Y. (eds.) 2011. *The dynamics of Asian labour markets: Balancing control and flexibility*, Routledge, Abingdon.
- Bhandri, A.K.; Almas Heshmati, A. 2006. *Wage inequality and job insecurity among permanent and contract workers in India: Evidence from organised manufacturing industries*, Working Paper no. 2097, Institute for the Study of Labour (IZA), Bonn, Germany.
- Blackwood, E. 1997. 'Women, land and labor: Negotiating clientage and kinship in a Minangkabau peasant community', *Ethnology*, 36(4), 277–293.

- Bowen, R. 2008. *From fields to factories: Prospects of young migrant women in Viet Nam's garment and footwear industry*. Thesis submitted in partial fulfilment of the requirements for the degree of Master of Social Science, RMIT, Melbourne
- Bremen, J. 1999. 'The study of industrial labour in Post-Colonial India - The Informal Sector: A concluding review', *Contributions to Indian Sociology*, 407–431.
- Brusentsev, V.; Newhouse, D.; Vroman, W. 2012. *Severance pay compliance in Indonesia*, Policy Research Working Paper 5933, Social Protection Unit, Human Development Network, World Bank.
- Butt, S. 2014. 'The position of International Law within the Indonesian Legal System' *Emory Law Review*, 28, 1–28.
- Caraway, Teri L. n.d. 'Final study: Labour courts in Indonesia', available at: <http://www.aflcio.org/content/download/28061/347451/version/1/file/caraway.pdf>
- Casale, G. et al. 2011. 'Legal regulation of the employment relationship in the Asia-Pacific Region', G. Casale (ed.): *The employment relationship: A comparative overview*, ILO, Geneva, 189–232.
- Castel, P.; To, T-T. 2012. 'Informal employment in the formal sector: Wages and social security tax evasion in Viet Nam', *Journal of the Asia Pacific Economy*, 17(4), 616–631.
- Chen, M.A.; Madhav, R.; Sankaran, K. 2014. 'Legal reforms for the self-employed: Three urban cases', *Indian Journal of Industrial Relations*, 50(1), July, 133–150.
- Chi, D.Q. 2012. *Employee participation in Viet Nam. Industrial and Employment Relations Department*, DIALOGUE Working Paper no. 42, ILO, Geneva.
- , 2011. *Understanding industrial relations transformation in Viet Nam: A multi-dimensional analysis*, Thesis submitted in fulfilment of the requirements for the Doctorate of Philosophy, Faculty of Economics and Business, University of Sydney, Sydney.
- (ed.) 2006. *Collective bargaining in Vietnam*, prepared by ILSSA-MOLISA, ILO-Japan Multi-Lateral Project, Bangkok.
- Clarke, S.; Lee, C.H.; Do, Q.C. 2007. 'From rights to interests: The challenge of industrial relations in Viet Nam', *Journal of Industrial Relations*, 49(4), 545–568.
- Cling, J.P.; Razafindrakato, M.; Roubaud, F. 2014. *Segmentation and informality in Viet Nam: A review of the literature: Country case study on labour market segmentation*. Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Working Paper No. 52, ILO, Geneva.
- ; -----; -----, 2011. *The informal economy in Viet Nam*, Ministry of Labour, Invalids and Social Affairs and ILO, Hanoi, December.
- ; -----; -----, Nguyen, C.H. 2011. *Growth and informal sector and employment in Viet Nam*. 4th Congress of the Asia & Pacific Network, 14 – 16 September, <http://www.reseau-asie.com>
- Collins, N. 2011. Viet Nam's labour relations and the global financial crisis, *Research and practice in human resource management*, 19(2), 60–70.
- , 2009. *Economic reform and employment relations in Viet Nam*, Taylor and Francis, Hoboken.
- ; Nankervis, A.; Sitalaksmi, S.; Warner, M. 2011. 'Labour–management relationships in transitional economies: Convergence or divergence in Viet Nam and Indonesia?', *Asia Pacific Business Review*, 17(3), 361–377.
- ; Zhu, Y. 2003. 'Viet Nam's labour policies reform' in *Asia Pacific Labour Law Review: Workers' Rights for the New Century*, Asia Monitor Resource Center, Hong Kong, 375–388.
- Cooney, S.; Lindsey, T.; Mitchell, R.; Zhu, Y. (eds.) 2002. *Law and labour market regulation in East Asia*, Routledge, London.

-
- ; Mahy, P.; Mitchell, R.; Gahan, P. 2014. 'The Evolution of labour law in Three Asian Nations: An introductory comparative study' 36 *Comparative Labor Law & Policy Journal*, 36(1), 23–68.
- Cox, J. 2012. 'With eyes wide open': Recent trends in Supreme Court Labour and Industrial Judgments', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Daanish Books, New Delhi, 109–124.
- Cuevas, S.; Mina, C.; Barcenas, M.; Rosario, A. 2009. *Informal employment in Indonesia*, ADB Economics Working Paper Series no. 156.
- Dao, Q.V. 2008. 'Viet Nam: Workers in transition' in S. Lee and F. Eyraud (eds.): *Globalization, Flexibilization and Working Conditions in Asia and the Pacific*, ILO, Geneva, 383–412.
- Darma, S.A. 2014. 'Kajian Hukum Ketenagakerjaan Terhadap Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor 19 Tahun 2012' [Study of Labour Law in Relation to Minister for Labour and Transmigration Regulation no. 19 of 2012], *Mimbar Hukum*, 26(2): 247–259.
- Das, A.; Pandey, D. 2004. 'Contract workers in India: Emerging economic and social issues', *Indian Journal of Industrial Relations*, 40(2), 242–265.
- Davidov, G.; Langille, B. (eds.) 2006. *Boundaries and frontiers of labour law: Goals and means in the regulation of Work*, Hart, Oxford.
- D'Costa, A.P. 2011. 'Contemporary capitalism and the challenges for inclusive development in India', presented at the Inclusive Growth in China and India: Role of Institution Building and Governance Workshop, School of Economics, University of Sydney.
- De Ruyter, A.; Warnecke, T. 2008. 'Gender, non-standard work and development regimes: A comparison of the USA and Indonesia', *Journal of Industrial Relations* 50(5), 718–735.
- Deakin, S.; Lele, P.; Siems, M. 2007. *CBR Labour Regulation Index for the UK, the US, Germany, France and India*. Centre for Business Research, University of Cambridge, <http://www.cbr.cam.ac.uk>
- ; Wilkinson, F. 2005. *The law of the labour market*, Oxford University Press, Oxford.
- Deshpande, A. 2011. *The grammar of caste: Economic discrimination in modern India*, Oxford University Press, New Delhi.
- Deshpande, L.K.; Sharma, A.N.; Karan, A.K.; Sarkar, S. 2004. *Liberalisation and labour: Labour flexibility in manufacturing*, Institute for Human Development, New Delhi.
- Dhanani, S.; Islam, I.; Chowdury, A. 2009. *The Indonesian labour market: Changes and challenges*. Routledge, Abingdon.
- Dharmarajan, N. 2012. 'Contract labour: An employer's perspective', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Daanish Books, New Delhi, 103–108.
- Dougherty, S.M. 2009. 'Labour regulation and employment dynamics at the State level in India', *Review of Market Integration*, 1 (3), 295–337.
- D'Souza, E. 2010. 'The employment effects of labour legislation in India: A critical essay', *Industrial Relations Journal, Special Issue: Employment Relations in India*, 41(2), 122–135.
- Ebisui, M. 2012. *Non-standard workers: Good practices of social dialogue and collective bargaining*, Working Paper No. 36, Industrial and Employment Relations Department, ILO, Geneva.
- Edwards, A.C. 1996. *Labor regulations and industrial relations in Indonesia*, Policy Research Working Paper no. 1640, World Bank.
- Fägernas, S. 2010. 'Labour law, judicial efficiency and informal employment in India', *Journal of Empirical Legal Studies*, 7(2), 282–321.

-
- Fashoyin, T. 2010. 'Trends and developments in employment relations and the world of work in developing countries'. *The International Journal of Comparative Labor Law and Industrial Relations*, 26 (2), 119–139.
- Fehring, I.; Lindsey, T. 1995. *Indonesian labour law under the new order: The military and prospects for change*, Centre for Employment and Labour Relations Law, Working Paper no. 7, The University of Melbourne.
- Fforde, A.; De Vylder, S. 1996. *From plan to market: The economic transition in Viet Nam*, Westview Press, Boulder, Colorado.
- Gopalakrishnan, R. 2010. 'Enforcing labour rights through human rights norms: The approach of the Supreme Court of India' in C. Fenwick and T. Novitz (eds.): *Human rights at work: Perspectives on law and regulation*, Hart Publishing, London, 195–228.
- ; Mirer, J. 2014. *Shiny cars, shattered dreams: A study on precarious workers in the Chennai Automobile Hub, their working conditions, and the challenges they face in the exercise of their right to freedom of association, based on worker narratives together with an analysis of the legality of precarious work under national and international law*, International Commission for Labor Rights.
- Hanoi National Economics University. 2011. *Research on informal employment in Viet Nam: Current situation and solution*. Discussion Paper, Hanoi National Economics University, Hanoi.
- Harriss-White, B. 2009. 'Globalisation, the financial crisis and petty production in India's socially regulated informal economy', *Global Labour Journal*, 1 (1), 151–176.
- , 2010. 'Work and wellbeing in informal economies: The regulative roles of institutions of identity and the State', *World Development*, 38 (2), 170–183.
- ; Gooptu, N. 2001. 'Mapping India's world of unorganized labour', *Socialist Register*, 37, 89–118.
- Hart, G.P. 1986. *Power, labor and livelihood: Processes of change in rural Java*, University of California Press, Berkeley.
- Hensman, R. 2010. 'Labour and globalisation: Union responses in India', in P. Bowles and J. Harriss (eds.): *Globalisation and labour in China and India: Impacts and responses*. Palgrave Macmillan, New York, 189–208.
- Herawati, R.; Dewayanti, R.; Sriyuliani, W. 2011. 'Penelitian Praktek Kerja Outsourcing Pada Sub-Sektor Perbankan: Studi Kasus Jakarta, Surabaya dan Medan' [Study of outsourcing work practices in the banking sub-sector: A case study in Jakarta, Surabaya and Medan], AKATIGA – OPSI – FES.
- Hill, E. 2009. 'The Indian Industrial Relations System: Struggling to address the dynamics of a globalizing economy', *Journal of Industrial Relations*, 51(3), 395–410
- Hittanagi, V.N. 2012. 'The debate on contract labour in India', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Daanish Books, New Delhi, 125–130.
- Hurst, W. 2014. 'Indonesia's courts of industrial relations: Context, structure and a look at Surabaya's cases', *Indonesia*, 97 (April), 29–54.
- Huynh, P.; Kapsos, S. 2013. *Economic class and labour market inclusion: Poor and middle class workers in developing Asia and the Pacific*, ILO Regional Office for Asia and the Pacific, International Labour Office, Economic and Labour Market Analysis Department, Bangkok.
- International Labour Office (ILO). 2015. *Non-standard forms of employment*, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, Geneva, 16–19 February.

-
- . 2013. *Labour and social trends in Indonesia 2013: Reinforcing the role of decent work in equitable Growth*, ILO, Jakarta.
- . 2012. *Statistical update on employment in the informal economy*. Department of Statistics, June. Available at http://laborsta.ilo.org/informal_economy_E.html
- . 2011a. *Decent work country profile Indonesia*, ILO, Geneva.
- . 2010a. *Effectiveness, efficiency and impact of Indonesia's apprenticeship programme*. ILO, Jakarta.
- . 2010b. *Employment policies for social justice and a fair globalisation*, Study VI, ILC, 99th Session.
- . 2010c. *Viet Nam Employment Trends 2010*, National Centre for Labour Market Forecast and Information, Bureau of Employment, Ministry of Labour, Invalids and Social Affairs (MOLISA). ILO Office in Viet Nam, Hanoi, October.
- . 2009. *Viet Nam Employment Trends 2009*, National Centre for Labour Market Forecast and Information, Bureau of Employment, Ministry of Labour, Invalids and Social Affairs (MOLISA), ILO Office in Viet Nam, Hanoi, August.
- . 2002. *Decent Work and the Informal Economy*, Study VI, ILC, 90th Session.
- IndustriALL. 2012. *Precarious Work in India*. http://www.industriall-union.org/sites/default/files/uploads/documents/a4_india_Study_new2.pdf
- Institute for Human Development. 2014. *India labour and employment report 2014: Workers in an era of globalization*, Academic Foundation, New Delhi.
- International Trade Union Confederation (ITUC). 2014. *Precarious work in the Asia-Pacific region: A 10 country case study*. ITUC, Brussels, <http://www.ituc-csi.org/precariou-work-in-the-asia?lang=en>
- Jenkins, R. 2004. 'Labor policy and the second generation of economic reform in India', *India Review*, 3, 333–363.
- Jhabvala, R. 2001. 'Excluding the majority: Workers, producers and categories of employment', *Indian Journal of Labour Economics*, 44, 243–249.
- Johnstone, R.; Mitchell, R. 2004. 'Regulating work' in C. Parker, C. Scott, N. Lacey and J. Braithwaite (eds.): *Regulating Law*, Oxford University Press, Oxford, 101–121.
- Johri, C.K. 1990. 'Industrialism and industrial relations in India', *Indian Journal of Industrial Relations*, 25(2), 230–242.
- Kartasapoetra, G.; Kartasapoetra, R.G.; Kartasapoetra, A.G. 1992. *Hukum Perburuhan di Indonesia Berlandaskan Pancasila [Labour law in Indonesia based on Pancasila]*. Sinar Grafika, Jakarta.
- Kochar, K.; Kumar, U.; Rajan, R.; Subramanian, A.; Tokatlidis, J. 2006. *India's pattern of development: What happened? What follows?*, Working Paper No. 12023, National Bureau of Economic Research, Cambridge Mass.
- Kountouris, R. 2012. 'The legal determinants of precariousness in personal work relations: A European perspective', *Comparative Labor Law & Policy Journal*, 34, 21–46.
- Kristiansen, S.; Ramli, M. 2006. 'Buying an income: The market for civil service positions in Indonesia', *Contemporary Southeast Asia*, 28(2), 207–233.
- Kumar, P. 2013. 'A structural analysis of Indian Contract Labor Laws' *Indian Journal of Industrial Relations*, 49(2), 185–196.

-
- Le, B.D.; Tran, G. L.; Nguyen, T. 2011. *Social protection for rural-urban migrants in Viet Nam: Current situation, challenges and opportunities*, Research Study no. 8, University of Sussex, Centre for Social Protection, Brighton, UK.
- Le, C.T.; Truong, Q. 2005. 'Human resource management practices in a transitional country: A comparative study of enterprise ownership forms in Viet Nam', *Asia Pacific Business Review*, 11(1), 25–47.
- Lee, S.; McCann, D. (eds.). 2011. *Regulating for decent work: New directions in labour market regulation*, ILO, Geneva.
- ; Eyraud, F. 2008. 'Labour market changes, workers' voice and labour regulation' in F. Eyraud and S. Lee (eds.): *Globalization, flexibilization and working conditions in Asia and the Pacific*, ILO, Geneva, 3–46.
- Lindsey, T.; Masduki, T. 2002. 'Labour law in Indonesia after Soeharto', in S. Cooney, T. Lindsey, R. Mitchell and Y. Zhu (eds.): *Law and labour market regulation in East Asia*, Routledge, London, 245–274.
- Long, Phan. 2011. 'Spotlight on labour leasing services', *Vietnam Investment Review*, 13 January.
- Maiti, D. 2012. 'Precarious work in India: Trends and emerging issues', *American Behavioural Scientist*, 57(4), 507–530.
- Malik, S. 2011. *P.L. Malik's Industrial Law*. Eastern Book Company, Lucknow.
- Manning, C. 2008. *The Political economy of reform: Labour after Soeharto*, Indonesian Studies Working Papers no.6, University of Sydney, Sydney.
- ; Roesad, K. 2003. 'The Manpower Law of 2003 and its implementing regulations: Genesis, key articles and potential impact', *Bulletin of Indonesian Economic Studies*, 43(1), 59–86.
- Marasigan, M.L.; Serrano, M. 2014. 'Indonesia', in M. Serrano (ed.): *Between flexibility and security: The rise of non-standard employment in selected ASEAN countries*, ASEAN Services Employees Trade Unions Council.
- Mathew, B. 2003. 'A brief note on labour legislation in India', *Asian Labour Update*, January – March, www.amrc.org.uk/4605.htm
- Matsumoto, M.; Verick, S. 2011. *Employment trends in Indonesia over 1996–2009: Casualisation of the labour market during an era of crises, reforms and recovery*. Employment Working Paper no. 99, ILO, Geneva.
- McCann, D. 2008. 'The regulation of working conditions in Asia and the Pacific: Flexibility, fragmentation and workers' rights' in S. Lee and F. Eyraud (eds.): *Globalization, flexibilisation and working conditions in Asia and the Pacific*, ILO, Geneva, 81–114.
- ; Lee, S.; Belser, P.; Fenwick, C.; Howe J.; Luebker, M. (eds.) 2014. *Creative labour regulation: Indeterminacy and protection in an uncertain world*, Palgrave MacMillan and ILO, Basingstoke and Geneva.
- McCarthy, J. 2010. 'Processes of inclusion and adverse incorporation: Oil palm and agrarian change in Sumatra, Indonesia', *Journal of Peasant Studies*, 37(4), 821–850.
- McLeod, R. H. 1993. 'Workers' Social Security Legislation', in C. Manning and J. Hardjono (eds.): *Indonesia Assessment 1993 Labour: Sharing in the benefits of growth?* Department of Political and Social Change, Research School of Pacific Studies, Australian National University, Canberra.
- Meagher, K. 2013. 'Unlocking the informal economy: A literature review on linkages between formal and informal economies in developing countries', WIEGO Working Paper No. 27, April.

-
- Mitchell, R. (ed.), 1995. *Redefining labour law: New perspectives on the future of teaching and research*. Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne.
- ; Mahy, P.; Gahan, P. 2014. 'The evolution of labour law in India: An overview and commentary on regulatory objectives and development', *Asian Journal of Law and Society*, 1(2), 413–453.
- Miranti, R.; Vidyattama, Y.; Hansnata, E.; Cassells, R.; Duncan, A. 2013. *Trends in poverty and inequality in decentralising Indonesia*. OECD Social, Employment and Migration Working Papers no. 148, OECD Publishing, Paris.
- Monteiro, V.C. 2012. 'Trade unions and contract labour: Need to reaffirm the directive principles of the Constitution of India' in K.R. Shyam Sundar (ed.): *Contract Labour in India: Issues and Perspectives*, Daanish Books, New Delhi, 147–156.
- NCEUS. 2009. *The challenge of employment in India: An informal economy perspective*, Vol. 1, Government of India, New Delhi.
- 2007. *Report on conditions of work and promotion of livelihoods in the unorganised sector*, August, NCEUS, New Delhi.
- Nicholson, P. 2002. 'Vietnam's labour market: Transition and the role of law' in S. Cooney, T. Lindsey, R. Mitchell and Y. Zhu (eds.): *Law and labour market regulation in East Asia*, Routledge, London, 122–156.
- Oey-Gardiner, M.; Suleeman, E.; Tjandraningsih, I.; Hartanto, W.; Wijaya, H. 2007. 'Women and children homeworkers in Indonesia' in S. Mehrotra and M. Biggeri (eds.): *Asian informal workers: Global risks, local protection*, Routledge, Abingdon, 250–289.
- Olivier, M. 2011. 'Informality, employment contracts, and social insurance coverage: Rights-based perspectives in a developing world context', *International Journal of Comparative Labour Law and Industrial Relations*, 27(4), 419–433.
- Ornati, O. 1955. *Jobs and workers in India*, Institute of International Industrial and Labor Relations, Cornell University, Ithaca, NY.
- Osterreich, S. 2013. 'Precarious work in global exports: The case of Indonesia', *Review of Political Economy*, 25(2), 273–293.
- Otsuka, K.; Chuma, H.; Hayami, Y. 1992. 'Land and labor contracts in agrarian economies: Theories and facts', *Journal of Economic Literature*, 30, 1965–2018.
- Palmer, S. 2009. 'Freedom of association and collective bargaining: Indonesian experience 2003–2008', Working Paper, ILO, Geneva.
- Papola, T.S. 2013. 'Role of labour regulation and reforms in India: Country case study of labour market segmentation', Employment Working Paper No. 147, ILO, Geneva.
- 2012. 'Contract labour: An academic perspective', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Daanish Books, New Delhi, 77–84.
- ; Pais, J. 2007. 'Debate on labour market reforms in India: A case of misplaced focus', *Indian Journal of Labour Economics*, 50(2), 183–200.
- Patnaik, S. 2012. 'Contract labour engagement: The way ahead', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Daanish Books, New Delhi, 131–136.
- Phan, L. 2013. 'Decree straightens out labour outsourcers', *Viet Nam Investment Review*, 9 November.
- 2011. 'Spotlight on labour leasing services' *Viet Nam Investment Review*. 13 January.

-
- Pringle, T.; Clarke, S. 2010. *The challenge of transition: Trade unions in Russia, China and Viet Nam*, Palgrave Macmillan, Basingstoke, UK.
- Pupos, V. 2014. 'Viet Nam', in M.R. Serrano (ed.): *Between flexibility and security: The rise in non-standard employment in selected ASEAN Countries*, ASEAN Services Employees Trades Union Council (ASETUC) and Friedrich-Ebert-Stiftung, Jakarta, 139 – 166.
- Puspitaningrum, S. 2002. 'Perlindungan Hukum Tenaga Kerja Harian Lepas Bidang Jasa Konstruksi di Kota Semarang' [Legal protection of casual day labourers in the construction industry in Semarang City], Unpublished Masters Thesis, Diponegoro University, Semarang.
- Qi, Li; Taylor, B.; Frost, S. 2003. *Labour relations and regulation in Viet Nam*, Southeast Asia Research Centre Working Paper Series no. 53, City University of Hong Kong, Hong Kong.
- Quinlan, M. 2006. 'Contextual factors shaping the purpose of labour law: A comparative historical perspective' in C. Arup, P. Gahan, J. Howe, R. Johnstone, R. Mitchell and A. O'Donnell (eds.): *Labour law and labour market regulation*, The Federation Press, Sydney, 21–42.
- , 2012. 'The "Pre-Invention" of precarious employment: The changing world of work in context', *The Economic and Labour Relations Review*, 23(4), 3–24.
- Quinn, P. 2003. 'Freedom of association and collective bargaining: A study of Indonesian experience 1998–2003'. Working Paper, ILO, Geneva.
- Rajeev, M. 2009. 'Globalisation and labour market flexibility: A study of contractual employment in India', *International Journal of Development Issues*, 8(2), 168–183.
- , 2006. 'Contract labour in Karnataka: Emerging issues and options', *Economic and Political Weekly*, 41(21), 2086–2088.
- Ramanujam, M.S. 2004. 'Contract labour in India: An overview' in M.S. Ramanujan and J.S. Johri (eds.): *Management of contract labour in India*, Shri Ram Centre for Industrial Relations and Human Resources, New Delhi.
- Ramesh, B.P. 2004. 'Cyber coolies in BPO: Insecurities and vulnerabilities of non-standard work', *Economic and Political Weekly*, 39(4), 492–497.
- Raveendran, G.; Sudarshan, R.M.; Vanek, J. 2013. 'Home-based workers in India: Statistics and trends', *WIEGO Statistical Brief No. 10*, December.
- Reddy, D.N. 2008. *Labour regulation, industrial growth and employment: A study of recent trends in Andhra Pradesh*, Institute for Studies in Industrial Development, New Delhi.
- Routh, S. 2014. *Enhancing capabilities through labour law: Informal workers in India*, Routledge, London and New York.
- Rowley, C.; Benson, J. (eds.) 2000. *Globalization and labour in the Asia Pacific region*, Frank Cass, London.
- Sahi, G.P. 2008. *Employment law in India*, CCH Hong Kong Limited; CCH Australia Limited.
- Saini, D. 2010. 'The Contract Labour Act 1970: Issues and concerns', *Indian Journal of Industrial Relations*, 46(4), 32–44.
- Saleh, H.M.; Mulyadi, L. 2012. *Seraut Wajah Pengadilan Hubungan Industrial Indonesia*, Bandung: Citra Aditya Bakti.
- Sankaran, K. 2012. 'Flexibility and informalisation of employment relationships' in J. Fudge, S. McCrystal and K. Sankaran (eds.); *Challenging the legal boundaries of work regulation*, Hart Publishing, London, 29–48.
- , 2011. 'Informal employment and the challenges for labour law' in G. Davidov and B. Langille (eds.): *The idea of labour law*, Oxford University Press, Oxford, 223–233.

-
- , 2010. 'Labour law in South Asia: The need for an inclusive approach' in T. Teklè (ed.): *Labour law and worker protection in developing countries*, ILO, Geneva, 225–260.
- Sen, A. 2010. 'Contract labour law: Convincing workers, employers key', *The Economic Times*, 4 October 2010.
- Sen Gupta, A.; Sett, P. 2000. 'Industrial relations law, employment security and collective bargaining in India: Myths, realities and hopes', *Industrial Relations Journal*, 31, 144-153.
- Serrano, M.R.(ed.) 2014. *Between flexibility and security: the rise in non-standard employment in selected ASEAN Countries*, ASEAN Services Employees Trades Union Council (ASETUC) and Friedrich-Ebert-Stiftung, Jakarta, 2014.
- Sharma, A.N. 2006. 'Flexibility, employment and labour market reforms in India' *Economic and Political Weekly*, 41(21) 27 May –2 June, 2078–2085.
- Shyam Sundar K.R. (ed.). 2012. *Contract labour in India: Issues and perspectives*. Daanish Books, New Delhi.
- , 2012a. 'The contract labour in India: The battle between flexibility and fairness' in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*. Daanish Books, New Delhi, 11–76.
- , 2012b. *Organizing the unorganized: The dynamics of organizing of and negotiating for contract workers in India*, Paper presented at the International Labour and Employment Relations Association (ILERA)16th World Congress, <http://ilera2012.wharton.upenn.edu/RefereedPapers/KolipakkamRangaraoShyamSundar.pdf>
- , 2011. *Non-regular workers in India: Social dialogue and organizational and bargaining strategies and practices*, Dialogue Working Paper no. 30, ILO, Geneva.
- , 2010. 'Emerging trends in employment relations in India', *Indian Journal of Industrial Relations*, 45(4), 585–595.
- , 2008. 'Impact of labour regulations on industrial development and employment: A study of Maharashtra, labour regulations in India', Series 6, Institute for Studies in Industrial Development, New Delhi.
- Sirait, G.M. 2008. 'Informalisasi Ketenagakerjaan: Antara Definisi, Segmentasi, dan Flexicurity' [Labour force informalisation: Definition, segmentation, and flexicurity], in *Jurnal Perburuhan*. No.8. Sept 2007–March 2008. Available at: <http://fpbn2.blogspot.co.uk/2008/08/informalisasi-ketenagakerjaan-antara.html>
- Sinhvi, S. 2012. 'Trends in employment relations in India: Towards hire and fire', in K.R. Shyam Sundar (ed.): *Contract labour in India: Issues and perspectives*, Indian Society of Labour Economics, Delhi, 85 – 102.
- Situmorang, M.; Sibarani, D.; Lingga, J. 2008. *Buruh Harian Lepas: Studi Kajian Hubungan Kerja, Upah dan Kesejahteraan di Perkebunan Sumatera Utara [Casual day labour: A study of employment relationships, wages and welfare in plantations in North Sumatra]*, Medan: Kelompok Perlita Sejahtera.
- Soepomo, I. 1992. *Pengantar Hukum Perburuhan [Introduction to Labour Law]*. Jakarta: Penerbit Djambatan
- Sood, A.; Nath, P.; Ghosh, S. 2014. 'Deregulating capital, regulating labour: The dynamics of the manufacturing sector in India', *Economic and Political Weekly*, XLIX, 58–60.
- Standing, G. 2011. *The precariat: The new dangerous class*, Bloomsbury, London and New York.
- Stone, K.V.W.; Arthurs, H. (eds.) 2013. *Rethinking workplace regulation: Beyond the standard contract of employment*, New York, Russell Sage Foundation.

-
- Suresh Sapkal, R. 2014. *Labour regulation, enforcement and the incidence of contract workers: Empirical evidence from the organised Indian manufacturing sector*, Rotterdam Institute of Law and Economics Working Paper Series No. 2014/04, April, Rotterdam Institute of Law and Economics, Erasmus University, Rotterdam.
- Teklè, T. 2010. 'Labour law and worker protection in the South: An evolving tension between models and reality' in T. Teklè (ed.): *Labour law and worker protection in developing countries*, ILO, Geneva, 3–50.
- Tenev, S.; Carlier, A.; Chaudry, O.; Nguyen, Q.T. 2003. *Informality and the playing field in Viet Nam's business sector*, IFC, World Bank and MPDF, Washington D.C.
- Thorat, S.; Newman, K. 2010. *Blocked by caste: Economic discrimination in modern India*. Oxford University Press, New Delhi.
- Thu, H. 2013. 'New regulations for labour subleasing', *Viet Nam News*, 2 May.
- Tidey, S. 2012. *Performing the State: Everyday practices, corruption and reciprocity in middle Indonesian civil service*, PhD Thesis, Amsterdam Institute for Social Science Research, University of Amsterdam.
- Tiwana, B.S. 2013, 'Multiplicity of segmentation of informal labour market and inclusiveness in India', Paper presented to the 3rd Regulating for Decent Work Conference, ILO, Geneva.
- Tjandra, S. 2011. 'Disputing labour dispute settlement: Indonesian workers' access to justice', *Law, Social Justice and Global Development*. http://www.go.warwick.ac.uk/elj/lgd/20010_1/tjandra.
- Tjandraningsih, I. 2012. 'State-sponsored precarious work in Indonesia', *American Behavioural Scientist* 57, 403–419.
- ; Herawati, R.; Suhadmadi. 2010. *Diskriminatif & Eksploitatif: Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Metal di Indonesia* [Discriminatory and exploitative: Contract work and labour outsourcing in metals industry in Indonesia], Bandung, Indonesia: AKATIGA-FSPMI-FES.
- ; Nugroho, H. 2009. 'The flexibility regime and organised labour in Indonesia', *Labour and Management in Development*, 1–14.
- ; -----; Tjandra, S. 2008. *Buruh versus Investasi? Mendorong Peraturan Perburuhan yang Adil di Indonesia* [Workers vs. investment? Promoting fair labour regulations], Bandung, Indonesia: AKATIGA.
- ; Herawati, R.; Suhadmadi 2010. 'Praktek Kerja Kontrak dan Outsourcing Buruh di Sektor Industri Metal di Indonesia' [The practice of work contracts and labour outsourcing in the metal industry sector in Indonesia], Bandung, Indonesia: AKATIGA-FSPMI-FE.
- Tran, Q.H. 2012. 'Amended Labour Code Protects Workers', *Viet Nam News*, 25 June.
- Tran, S.V.; Thomas, A. 2011. 'Striking the right balance in the Labour Code', *Viet Nam News*, 6 July.
- Vaid, D. 2014. 'Caste in contemporary India: Flexibility and persistence', *Annual Review of Sociology*, 40, 391–410.
- Van der Wal, S. 2008. *Sustainability issues in the tea sector: A comparative analysis of six leading producing countries*, Somo (Centre for Research on Multinational Corporations), Amsterdam.
- Viet Nam News. 2014a. *Social insurance for seasonal workers*. 14 August.
- , 2011. *Labour outsourcing needs tighter control*. 6 July.
- Vosko, L.F. 2011. *Managing the margins: Gender, citizenship and the international regulation of precarious work*, Oxford University Press, Oxford.

-
- ; MacDonald, M.; Campbell, I. (eds). 2009. *Gender and the contours of precarious employment*, Routledge, London and New York.
- Vu, T. 2005. 'Workers and the socialist State: North Viet Nam's State-labor relations, 1945 – 1970', *Communist and Post-Communist Studies*, 8, 329–356.
- Warnecke, T.; De Ruyter, A. 2012. 'The enforcement of decent work in India and Indonesia: Developing sustainable institutions', *Journal of Economic Issues* 46(2), 393–402.
- Widarti, D. 2008. 'Indonesia: The search for alternatives', in S. Lee and F. Eyraud (eds.): *Globalization, flexibilization and working conditions in Asia and the Pacific*, ILO, Geneva, 237–278.
- Wilshaw, R.; Unger, L.; Do Quynh, C.; Pham Thu, 2013. *Labour rights in unilever's supply chain: From compliance to good practice*. An Oxfam Study of Labour Issues in Unilever's Viet Nam Operations and Supply Chain, Oxfam International, http://policy-practice.oxfam.org.uk/publications/labour-rights-in-unilevers-supply-chain-from-compliance-to-good-practice-an-oxf-267532?cid=rdt_unileverlabourrights
- World Bank (WB) various years. *Enterprise Surveys*. <http://www.enterprisesurveys.org/>
- . 2014. *East Asia Pacific at work: employment, enterprise, and well-being*, Washington D.C.
- . 2013. *World Development Report 2014: Risk and opportunity – Managing risk for development*, Washington D.C.
- . 2010. *India's employment challenge: Creating jobs, helping workers*, Oxford University Press, New Delhi.
- Zhu, Y. 2011. 'Labour markets in Viet Nam: Developments under the economic reforms and globalisation' in J. Benson and Y. Zhu (eds.): *The dynamics of Asian labour markets: Balancing control and flexibility*, Routledge, Abingdon, 148–164.
- . 2005. 'The Asian crisis and the implications for human resource management in Viet Nam', *International Journal of Human Resource Management*, 16(7), 1261 – 1276.
- . 2002. 'Economic transformation and human resource management in Viet Nam', *Asia Pacific Business Review*, 8(3), 115–134.
- ; Collins, N.; Webber, M.; Benson, J. 2008. 'New forms of ownership and human resource practices in Viet Nam,' *Human Resource Management*, 47(1), 157 – 175.

Appendix 1 – Summary of regulation of fixed-term contracts

Table 7. Regulation of fixed-term contracts – India, Indonesia and Viet Nam

Country	Regulated by law	Restrictions on use (e.g. valid reasons required; use for certain types of work only)	Minimum and maximum length of contract	Maximum number of successive contracts	Limit on cumulative duration of successive contracts	Explicit right to equal treatment with permanent workers
India	Minimal	✘	✘	✘	✘	✘
Indonesia	✓	Can only be made for certain types of jobs	Max length of 2 years (lower max lengths for certain types of fixed-term contract)	One renewal only (no renewals permitted for certain types of fixed-term contract)	One extension only and for no longer than one year (extensions not permitted for certain types of fixed-term contract, & extension lengths lower for certain types of fixed-term contracts)	✘
Viet Nam	✓	✘	Min length of 12 months Max length of 3 years	One renewal only.	✘	✘

Source: Compiled by authors.

Appendix 2 – Summary of regulation of agency work

Table 8. Regulation of agency work – India, Indonesia and Viet Nam

Country	Registration/licensing requirements (agency &/or principal employer)	Studying requirements (agency &/or principal employer)	Limitations on occup./industries in which agency work is permitted	Restrictions on reasons for using agency workers	Limitations on duration of agency arrangements	Restrictions on proportion of workforce supplied by an agency	Equal wages/conditions	Bargaining rights	Specifications of legal liability of agency and principal employer	Conversion rights (to permanency with principal employer)
India	✓	✓	✓ Agency work may be prohibited in certain processes, operations or works	✗	✗	✗	✓	-	✓	Only where agency arrangement found to be a 'sham' under common law.
Indonesia	✓	✓	✓	✗	✗	✗	✓	✓ with direct employer only	✓	May arise where outsourcing occurs in violation of statutory requirements
Viet Nam	✓	✓	Limited to 17 types of work	✓	12 months	✗	✓	✓ with direct employer only	✓	✗

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