

Beyond ‘Agency Employment’ in Pakistan: The outsourcing of employers’ responsibilities to employment agencies

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Abstract

The proliferation of agency employment in Pakistan is a serious labour problem and a public policy concern because of the potentially negative implications for agency workers’ basic statutory rights and ensuing social inequities. It is suggested that agency employment takes two distinct forms in Pakistan. The first may be termed pay-rolling agencies – this is potentially an attempt by employers to bypass statutory obligations concerning workers’ statutory benefit entitlements and trade union rights, simply by paying workers through an agency. The second form constitutes agencies which are genuine in nature and perform a traditional agency role. This paper discusses issues surrounding blurring organisational boundaries in relation to the use of agency employment and its implications on agency workers. Moreover, it pulls together pertinent theoretic arguments in explaining the difference between motives behind the adoption of pay-rolling and traditional agency systems.

Key Words: Agency Employment, Pay-rolling Agencies, Statutory Employment Rights

Introduction

Attention has recently been directed to the pattern of employment relationship with the provision of labour to a client organisation by employment agencies. Firms are increasingly looking beyond ‘standard employment contracts’ for flexibility and economic gains and agencies offer substantial offsetting economies in order to gain contracts (Matiaske and Nienhuser, 2006; Purcell, Purcell and Tailby, 2004; Storrie 2002). Whilst firms guarantee themselves greater flexibility and often rewarding financial gains, agency work, on the other hand, affects people with this employment status (Dale and Bamford, 1988; Pfeffer and Baron 1988).

Agency employment is a ‘three-way’ or ‘triangular’ relationship involving a worker, a company acting as a temporary work agency and a user company, whereby the agency employs the worker and places him or her at the disposition of the user company (Davidov 2004). The hiring of workers through agencies has become a central focus of employment policy over the last ten years (ILO 1997; Storrie 2002). Agency employment has changed the contours of employment relations in many parts of the world and raised

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concerns about employment protection, statutory benefits and collective bargaining rights of agency workers (Arrowsmith, 2006; Cowell and Singh 2002; Matiaske and Nienhuser, 2006; Sayeed, Ali, Parveen and Ali, 1997). The role played by employment agencies is both complex and dynamic, and involves complexities of the triangular relationship (Davidov 2004; Rubery et al. 2005; Purcell et al. 2004). This three-party employment relationship often generates ambiguity regarding the employment relationship and raises questions as to who is the 'employee', and ambiguity as to the employment rights associated with this status. An equally important question is who bears the responsibility of an 'employer' in terms of providing employment rights and responsibilities (Collins, 2001; Davidov, 2004). These questions arise in part due to the blurring of organisational boundaries and the lack of clarity surrounding the position of these workers in labour laws (Fudge, 2006; Gonos, 1997; Rubery et al. 2005). The blurring of organisational boundaries between agencies and client organisations potentially undermines employment conditions and raises concerns about the employment rights of agency workers (Burgess, Rasmussen and Connell, 2004; Davidov 2004; Rubery et al. 2005).

Traditionally, and predominantly in the West, agencies supply workers who perform short-term temporary work for a client, then move on to do the same for another client. The only longer-term relationship these workers have is with the agency (Davidov 2004). However, in some instances, opportunistic employers tend to relinquish employers' responsibilities to agencies to avoid the costs relating to statutory employment rights (Storrie, 2002). This amounts to nothing less than the complete 'outsourcing' of employers' responsibilities by client organisations to employment agencies (Arrowsmith, 2006; Francois, 1999; Storrie 2002). For instance, there are situations in which the only service provided by the agency is the payroll function (Magnum, Mayall and Nelson, 1985). In this case, the workers are engaged with the client organisation for a long-term, often indefinite, period of time and perform their work just like any other employee of the organisation. The only difference from other permanent employees is that these workers receive their payment from the agency. The agency is not involved in hiring decisions, wage-setting or dismissals, and certainly not in the allocation of tasks and work supervision. The agency receives a payment from the client organisation every month, retains their commission, and then pays the workers. Hence by using an agency for 'payroll' purposes, the client organisation avoids statutory minimum benefits without facing legal implications. In addition to relinquishing employers' responsibilities in terms of statutory employment benefits to the agency, employers effectively exclude these workers from bargaining units within their workforce, often generating a non-unionised workforce within a unionised workplace (Gray, 2002; Heery, 2004).

Literature provides a number of varying explanations of companies' use of temporary agency workers. The next section discusses growing body of literature illuminating diverse set of explanations and varying antecedents of temporary agency employment, mirrored by pertinent theoretical insights.

Agency Employment – Theoretical Insights

Researchers have generally proposed dichotomous employment structure with distinctions between internal or core and external or peripheral groups of workers (Atkinson, 1984; Cappelli and Neumark, 2004; Davis Blake & Uzzi 1993; Lepak & Snell 1999). A good starting point in explaining growth and business rationale for the deployment of non-standard forms of employment arrangements is the discussion on issues surrounding employment flexibility. Notably, the flexible firm model (Atkinson 1984), suggested a core-peripheral staffing strategy and triggered debate in the scholarly and business literature (Atkinson, 1984; Hakim, 1990; Hunter, McGregor, MacInnes, and Sproull, 1993; Pollert, 1988, 1991). The next section discusses segmentations associated with core-periphery dimensions discussed in the flexible firm model.

Flexible Firm Model

The flexible firm model suggested that organisations retain and develop an inner layer of core employees who possess high-level firm specific skills (Casey, Metcalf and Millward, 1997; Hakim, 1990; Hunter et al. 1993). Further to this goal of adjusting employment to demand, a reliance on temporary agency employment can also provide employment stability to regular core employees in the form of layoff avoidance - mirroring the core-periphery segmentation associated with the flexible firm model (Atkinson, 1984). Moreover the core-periphery conceptions, as explained in the flexible firm model (Atkinson, 1984), highlights the strategic use of agency employment along the core-periphery lines. Another important conception is the Transaction Cost Economics (TCE), which discusses economic perspective on organisations. Though TCE discusses a vast range of issues covered in a huge body of literature, the next section briefly discusses TCE in explaining the use of agency employment.

Transaction Costs Economics

A vital perspective, which potentially explains the use of agency employment, particularly from budgetary guidelines, is transaction cost economics (Williamson, 1979). In the case of labour-related transactions, the transaction costs economic perspective posits that the transaction costs increases with the complexity and the division of labour. Transaction cost economics theory implicitly advocates reliance on permanent workers where the transaction costs of using agency labour is higher. The transaction costs perspective also points to the difference between permanent open-ended contracts and the agency employment. The difference primarily lies in the costs of terminating the contract. While a work relationship between an agency worker and a client organisation can be terminated at any time at no cost to either party, an open-ended permanent contract cannot be unilaterally terminated without costs. As stated earlier, Pakistani law provides strong protection to permanent workers against unfair dismissal and cursory evidence

provide some indications of proliferation of agency employment against this backdrop. Moreover, this employment protection is associated with termination/dismissal cost in the form of notice of termination and severance cost. Thus, the transaction cost associated with the dismissal/termination of permanent employment contract encourages employers to exercise 'strategic staffing' in the form of hiring workers through employment agencies.

The dichotomy flowing from core-peripheral segmentations (flexible firm model), often grounded in financial and transactional (transaction cost theory) underpinnings, become all the more lucid when these segmentations correspond with differences in contracts types entailing polarization in the workforce resulting from differential treatment between permanent and non-permanent workers. Especially, when it concerns workers who do not work directly for the core employing entity (client organisations), but work for another employer, such as an employment agency. This notion of duality between internal and external, or primary and secondary labour markets is explicated in the theory of dual labour markets (Doeringer and Piore, 1971; Kalleberg, Reskin and Hudson, 2000), which is discussed in the next section.

Theory of Dual Labour Market

Building upon the work of Kerr and Dunlop, on the concepts of internal and external labour markets, Doeringer and Piore (1971) developed the Internal Labour Market (ILM) theory into a useful analytical instrument in order to outline the basic ideas of labour market duality. The theory of dual labour markets (Doeringer and Piore, 1971) has described dual labour markets where jobs fall into either the primary or secondary sector. Jobs in the primary sector are "good jobs" characterised by high wages, job security, substantial responsibility and ladders where internal promotion is possible. Jobs in the secondary sector are characterised by low wages, casual attachments between workers and firms, and are menial. Although delineation of segmentation and the associated sources of duality are rooted in a multitude of factors, the scope and discussions in this paper are focused on within-firm labour market bifurcation of workforce flowing from the distinction associated with contract types at workplace level. This particular duality can be referred as type-of-contract segmentation (Polavieja, 2001). The next section discusses this duality flowing from the differentiations in contract types in more detail.

Multi-segmented workforces

In the backdrop of type-of-contract segmentation, workforces in the primary (insiders) sector are characterised with permanent employment contracts which exhibits characteristics such as high negotiated wages, great promotion possibilities, good working conditions and employment stability. At the other end of the spectrum, are precarious and vulnerable workers more often than not characterised with the non-standard employment contracts, such as temporary agency contracts. Workers in this secondary (outsiders) sector tend to have low pay, poor or no benefit entitlements, little possibility for advancement, poor working conditions and often harsh or arbitrary

discipline (Polavieja, 2001). The duality in the labour market resulting from the Type-of-contract segmentation carries with it a number of undesirable consequences. Basically, it generates 'horizontal' labour market inequalities, which implies that workers realising equal tasks actually enjoy dissimilar job conditions derived from their types of contract. Moreover, workers on this sector are often excluded from collective bargaining arrangements. This has serious implications on comparative fairness between workers and may potentially result in exploitation of one segment of workers who are likely to be characterised with non-standard employment contracts.

Flowing from issues surrounding potential marginalisation of workers in the secondary labour market, a potential explanation in regard to the pay-rolling agency system, may also be derived from the sociological literature underpinning the politico-economic antecedents of temporary agency work. The flexible firm model, transaction costs perspective and to a considerable extent the theories of dual labour markets mostly explain labour market institutions and arrangements for the ongoing employment relations in efficiency terms, that is, in terms of interest of market participants in minimising the costs of their transactions. The political economy literature embedded in sociological approach to institutions tends to view labour markets by a variety of social forces in addition to efficiency considerations, such as the distribution of power in the society by often suggesting firms as island of conscious powers acting rationally to maximise their own advantage by exploiting the inherently unequal bargaining powers between labour market actors – such as employers and workers (Fox, 1974; Weber, 1978). The employers' interest lay in maximising the profit derived from labour and minimising the cost of its hire – employers' superior position serve him in both endeavours (Fox, 1974). Given the normally more pressing economic needs of the workers, the uneven balance of power between employers and workers can result in social injustice (Fox, 1974). Especially, in regard to agency employment, this can be exacerbated by the fact that agency employment largely remains outside of the regulatory framework governing employment in many parts of the world (Burgess et al. 2004; Davidov, 2004; Sayeed et al. 1997; Storrie, 2002). In the Pakistani context, agency work perhaps evolve as an evasion largely due to factors such as labour market poverty, existence of regulatory gaps and the asymmetric distribution of power and wealth between employers and workers.

It is also important to note that the use of workers on temporary agency contracts by employers is widespread, and evidence suggests that such employment is growing in many regions of the world (Erickson, Kuruvilla, Ofreneo and Ortiz, 2003; Forde, 2001; Koene, Paauwe and Groenewegen, 2004; Sayeed et al. 1997 Storrie, 2002). However the explanations and nature of agency employment are not universal. The explanations of agency employment are mainly discussed in the Western academic literature (see for example Purcell et al. 2004; Rubery et al. 2005), where agencies mostly operate in their traditional role by supplying workers who perform short-term temporary work for a client, and then move on to do the same for another client. However, in the present dynamic business environment, and in the absence of comprehensive research on agency employment, the universal applicability of these arguments/models, explaining employment relationship, may be questionable (Budhwar and Deborah, 2001). It is,

therefore, not clear as to what extent theories/models explaining reasons of agency employment in the West can guide us to understand the motives and nature of agency employment in contexts outside Western world. As existing studies have focussed on the traditional form of agency employment, and have sought to explore the reasons of this form of agency employment (Forde, 2001; Druker and Stanworth, 2004; Storrie, 2002; Uzzi and Barness, 1998; Ward, Grimshaw, Rubery and Beynon, 2001), it is difficult to identify robust findings that generalize across contexts where agency employment may take different forms, potentially for different reasons resulting in different implications for the agency workers. Given the fact that different economic, competitive and regulatory contexts have considerable influence on the way firms make use of agency employment (Erickson et al. 2003; Matiaske and Nienhuser, 2006), it is important to understand the reasons why firms adopt different practices in regard to agency employment in different national legal contexts. One such context is Pakistan. The next section highlights issues surrounding agency employment in Pakistan.

Agency Employment in Pakistan

Pakistan is a developing country with the world's sixth-largest population and an economic growth rate that has been consistently positive since a 1951 recession. Driven by an agenda sponsored by the International Monetary Fund (IMF), World Bank and neo-liberal economic policies, the Pakistani economy has rapidly integrated into the global economy (Samad and Ali, 2000). This has resulted in the privatization of key state industries and the opening up of export processing zones to attract foreign capital (Dror, 1984). The formation of the Special Industrial Zones and Export Processing Zones waived the application of labour laws in enterprises operating in these zones to attract investors. This has changed labour relations, and has potentially contributed towards a culture of subcontracting labour through third-party supplier establishments (agency employment) (Sayeed et al. 1997).

The last two decades have witnessed a rapid increase in agency employment in Pakistan (Sayeed et al. 1997; Sayeed and Ali, 1997; Zaman, 2004; Zar, 1992). It is however difficult to provide factual data regarding extent or growth of agency employment in Pakistan, largely due to the sketchy state of labour-related data in the country. Further to the lack and incomprehensiveness of large scale statistical data sets, the field of employment is a highly under-researched area. It thus becomes difficult to find any objective data on the extent of agency employment in Pakistan. However, some evidence indicates that agency employment in Pakistan increases the chances of worker exploitation (Khan and Kazmi, 2003; Samad and Ali, 2000; Zaman, 2004). This affects workers employed through contracting establishments (agencies) which are commonly known as 'contractors' in Pakistan (Klennert, 1992; Sayeed and Ali, 2000) (the term 'agency' will henceforth be used to denote a contractor, contracting establishment or supplier organisation). In a number of situations, employers are potentially motivated to use agency employment to capitalise on loopholes in legislation concerning the statutory rights of agency workers, and to erode union bargaining power (Qadir, 2006). It is important to note that there has been an absence of specific regulation with respect to the

employment status of agency workers and the main statutes governing employment governing regular/permanent employment contracts in Pakistan are the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (ICEO)ⁱ and the Industrial Relations Ordinance, 2002 (IRO).ⁱⁱ

It is suggested that the decline in unions' influence and membership is to some degree a consequence of the growth in agency employment (Samad and Ali, 2000; Sayeed et al. 1997). The rationales for employer practices are often buried in history (Casey et al. 1997). Given the history of acrimonious union-management conflicts in the 1970s and 1980s (Khan and Kazmi, 2003; Qadir, 2006), Pakistani employers are consequently more inclined to hire a large number of workers through agencies to weaken union strength or to avoid future prospects of unionisation if the firm is not currently unionised, resulting adversely on agency workers who cannot adequately voice their own concerns and needs. Moreover, these workers are normally given a vastly different, often negligible, package of rights and benefits from their permanent counterparts. They are especially vulnerable to instant dismissal and are generally excluded from collective bargaining arrangements (Shafi 2005). This has raised concerns about the implementation of labour rights in Pakistan (Khan and Kazmi, 2003; Klennert, 1992). In regard to the nature of agency employment, preliminary evidence suggests that agency employment in Pakistan is not a unitary concept and exists in two main forms - pay-rolling and traditional agencies (Sayeed et al. 1997). The next section describes these two forms in more detail.

Pay-rolling and Traditional Agencies

Cursory evidence suggests that agency employment in Pakistan takes two distinct forms in Pakistan (Sindh Labour Appellate Tribunal, 2000; Sayeed et al. 1997; Sayeed and Ali, 2000). The first may be termed pay-rolling agencies. These agencies are often ghost entities, having been created or arranged in order to lessen the number of employees on an establishment's payroll, so that employers' obligations in regard to statutory benefits are confined to fewer workers; as such, many such agencies exist on paper only (Sayeed et al. 1997). Those that exist are employer-arranged small enterprises, often run by one person with the aim of performing only a payroll function (the term 'pay-rolling agency' will henceforth be used to denote these forms of agencies). These are mostly formed on a temporary makeshift basis and are very difficult for the labour ministry to trace and regulate. Workers hired through these agencies receive wages from the agencies, and thus these agencies are often used as an intermediary only for payroll purposes. This then exempts client organisations from any legal obligation to offer statutorily required benefits to these workers, since Pakistani law considers the employing establishment and the agency as two independent entities (Shafi 2005). Whether these agencies are ghost or are deceitfully created as 'employer-arranged' small enterprises, the objective is to show that employer-employee relationship between client organisation and the 'agency workers' is not established. This can be achieved with the help of a 'confident employee' of the client organisation whose job is to act as an 'agency' by facilitating wage distribution among workers from a different payroll book. In addition, this objective of illustrating indirectness of employment can also be achieved by outsourcing the pay-roll

function through independent, but 'fraudulent' companies. These companies earn their living by facilitating pay-roll function for their clients against a set premium. The underlined goal in all these forms is to subtly misclassify a group of effectively permanent workers as 'agency' workers by ingeniously illustrating that they get their wages from these agencies, instead of directly getting paid from the employers. The pay-rolling agency system is therefore an attempt by employers to avoid their responsibilities by formally naming a shadow (exist on paper only) or fake entity (agency) the 'employer'.

The second form constitutes agencies which are genuine in nature and perform a traditional agency role, where agencies supply workers who perform short-term temporary work for a client and receive their statutory benefits from the agencies. In this case, the nature of work provided by the agency is mainly genuinely temporary, and the relationship of the worker with the agency is more than just a legal fiction. Although, there are cases where agencies are operating in their traditional form – for instance, there are situations where agency workers' rights to form a union have been put into practice (for example National Refinery, Karachi; Kohat Cement, NWFP), however, even in this traditional form, agency employment can be used as an effective union deterrent. This is because by using agency workers employers can carve out a union-free section of workforce from among the entire workforce – avoiding payment of all the gains normally achieved by the union.

Hence, on the basis of the cursory evidence discussed earlier, it appears that pay-rolling agency workers in Pakistan are likely to be a marginalised segment of the workforce and may be characterised by low benefits, poor terms and conditions, and less job security. They might be deprived of the statutorily enforceable minimum fringe benefits given to them by law, in addition to experiencing obstacles to voicing collective concerns within the workplace. Given the low wage levels, uncontrolled inflation and lack of any sort of state-provided unemployment cover, legal backings such as minimum essential benefits become all the more crucial for the welfare of impoverished and already vulnerable agency workers in Pakistan.

As discussed earlier, employment agencies have become significant actors in industrial relations, and often play a complex intermediary function within the labour markets (Heery, 2004; Purcell et al. 2004; Rubery, Cooke, Earnshaw and Marchington, 2003). As such, they intermediate between the purchasers and providers of the labour and may also be used to blur regulatory responsibility and to de-unionise workplaces (Burgess et al. 2004). The next sections discuss issues surrounding blurring organisational boundaries associated with this multi-employer arrangement of agency employment and its varied implications on agency workers.

Agency Employment: Blurring Organisational Boundaries

Agency employment is to a large extent triggered by the flexibility of supportive provisions in labour legislation. With regards to the interaction of legal regulation and the nature of the employment relationship, Dickens (2004) argues that improving the conditions of agency workers on temporary contracts through legal intervention improves employment rights, and makes it more likely that workers will accept such contracts constructed to meet business needs. This line of reasoning is arguably in conjunction with the evidence suggesting negative impacts of involuntary temporary work on workers' future employment prospects in countries such as New Zealand (Spoonley, 2004). In the Netherlands, for example, recent changes in law have resulted in agency workers receiving comparable employment rights, such as social security and dismissal protection (Kok, 2004). Kok (2004) has associated this change in law with a decline in the level of involuntary agency employment. However, in situations where statutory and case law provide better protection for non-agency atypical jobs, such as part-time and temporary work, agency work evolves as an evasion (Heery, 2004). Consistent with this law evasion view is the notion that employers in some countries hire workers on temporary agency contracts to avoid the legal protection associated with terminating permanent open-ended employment contracts (Allan, 2002). One such context is Pakistan, where strong protection associated in the law with the dismissal of permanent employees pulls employers towards higher use of non-standard employment (agency contracts). The next section discusses issues surrounding legal protection against unfair dismissal and its relationship to employers' use of agency contract employment.

Unfair Dismissal Protection

The right not to be unfairly dismissed is normally associated with permanent full-time employment. Termination of permanent open-ended employment is generally associated with costly (Gunderson, 2001) and lengthy (Allan, 2002) procedures, which often involve legal implications (ILO, 1982). A worker hired through an agency may be terminated with minimal risk of legal action. Thus, opportunistic employers may be encouraged to adopt more carefully planned employment relationships, such as the use of non-permanent employment contracts, in order to avoid the period of notice and legal costs incurred when legal dismissal protection is offered to workers they wish to dismiss. As mentioned, issue surrounding termination related costs points to the difference between permanent open-ended contracts and the agency employment. The difference primarily lies in the costs of terminating the contract. The costs of terminating an open-ended contract are threefold: the period of notice and the legal costs incurred by the work organisation in cases of dismissal when legal dismissal protection is in force, and costs in terms of negative reputation effects (Koene et al 2004). Hence, where regulation provides strict protection for standard workers, employers' desire for certain forms of flexibility may encourage the growth of employment outside the regulated area. In line with these arguments, it is suggested that employers in Pakistan find it attractive to avoid provisions concerning unfair dismissal by hiring workers through employment agencies (Sayeed et

al. 1997). Protection against unjustified termination of permanent employment is an important issue in Pakistan (Standing Order Ordinance 1968, Section; 12). A worker aggrieved by termination, discharge or dismissal has the right to a committee hearing for the redress of his/her grievance. However, workers on temporary contracts, especially those sub-contracted through agencies, are vulnerable to immediate dismissal without any notice or reason. This is exacerbated by the fact that often these workers are not covered by collective agreements.

Further to avoiding employment protection provisions, the cost of employee benefits may have a considerable impact on deciding whether to employ agency or permanent employees (Dennard and Northrup, 1993). The next section discusses issues surrounding avoidance of benefit costs.

Benefit Costs

Researchers have associated the use of workers on temporary contracts with the employers' practice of offering certain groups of workers lower benefits, thus enabling organisations to reduce variable costs relative to competitors (Davis-Blake and Uzzi, 1993; Nollen, 1996; Mangum et al. 1985). This can be achieved by avoiding obligations to offer statutory benefits to workers on temporary contracts (Houseman, 2001; Lucas and Head, 2004; Matiaske and Nienhuser, 2006). In most European countries, agency workers face marginalization in terms of employee benefits, even where the law demands parity with the client organisations' permanent workers (Matiaske and Nienhuser 2006; Storrie, 2002).

Employment legislation can influence employers' practices of choosing to offer certain levels of benefits to workers on different employment contracts. As stated earlier, in some cases, agencies are assuming 'burdens' of being an employer by accepting the title of a legal 'employer', even with regard to those employees who work for the same firm for long or indefinite periods of time as opposed to working on truly temporary assignments (Davidov, 2004; Sayeed et al. 1997). Arguably this may be significant in countries without legal restrictions on the length of work assignments through employment agencies, such as Pakistan. In the Pakistani context, Social Security, Group Life Insurance, Gratuity/Provident Fund and Employee Old-Age Benefit (pension) are statutorily required minimum benefits (Shafi 2005). Whether an agency worker is treated as the client organisation's employee or as the agency's employee is an important issue with respect to the provision of employee benefits in Pakistan. As stated earlier, cursory evidence indicates that an important reason behind agency employment in Pakistan is law evasion (Sayeed et al. 1997). Flowing from the distinctions introduced between traditional and pay-rolling agencies, it may be the case that the pay-rolling agency mechanism is used for workers who are effectively the regular employees of the firm. Given regulatory gaps in Pakistan allow it – this deviant, and potentially illegal, pay-rolling mechanism is achieved by relinquishing employers' responsibilities to a 'corporate partner' (agency) who only provides pay-rolling service. This potentially mean huge cost saving regarding benefit entitlements, which often results in acute

marginalisation of a substantial portion of workforce carved out as ‘agency workers’ from the entire workforce.

In addition to relinquishing employers’ responsibilities in terms of statutory employment benefits to the agencies, employers can effectively exclude these workers from the bargaining unit of their workforce. In this way employers are able to maintain a non-unionised workforce within an often unionised workplace. The next section discusses issues surrounding agency workers’ rights of collective bargaining and representation.

Collective Bargaining

Employers are generally hostile to the prospect of unionisation (Haynes, 2005). Researchers have often associated the use of workers on temporary contracts with the employer motive to weaken union power and influence (Benson and Ieronimo, 1996; Cowell and Singh, 2002; Dale and Bamford, 1988; Olsen, 2005; Pfeffer and Baron, 1988; Uzzi and Barness, 1998). The growth of agency employment arguably reduces trade union recognition because unions often find it difficult to organise temporary workers not covered by collective bargaining. The likely continual change of workplace and the dual employment relationship may make the provision of collective representation and bargaining rights ineffective and difficult in practice. Conventional wisdom therefore suggests that unions are likely to oppose the use of agency employment. Interestingly, however, unions are not always against the increased use of agency employment by their establishments (Heery, 2004; Hunter et al. 1993; Olsen, 2005). An alternative explanation for why highly-unionised establishments use agency employment may be offered: if workers on temporary contracts serve to heighten job security for permanent workers then this might lead to a positive relationship between unionisation and temporary agency employment (Davis-Blake and Uzzi, 1993; Gjelsvik, 1998; Heery, 2004; Heery, Colney and Delbridge, 2002; Olsen, 2005).

In the case of Pakistan, given agency workers can not be full members of trade unions (bargaining units comprising permanent workers of client organisation), the increasing use of agency employment has become a long-standing plight of unions who strongly oppose the use of agency employment by their employers (Sayeed et al. 1997; Sayeed and Ali, 2000). The use of agency employment, therefore, has become a serious matter of concern for agency workers’ collective bargaining rights (See for example ILO Case No. 2169; ILO Case No. 2096) and has contributed in the decline of union strength in Pakistan over the last two decades (Qadir 2006). Thus, trade unions in particular, view the growth in agency employment as a cause for concern and a serious deterrent to unionization (Dawn, 2002; IUF, 2004). Unions actively campaign for and support restrictions on agency employment (NSCL, 1992). The International Labour Organisation (ILO) Committee on Freedom of Association has repeatedly noted violations of trade union rights committed by employers, across several industries in Pakistan.

Discussion and Conclusion

The above discussion suggests that employers have the choice to use employment agencies as a strategic alternative to direct employment to escape statutory obligations (Arrowsmith, 2006; Francois, 1999; Gray, 2002; Purcell et al. 2004). Moreover, it is established that the statutory rights offered to agency workers are usually less than those available to regular employees on open-ended contracts (Matiaske and Nienhuser, 2006).

In the case of Pakistan, the ambiguous employment status of agency workers has potentially adverse implications for labour rights. In particular, access to basic employment benefits and collective representation and bargaining are key areas of concern. There are no clear guidelines within legislation or on the basis of previous court cases to define who the 'employee' and 'employer' are in the context of this triangular relationship between agencies, client organisations and workers. Consequently, this leaves agency workers vulnerable in terms of their statutory rights as no party is willing to assume employer's responsibility. This is because each case can set a different precedent regarding employer status. Furthermore, often poor and underprivileged temporary agency workers find that their right to take the client organisation to court is in fact illusive, because the courts often find triangular relationships in the field of employment especially difficult to handle (Deakin, 2001; Shafi, 2005). It is also important to note here that agency workers in Pakistan are generally unaware of their constitutional rights. Moreover, it is not very viable for impoverished workers to be involved in lengthy legal battles, often because of the scarcity of means and time.

The discussions in this paper also refute the notion, often rooted in conventional believe, that temporary agency work has only been a natural and inevitable response to changes in the economy and it evolved organically only out of the need of businesses for workforce flexibility. It rather suggests that the essential characteristic of agency employment in Pakistan does not appear to be the short duration of employment assignments, but rather the creation of a "triangle relationship" between a business, the agency and an employee. This triangle relationship allows firms to which the workers were assigned to avoid various forms of regulatory and legal compliance – since the employment agencies are classified as the worker's employer. This gives organisations ability to move workers from stable, high-paying jobs in the "primary" labour market to a low-wage, bad jobs in the "secondary" labour market. Agency work, therefore, splinters internal labour markets, exposing workers to the harshest features of the external market. The discussion in this paper, therefore, is expected to have policy relevance with regard to agency workers' statutory rights including benefit entitlements and collective representation. Though these practices clearly appear to be against the spirit of the law and are aimed to be achieved on the back of the weakest workers, yet ironically some of the employers' practices discussed here are entirely within the scope of the law. This perhaps indicates that the existing Pakistani employment legislation may not be sufficient to prevent the potential abuse of agency workers. Such potential manipulation of the law can be mitigated through the identification of loopholes and gaps in legislation which need addressing to prevent employers using the law to protect their own interests. Moreover, given the low wage levels, uncontrolled inflation and lack of any sort of state-provided unemployment

cover, legal backings such as minimum essential benefits become all the more crucial for the welfare of impoverished and already vulnerable agency workers in Pakistan.

In addition to the issues surrounding ambiguities in the regulatory setups, weak negotiating powers of agency worker, the issue of inadequate enforcement of the employment legislations at workplace level is another important matter which compounds and exacerbates the problems associated with precarious agency employment practices discussed here. Typically, temporary help agencies are less visible, smaller, and less capitalised business entities than their clients. Often, these business entities go in and out of business and are difficult to find. These agencies, therefore, are much more likely than their clients to fail to pay equitable pay and benefits and then disappear.

To summarise, this paper suggests that the changing contours of employment require adaptation in the modes of regulation, which currently no longer fit with reality. The challenge for those who shape the law is to bring public policy in line with workplace reality. For example, the law must be unambiguous as to who is considered the 'employer' of workers hired through agencies with regard to statutory benefits. If agencies are legally considered the 'employer', then they may be asked to provide the workers with statutory employment rights, such as statutory benefit entitlements and statutory right to collective representation. This can be achieved by putting measures in place to ensure that agencies are used only in their traditional role and not to evade employers' responsibilities. Consequently, the pay-rolling agency system – an attempt by employers to bypass statutory obligations, simply by paying workers through an agency, may potentially be curtailed. Moreover, a viable legal right for agency workers to collective representation and to belong to a trade union is needed, regardless of the legal status of the employment.

As part of a PhD study, an empirical investigation has recently underwent by the author to vigorously investigate the motives and nature behind the use of pay-rolling agency system. This inquiry was being carried out in six different case study organisations (workplaces) in three industrial sectors in Pakistan characterised with the higher incidence of agency employment. Findings to date are very much in line with the research predictions and the issues highlighted in this article. Notwithstanding this inquiry, a large scale inquiry is needed, perhaps on a governmental level, to cover all major industries in Pakistan, so that a robust case can be made for holistic and unambiguous employment regulations.

Notes

ⁱ This deals with the conditions of employment and working conditions in the medium and large scale industrial and commercial sectors.

ⁱⁱ This pertains to the right to organise and bargain collectively, the right to strike, modes of conflict resolution and protection against victimisation etc.

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