



# Indian Staffing Industry Research 2012

**TURNING AVAILABLE WORK INTO JOBS**

# Indian Staffing Industry Research 2012

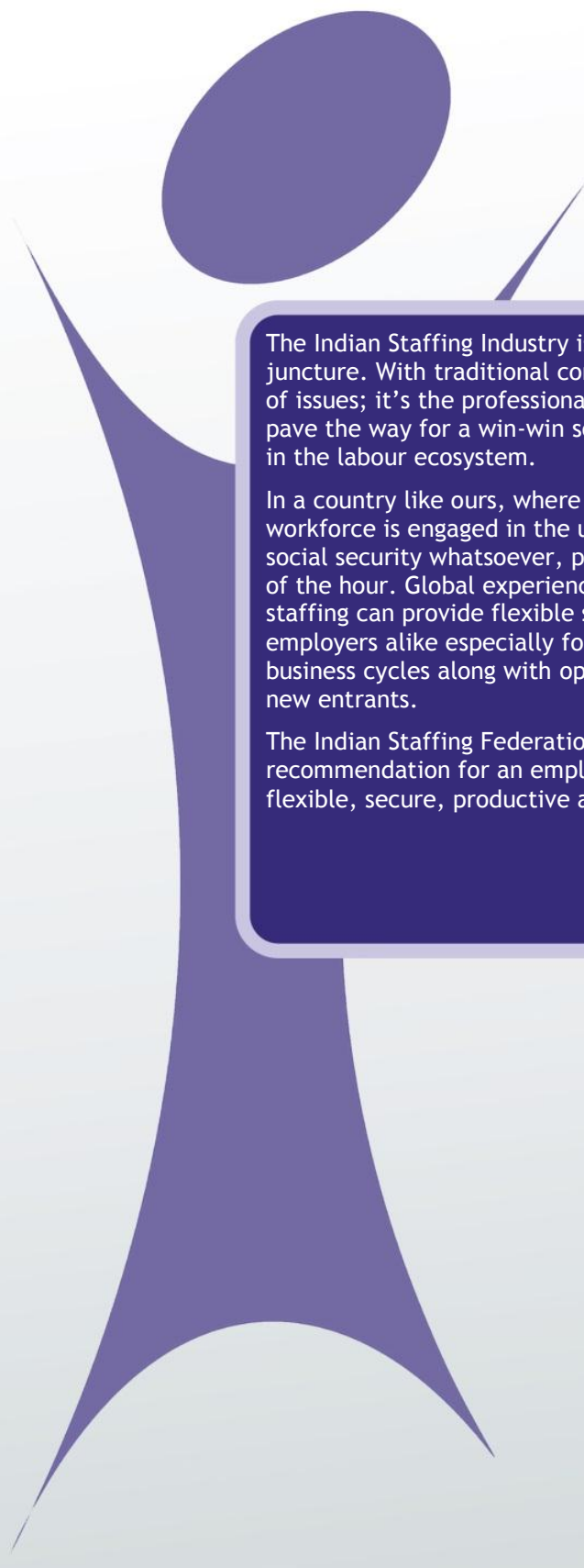
**TURNING AVAILABLE WORK INTO JOBS**



An

**INDIAN STAFFING FEDERATION  
Presentation**

October 2012



The Indian Staffing Industry is standing at a very crucial juncture. With traditional contracting mired with all sorts of issues; it's the professional staffing industry that can pave the way for a win-win solution to all the stakeholders in the labour ecosystem.

In a country like ours, where more than 90% of the workforce is engaged in the un-organized sector with no social security whatsoever, professional staffing is the need of the hour. Global experience shows us that professional staffing can provide flexible solutions to workers and employers alike especially for managing vicissitudes of business cycles along with opening up the labour market to new entrants.

The Indian Staffing Federation is diligently pursuing its recommendation for an employment diamond that ensures a flexible, secure, productive and dignified workplace.

*K Pandia Rajan, President  
Indian Staffing Federation*

# Summary

## Indian Flexi Staffing Industry - The Dynamics

### Industry Size, Types, Demography

- 1.3 million, or 3% of organised sector employment
- This is projected to touch 10% by 2025
- 79% of such workers are in the 21-30 age group
- Three types of Flexi Staffing - 1) Professional 2) General (White Collared) 3) General (Blue Collared)
- Persons with general graduate degree (54%), higher secondary certificate (17%), and secondary certificate (9%), hold the largest share of flexi jobs.
- Average salary of a flexi worker around INR 10,000 a month. 94% paid through banking channels
- India is amongst the top 5 nations in terms of flexi staff base, but among the lowest in terms of penetration at 0.32%
- 27% of Indians joined the flexi workforce due to lack of any alternative opportunity in the format sector
- Most flexi jobs in India continue to happen at the lower end of the skill spectrum such as data operations, accounts, sales, back end operations, administration and marketing

### Challenges faced by a Temporary/Contractual Worker

- Lack of social recognition
- Inadequate redressal mechanism
- Mobility is difficult
- Inadequate wage security
- Inadequate employment security
- Lack of social security

### Benefits to a flexi worker

- A job better than no job
- Multiple job opportunities
- Gets the much needed first career break
- Add to their work experience and on the job learning
- Enjoys legitimate wage and social security
- Better working conditions
- Becomes a stepping stone to a permanent job

### Challenges for staffing companies

- No formal recognition
- Archaic laws-outdated, overlapping
- Price of compliance-complex, expensive
- Unorganised sector where gross is equal to net
- Unorganised sector where there is zero compliance
- Over 10000 unorganised players

- User companies see staffing companies as “transfer of burden” rather than a partner

## Staffing Worldwide

- \$406 billion business
- 11.9% of total workforce in China are flexi staff
- China the largest market yet highly regulated
- Germany, Italy, Sweden are the fastest growing
- China, India, South Africa, Brazil to be the largest
- More inclusive, better gender diversity compared to India
- India is among the five least protected countries when it comes to flexi workforce inspite of having an elaborate regulatory framework

## ISF's role

- Regulatory thought leader in India
- Whistle blower
- Arbitrator between user companies and workers
- Authoritative voice of the industry

## ISF Recommendations

### Major Changes with long term impact

- Fewer laws, greater coverage, impact
- Specific Law for flexi staffing; focus on tripartite arrangement
- Specific Law for flexi staffing; focus on tripartite arrangement
- Mandatory registration for all
- Minimum Capital requirement

### Changes with immediate impact

- Ratification of ILO Convention 181
- Legal recognition of staffing companies
- Delineate responsibilities of the flexi staffing company and the user company
- Include provision for single national license for contract labour
- Adopt IT solutions
- Centralisation of ESIC
- Improve PF Efficiencies
- Enable Social Inclusion
- Grievance redressal mechanism

## Way Forward

- Flexi staff expected to reach 10% of organised employment, equivalent to 9 million
- Skill gap between education & employment requirements to be bridged
- India to gain the ability of harnessing its manpower optimally


# Contents

<i>Chapter 1</i> The Indian Staffing Industry .....	7
1.1 Scale of flexi staffing in India .....	10
1.2 Industry Structure .....	16
1.3 Growth Drivers .....	20
1.4 Benefits of a growing flexi staffing industry .....	22
1.5 Major challenges for the flexi staffing industry.....	30
1.6 A survey of flexi staff in India.....	32
<i>Chapter 2</i> Reform of Labour Laws - A Call to Action .....	43
2.1 The Need for Reforms in Current Labour Laws .....	46
2.2 An Outline for Labour Law Reforms.....	49
2.3 Interim reform of the existing labour laws, rules and practices.....	53
2.4 Concluding remarks .....	66
<i>Chapter 3</i> International Experience with Flexi Staffing .....	67
3.1 Labour market and flexi staffing industry .....	70
3.2 Staffing industry size across select countries .....	73
3.3 Staffing industry penetration .....	75
3.4 Staffing industry size by revenue.....	78
3.5 Characteristics of Flexi Workers.....	80
3.6 Motives behind accepting temporary job .....	84
3.7 Companies' rationale for using flexi staff .....	85
3.8 Working Conditions of Flexi Staff.....	87
3.9 Training Program for Flexi Staff .....	89
3.10 Social Inclusion .....	92
3.11 Challenges.....	93
3.12 Legislative Initiatives.....	96
3.13 A Review of the Chinese Flexi Staffing Industry.....	100
3.14 Summary Observations.....	103
3.15 Concluding Remarks .....	104
<i>Chapter 4</i> Way forward.....	107
Appendix .....	113
About Indicus.....	115
About ISF .....	116



# *Chapter 1*

# **The Indian Staffing Industry**



Indian industry is mired in archaic Labour Laws. The possible panacea for all sectors of the economy engaging human resource is through legitimate engagement of manpower through temporary or flexi engagement; while guaranteeing not only a decent wage but social security that is meaningful.

*Michael Dias, Secretary,  
The Employers Association*

The biggest driver of the staffing industry is changes to the world of work; as organizations deconstruct, employment has moved from a lifetime contract to a taxicab relationships. But policy must recognize this shift because what it will expand formal employment

*Manish Sabharwal, Chairman  
TeamLease*



A **Staffing Company** is any enterprise or person, independent of the public authorities, which provides one or more of the following labour market functions:

- services for matching offers of and applications for employment
- services for employing people with a view to making them available to a third party (“user company”); and/or
- other services relating to job seeking, such as the provision of information, that do not aim to match specific employment offers and applications.

Flexi staffing refers to category (b) above. In this type of employment model people are hired by a staffing agency, and then hired out to perform work at and under the supervision of the user company. There is no direct employment relationship between the staffing agency employee and the user company, although legal obligations towards the flexi staff have to be borne by the user company. The staffing agency offers employees a fixed duration employment contract, typically written. The employment is often called “temporary work”, “temping” or “temporary staffing”. The hiring firm pays fees to the staffing company, and the staffing company pays the wages. Flexibility for both employee and employer along with security is a key feature of agency work.

The Indian staffing industry is a nascent one, which came into existence in the post-liberalisation period, and this report is the first substantial piece of work on this industry in India. The report looks into three different aspects. First, we try to address the various features and characteristics of this industry in India - its size, the industry structure, the growth drivers, the benefits, the major challenges, and the profile of the flexi workers. Another aspect of the growth of the staffing industry in India has been that it has grown within a constraining labour law system which has not yet accorded any recognition to the industry. As a result, the industry here is exposed to numerous legal ambiguities, over and above the general labour market rigidity. The issues facing the industry, our suggestions and an outline of proposed reform initiatives based on the International Labour Organisation framework are presented in the next part. Lastly, it reviews the international scenario to present a comparative view as well as highlighting the learning opportunities India has.

## 1.1 Scale of flexi staffing in India

As mentioned, Flexi staffing is a very nascent industry in India. It has been growing with changing business dynamics in the face of increased cyclical volatility and gradual structural shifts in the economy. However, till now, there has been no attempt to properly estimate the size of this industry. This section attempts to answer this very question.

Various reports have been published by the National Sample Survey Organisation (NSSO) on India's employment conditions over the years - they deal with the organized and unorganized sectors, rural and urban areas, across all states and union territories of India, industries and occupations, and so on. However, the NSSO has not yet attempted to provide any estimation on the size of flexible employment in India.

Our estimation uses the 61<sup>st</sup> (2004-05) and 66<sup>th</sup> rounds (2009-10) of NSSO survey data. The surveys used were quinquennial rounds that have a large sample of about 120,000 households. This allowed us to not only estimate the latest figures, but also to estimate recent growth and project future trends. Here it should be noted that the NSSO data is known to have certain flaws related to under-reporting, and the estimates are corrected for such flaws. We also use various other data from Government sources like population data from Census, Economic Survey data from Ministry of Finance, number of beneficiaries of Provident Fund from the Employees Provident Fund Organisation (EPFO), as cross checks and correction factors.

First, let us consider the population of India for 2011. The Census of India has not yet released the final figures, but the provisional figures released in April 2011 place India's population at about 1.21 billion. This provisional figure has been used in our estimate of flexi employment in India. As such, our estimation of flexi staffing market size is for the reference year 2011.

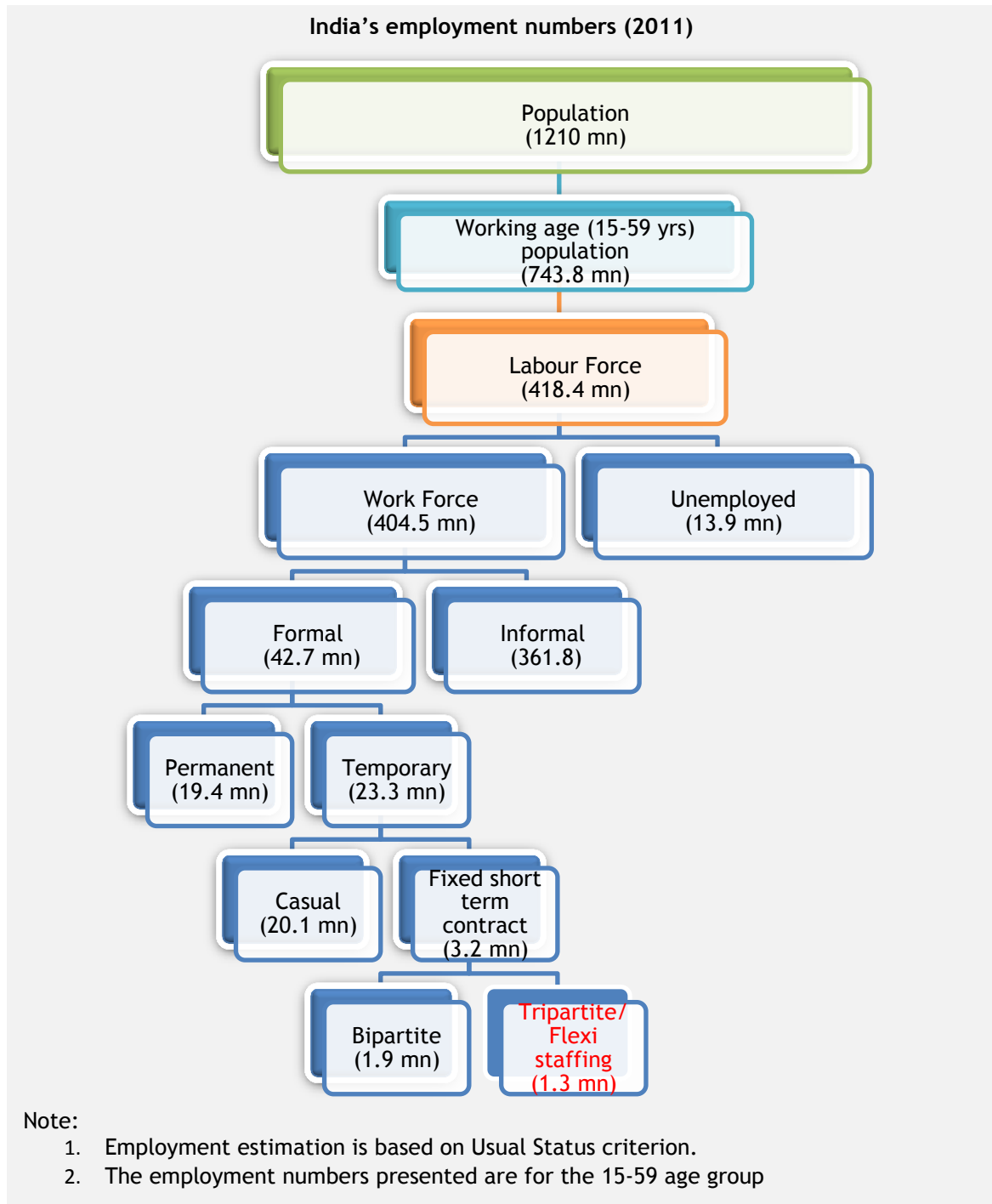
We have taken the working age group being in the 15-59 years range because that is more or less the norm in India and most data on employment tends to look at this age segment. Consequently, cross checking and evaluating our results becomes somewhat easier. We expect that over a period of time this should change to perhaps 18 to 65 or even 21 to 65. Moreover, flexible employment has certain characteristics that are very well suited for older age groups and those interested in taking up post retirement occupation. However, that is currently rare, and for the purposes of this estimation we stick to the 15-59 years norm.

The working age group population estimate stands at 743.8 million in 2011 and about 61% of the total population. Among these, the labour force consists of the subset of working age population who are willing to work for a benefit - cash or kind. The buzzword here is 'willing', and thus labour force by definition includes both employed and unemployed. In other words, those among the working age group who are students, homemakers, ill, or simply not interested in working for some reason or the other are not included in the labour force. The labour force of India (in 15-59 age group) as of 2011 is estimated at 418.4 million.

The workforce consists of only those from the labour force who are in gainful employment over the reference period at the time of the NSSO survey. In our estimation we follow the Usual Status approach which considers a 365 days reference period. The workforce includes all those in the labour force who are working for a salary, whether it is casual, with or without a contract, at home or outside. It even includes those who are working for a family business and may not be explicitly paid. Another way to think about the work force is all those in the labour force who are not unemployed.

Estimating work force in India is more difficult than the developed economies. The problem is that there are many people who work for only a few hours a day or week, or work very unproductively. As per the NSSO definition, they are technically considered to be employed and form a part of the work force. But any one even vaguely familiar with India's employment

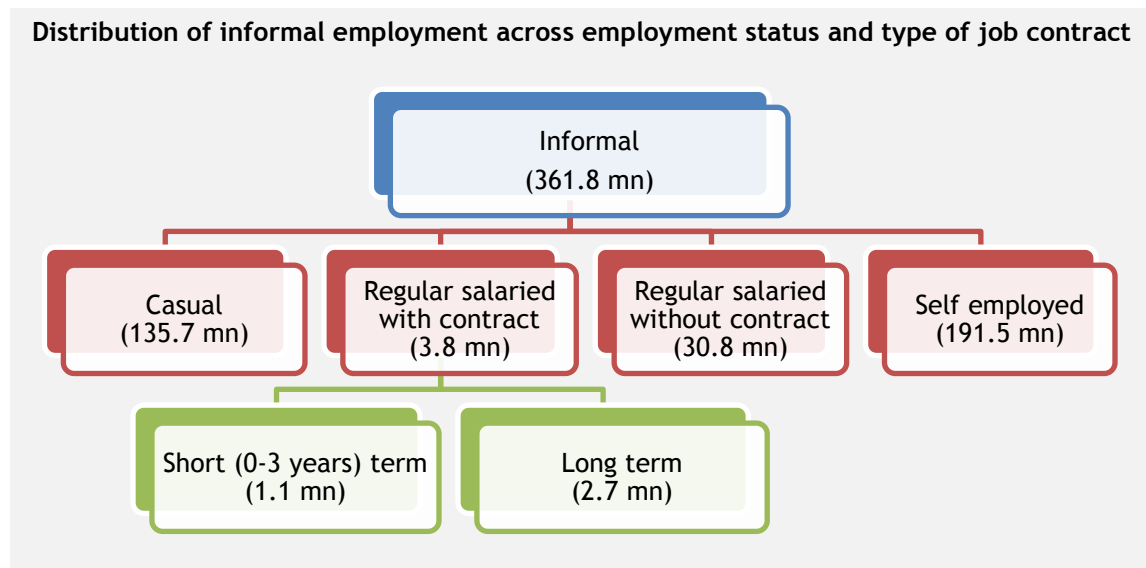
conditions knows that effectively a very large mass of people is not adequately employed. Economists have come up with various definitions such as disguised employment, unproductive employment, etc. but credible estimates are missing. Other parts of this report discuss the important contribution that flexible staffing agencies can make in providing productive and rewarding employment to many in the workforce. Here we will limit ourselves to the estimation process.



In other words, we estimate that about 3.3 % of the labour force in the 15-59 age group is unemployed on a 'usual basis' as per the NSSO definition. This leaves us with 404.5 million in

the workforce and 13.9 million unemployed. These 404.5 million are distributed across the formal and informal sectors. This is the first definitional hurdle that we come across as there are many ways that formal and informal productive sectors have been defined. And often the formal and informal is used interchangeably with organized (formal) and unorganized (informal).

This report does not venture into alternate definitions of the formal/informal sector and the pros and cons of each, and whether it is a better nomenclature than ‘organized’ and ‘unorganized’. Each of these is a contentious issue and a consensus eludes us. Moreover, since our primary concern is estimation of employment numbers, the definition to be used has also to be amenable to the format of data availability. For this purpose, we develop the following working definition for ‘formal’ and ‘informal’ sector based on the only credible database (NSSO survey data) on employment that we can use for estimation purposes. For our estimation, the formal sector is the set of those productive entities that include (i) the government and quasi-government bodies (including public sector companies), (ii) private and public limited companies, and (iii) other registered organizations such as cooperatives, trusts and societies. Note that these days even partnerships and proprietorships need to be registered, but these are not included in our definition of the formal sector. And, the informal sector here has been defined as anything that is not in the formal sector. As per Indicus estimates, of the 404.5 million in the workforce, 42.7 million are in the formal sector and 361.8 million in the informal sector.



This section concentrates on formal sector employment and its various sub-divisions. There are three key criteria that any employer-employee relationship is governed by:

- The payment terms
- Documented contractual arrangements
- Other benefits (e.g. Social security benefits as applicable)

Various combinations of the above can lead us to different forms of employment. Conventionally, there are many definitions that are floating in employment literature and industry. Each of these terms, however, is used in a rather narrow sense in the sense that precise definitions are missing.

*Moreover, certain value judgments are imposed on different kinds of employment contracts some are considered to be good to have (e.g. a permanent job), some not so good (e.g. casual job, or contract labourer). This is an unfortunate practice followed in sections of the academia, government/policy makers, civil society, media and industry alike. No single form of employment can ever be considered to be better than the other. For example, a permanent job that does not enable learning and career growth of an individual may be a far worse than a temporary job that ensures learning and consequently career growth.*

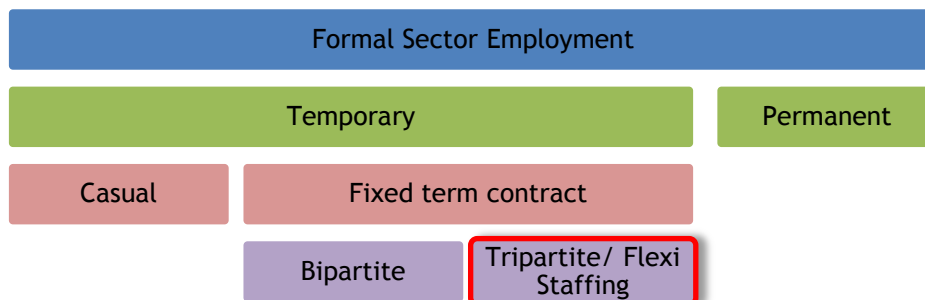
#### Sectoral distribution of informal employment (2011)

Sector	Employment (in million)
Agriculture, Hunting And Forestry	199.2
Fishing	1.5
Mining And Quarrying	1.8
Manufacturing	39.8
Electricity, Gas And Water Supply	0.2
Construction	37.3
Wholesale And Retail Trade; Repairs of Motor Vehicles, Motorcycles and Personal and Household Goods	39.5
Hotels And Restaurants	5.4
Transport , Storage And Communications	16.6
Financial Intermediation	1.3
Real Estate, Renting And Business Activities	3.9
Education	3.7
Health And Social Work	1.7
Other Community, Social And Personal Service Activities	7.0
Activities of Private Households	3.2
<b>TOTAL</b>	<b>361.8</b>

Source: Estimation based on NSSO survey data, 66th round, 2009-10

Different kinds of economic activity require different kinds of employee-employer relationships. Indian agriculture growth for instance rests on the availability of casual labour in the right seasons. Permanent or even part time jobs are not suitable for agriculture as it has highly seasonal requirements. The point is that alternate kinds of employment terms have evolved due to the specific needs and characteristics of varying economic activities, and not to be better or worse than the other.

We broadly differentiate the formal sector employment between the following kinds:



Permanent employment is a long term relationship and both the employer and employee find it in their mutual interest to invest in each other for a long term goal. Such employment can sometimes display monopolistic/monopsonistic traits and the employer/employee can exploit this stability to their advantage. Regular salary/wages are paid to the employee, typically along with social benefits like Provident Fund, Gratuity, and so on. We estimate permanent formal sector employment in 2011 at 19.4 million, or 45% of formal sector employment.

Temporary employment is typically a short term relationship, with or without any written contract between the employer and employee. The term of payment of salary may also vary - some may receive regular salary/wage, for others it may be daily, piece rated, in kind. Our estimate for temporary formal sector employment for 2011 stands at 23.3 million.

We divide the temporary formal sector employment into two sub-categories: Casual (typically without any contract) and Fixed (short) term contract. The bulk of the temporary employment, estimated at 20.1 million, falls in the 'Casual' category. This leaves us with the remaining 14% or 3.2 million who have fixed short term contract (less than 3 years) based temporary employment. The latter includes two distinct categories: the 'bipartite' includes employees having a direct employment contract with their employer, whereas a staffing agency plays an intermediary role between the employer and employee in case of the 'tripartite' fixed term contract. In the latter case, the worker has an employment contract with an intermediary, and the intermediary sends the worker to work for and under direct supervision of the user company based on a separate work contract between the intermediary and the user company. This is our target category - the flexi staff. For our estimation, we define flexi staff as that part of the fixed (short) term contract segment which is (i) receiving regular statutory benefits like Provident Fund, (ii) operates through an intermediary.

Of these 3.2 million, 1.95 million are estimated to be receiving benefits such as PF over and above regular wages and salaries. Annual Survey Industries (ASI) shows about 31% of the total number of workers (as opposed to total number of employees) being through intermediaries.<sup>1</sup> But ASI does not include the services sector, does not differentiate between various kinds of employment options, and this definition of contract workers mostly applies to blue collar workers. In the service sector this ratio is far higher and it is also higher among white collar workers. We estimate that about two-thirds of all employment that is short term and with benefits is flexi-employment. This puts our estimate of flexi staffing industry in India at about 1.3 million in 2011.

<sup>1</sup>As per the ASI definition "workers include all persons employed directly or through any agency". Employment 'through an agency' is another term for "Contract Workers defined as persons who were not employed directly by an employer but through the contractor." The ASI coverage of contract workers does not include "supervisory and managerial staff" a category that typically is taken to include all white collar workers. Hence though ASI provides some indicative element of the size of the flexi-staffing, it has limited coverage which is only blue collar workers in manufacturing.

*This is roughly 3% of India's total organized sector employment. If growth between 2004-05 and 2009-10 is any indication, flexi-staffing would account for about 10% of India's formal sector employment by 2025. Of course, government policy is likely to play a critical role in its further progress.*

The subsequent question that arises is where can the growth be expected to come from? As the international experience as well as responses from Indian user companies in our survey shows, it is unlikely to come from the pool of permanent employment. The process and purpose of the two are distinctly different. The growth can only come from targeting the other components of the temporary workforce in the formal sector. The 2011 numbers indicate a potential 23.3 million market size for the flexi staffing industry.

*The issue that need to be addressed is the benefit it can bring for the workers if the casual and bipartite fixed short term contract holders can also be brought under the fold of the flexi staffing industry. To answer this, it needs reiteration that the bulk of the potential market is currently 'casual' in nature. Most of such workers do not have any written job contract, are not covered by any social security benefits like Provident Fund, Gratuity, medical or insurance benefit under various welfare schemes like Employees' State Insurance. They also do not have any defined employment period. The case of the bipartite fixed short term contract holders is marginally better. But typically even this category of workers will not have many of the benefits of working through staffing agencies like access to skill development training, re-skilling based on area of job availability, possibility of quick redeployment on expiry of contract subject to availability of work, universal access to social benefits in addition to regular salary, option to adjust work life to one's needs, and so on. Moreover, there may be a substantial search cost involved for the user company in their hunt for the right employee.*

*In short, the 'security with flexibility' feature of the staffing industry looks far more attractive and beneficial relative to 'casual' or 'bipartite fixed short term' cases, both for the employer and employee. For the other temporary workers, it definitely provides them more job and social security. To the desiring few it also offers flexibility in work life. For the employers, it can ensure easy supply of the right kind of candidate at the right time. The same also applies for flexibility. The option of easily adjusting workforce depending on realised demand will make manpower planning much easier. Both of these are definitely going to be big pluses for the employers in managing their operations in an environment of increasing market cyclicity and structural changes across the global economy.*

The staffing industry thus definitely has a future in India, and it can dwarf the industry in many developed countries. The experience in China is a case in point where the official estimate of staffing industry size puts it at 27 million in 2008. This definitely merits public attention, and more consideration than it currently receives.

One of areas which require immediate consideration is reforming the existing labour law system in India to bring it more in tune with the unique 'tripartite' feature of the flexi staffing industry. The Indian Staffing Federation, which has been founded by leading flexi staffing agencies of India, has prescribed a number of best practices drawn from international industry norms to protect the interests of all parties involved in a tripartite system. As it stands today, compliance is entirely voluntary and that too limited to member staffing agencies only. Currently, the ISF members roughly cover 0.35 million flexi staff out of the 1.3 million estimated market size. A legal framework to protect the interest of this vast number of workers and many more ready to be tapped is the need of the hour.

## 1.2 Industry Structure

The flexi-staffing industry operates on the basis of a tri-party agreement between the staffing intermediary, flexi-worker and client/user organization. The flexi workers are hired by the flexi staffing agencies, work in the facility and under the direct supervision of the client companies, but receive salary from the flexi staffing agencies. The industry basically operates on two revenue models. The flexi staffing agency receive a percentage of salary (~10-20%) in addition to the remuneration and benefits paid to the employee or get a fixed fee per month for every employee placed.

### *Flexi-workers*

Given that the concept is comparatively new in India, with its genesis in the U.S during the 1960s, it took time to gain acceptance from different segments of the Indian workforce. But today it is increasingly becoming popular in a range of demographic segments including retired professionals, housewives, students, recent graduates and freelancers. People looking for short term options, experienced people looking for specific experience, top notch professionals looking for interim position are all benefitting from this new and emerging space. Not to forget, the biggest beneficiary of the temporary concept has been the recent graduates. The industry has given them an opportunity to experiment with different career options and flexibility to find their desired career paths.

A notable trend these days is that people in their late 40s are also plugging themselves into the temporary segment. These are the professionals who are past their professional career, or those who cannot fit themselves permanently into the corporate environment anymore. Another segment which is increasingly showing interest is the home makers, who are willing to work during rush hours in retail outlets and man the cash counters.

### *Flexible Employment*

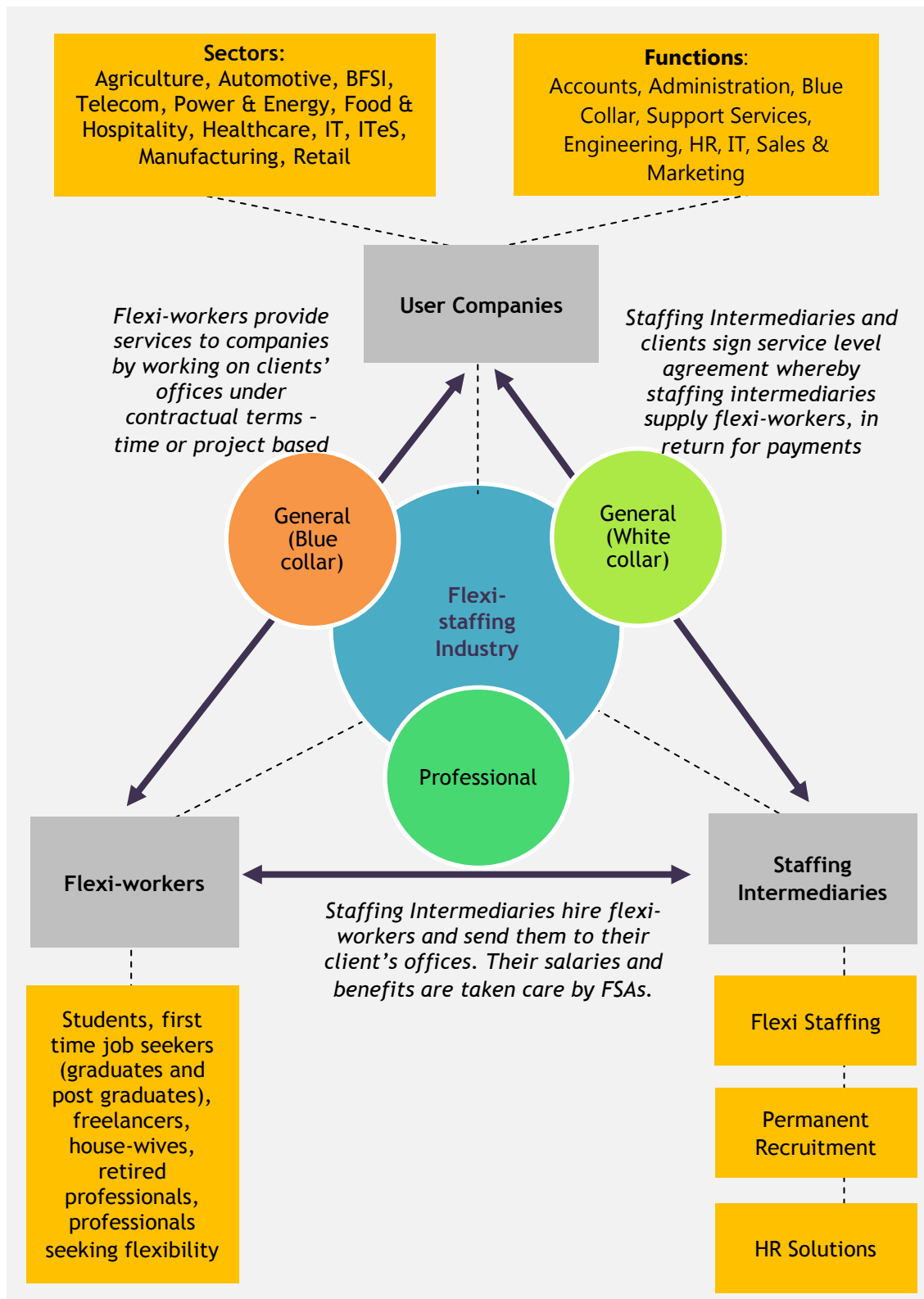
Based on the acquired skill set of the temporary worker, the temporary staffing market can be divided into three categories:

Professional Staffing	Highly skilled and technically proficient workers	Margins: 15-20%
General Staffing (White Collar)	Workers with basic or generic training	Margins: 7-10%
General Staffing (Blue Collar)	Minimum wage workers, work in factories or plants	Margins: 3-5%

Source: Primary survey and media articles



### Flexi-Staffing Industry Structure



Source: Primary Survey

Professional staffing typically entails jobs requiring highly specialized skill sets and includes professionals such as auditor, accountants, web planners, designer, analysts, hardware and software engineers. White collar roles on the other hand involve workers with moderate skill sets and generally work as secretarial staff, customer service representatives, data entry operators, telemarketers, helpdesk/product support, customer relationship officers, market surveyors. Typically at the bottom of the pyramid are the blue collar workers who are employed as workers in plants and factories, janitors, warehouse work operators, maintenance and repair personnel. These workers typically receive lower wages, often receiving just the minimum wages as applicable in the state where the company operates.

Initially, many of the flexi jobs were created in sectors like Information Technology (IT), Information Technology enabled Services (ITeS) space and Engineering. IT companies primarily operate on a body shop model, and increasingly ITeS companies are also onto the flexi staffing model. As time goes on flexi jobs are increasing in human capital intensive businesses like Banking and Financial Services, Insurance, FMCG, Retail and Consumer Durables.

#### **Practices of organized staffing - the differentiators**

The organised staffing firms mandatorily ensure that all the statutory provisions in place to protect the interest of the workers are adhered to. Employees are paid wages at par with the prevalent market rates, subject to compliance with the Minimum Wages Act. Benefits like Provident Fund, medical and insurance coverage under ESIC are also provided to each of the employees. Staffing companies are required to adhere to all applicable labour laws like:

- Minimum wage Act
- Provident Fund Act
- CLR Act
- ESIC Act
- Industrial Dispute Act
- Gratuity Act

In addition, the organized players also follow the mandatory practices such as:

- Not charging flexible employees for placement
- Generating salary slips/wage receipts for every flexible employee
- Run an accurate pay roll system
- Issuing appointment letters giving all the terms and conditions of employment

Indian Staffing Federation also suggests the following best practices to its members:

- Paying salaries through proper banking channels
- Support the staff in addressing their issues or concerns around their employment
- Implement grievance redressal mechanism
- Cover the flexi workers under additional group mediclaim and personal accident insurance coverage over and above ESIC requirements
- Organise rewards and recognition programme for high performers in consultation with user companies
- Provide skill development opportunities in consultation with user companies

Professional staffing is gaining ground in IT, Engineering, Healthcare and Consumer Services sectors. Most flexi jobs in India continue to happen at the lower end of the skill spectrum such as data operations, accounts, sales, back end operations, administration and marketing.

#### ***Staffing Intermediaries***

This industry is demarcated into the formal sector and the informal sector, with the informal sector intermediary agencies' share being dominant. In the formal sector, there are around 10



## 1.3 Growth Drivers

### *Changing Economic Scenario*

In spite of the slower pace of growth in the last couple of years, at marginally higher than 6%, the Indian economy has been growing at a steady pace on an average of 7% since 1997. While on the one hand there is a demand for manpower across various sectors there is also a need for a labour environment which can respond quickly to business realities. The win win scenario which creates a job opportunity for today's youth on the one hand and provides employers with manpower as and when and wherever they require on the other hand and above all propels the overall growth of the economy has been a key driver of flexi-staffing.

### *Talent Optimization*

In the current market scenario, Indian firms are increasingly looking at optimizing talent. Optimizing talent means being "Right Staffed" (as opposed to being Under or Over Staffed). A company which wants to be right staffed has two main options which are either to outsource to a third party, which very often is in the informal sector, or to move towards flexible staffing. Outsourcing to the informal sector creates challenges as sometimes these sectors are unable to employ the right talent because of how they are structured. As a result, companies are moving increasingly towards flexi staffing. Flexi work facilitates structural change by enabling companies to ramp up and ramp down talent according to the need. In order to control fixed costs, firms have preferred opting for temporary staff to bring in efficiency in their operations. By employing temps, companies are able to save on an average 20% depending on the nature of the project<sup>2</sup>.

### *Swift increase in high growth segments*

Companies across traditional sectors such as Retail, Telecom, Hospitality, Pharma, Manufacturing, and Agriculture are increasingly shifting to the flexi staffing model. The size of India's Retail sector, one of the major sources of demand for flexi staff in India, is currently estimated at around US\$ 450 billion and is expected to grow at 10-12% per annum. Given this positive future outlook, the sector is expected to witness a strong demand for flexi staff.

Considering that deploying flexi staff increases flexibility enabling allocation of staff as per changing requirements, firms are recognizing flexi staffing as a key HR management strategy. Moreover, firms have started seeing flexi workers as a way to screen potential new employees or to fill in for temporary vacant positions owing to permanent employees going on sick/vacation/ maternity leave.

### *Supply side driver not to be ignored - workers' demand for decent work.*

Flexi-staffing is a great enabler of decent work. In its absence a lot of time workers are forced to work either in the informal sector or as casual workers in the formal sector. In either of these situations they tend to miss out on decent work, work with social security and insurance and work done with a proper written contract. The work provided to flexible staff in comparison not only gives the worker all these benefits but also ensures that once the contract is over, other opportunities are provided to the worker. This is resulting in increasingly higher demand for contractual jobs amongst workers. ISF members receive in excess of 100,000 applications from job seekers every month.

---

<sup>2</sup> Business World - Article 'Growth And Gumption'

## *IT/ITeS*

The Indian IT and ITeS industry serves as major outsourcing hub for the rest of the world and is considered as the pioneer in staffing. Its revenue is pegged at US\$ 37 billion for the financial year 2012<sup>3</sup>. The industry is expected to witness a high level of flexi hiring in the next few years, with the penetration of temporary workforce in the segment being expected to increase from 10% to ~20%.

Although the industry has been facing challenging times amid the global economic slowdown, there has been buoyancy in flexi hiring among IT companies in India. IT firms are swiftly adopting the practice of hiring flexi staff in order to beat margin pressures, maintain lean benches and also facilitate just-in-time hiring in a highly volatile market. The firms are increasing their flexi staff count in non-core activities and services (where the revenue flow is not recurring) to focus more on core activities and cut down on costs to withstand competition from other emerging markets and become more competitive.

In addition flexi staffing has plenty to offer from the perspective of workers too. There has been a shift in the general mindset of the Indian workforce, with people becoming more open to work on contract/consulting basis, particularly in the case of qualified professionals. Such a work arrangement has offered them the flexibility to work, especially those who are unable to commit to long term or long hours or those who due to family responsibilities or crisis situations are unable to work under permanent work conditions. For some others, flexi staffing is an opportunity to quickly add to their skill portfolio and to some others, a stepping stone into a permanent position.

---

<sup>3</sup> CyberMedia Research (CMR), 2011

## 1.4 Benefits of a growing flexi staffing industry

The wave of globalization has been marked by surge in capital flows among developed countries and between developed and developing countries. While these capital flows have been associated with high growth rates in some developing countries, a number of countries have experienced episodic collapses in growth rates and significant financial crises over the same period which has taken a serious toll in terms of macroeconomic and social costs. The volatility and the fundamental structural changes in the global economy are generating a great deal of uncertainty and apprehensions about long term planning at all levels. In such a scenario, everyone is looking for ways to navigate through such adversities while protecting their competitive edge.

The ISF/Indicus survey explores the role the staffing intermediaries can play in such a challenging business environment and how the different services provided by this sector are addressing the business requirements in a world of volatile economic cycles. As it turns out, the main attraction of these agencies is the flexibility they provide in manpower planning, allowing companies to better adjust to volatile demands. The staffing intermediaries play a crucial role in navigating the seasonal, cyclical and structural shifts in the labour markets and matching the forces of demand and supply more efficiently.

### *Staffing intermediaries help firms in adapting to volatile situations*

*“With the help of agencies, we get flexibility that enables us to react quickly when there’s a sudden demand, especially when we need to kick-start any project on an urgent basis.”*

*HR Manager of an IT company*

The shock of the recent economic downturn has called for a fundamental change in the dynamics of the recruitment process and exposed weaknesses in existing talent management strategies that are often dependent on reliable medium term planning. Traditionally, employers have increased their use of temporary and contingent staffing during a recession. As the economy recovered, employers scaled back their use of contingent talent and increased their permanent head count. However, the prospect of long term economic uncertainty appears to be changing employer behaviour.

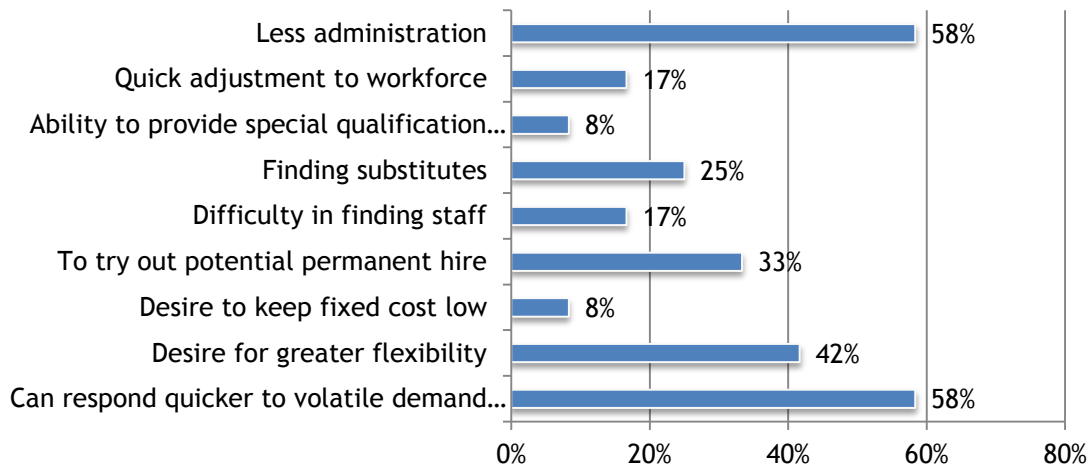
With volatile situations in many economies around the world, including India, the process of talent recruitment needs to evolve accordingly. With the global economy entering into a period of long term uncertainty, any form of planning has become increasingly challenging. In such a scenario, flexibility has emerged as the need of the hour. The ability to quickly respond to volatility has acquired immense importance. The option to deploy flexi staff enables companies to better absorb cyclical fluctuations through easy workforce adjustment and assures them of on time access to a pool of workers with required skills.

*“Given the weak business environment, we are unable to do any recruitment planning. But with the help of these agencies we can afford to take a risk”*

*Senior Manager of a leading technology company*

In the ISF/Indicus survey, majority of the respondents from the user companies cited a desire for ‘the ability to respond quicker to volatile demands’ and ‘greater flexibility’ as the most important reasons for choosing the services of a flexi staffing agency.

### Reasons for working with flexible staffing agencies-From User Company's perspective



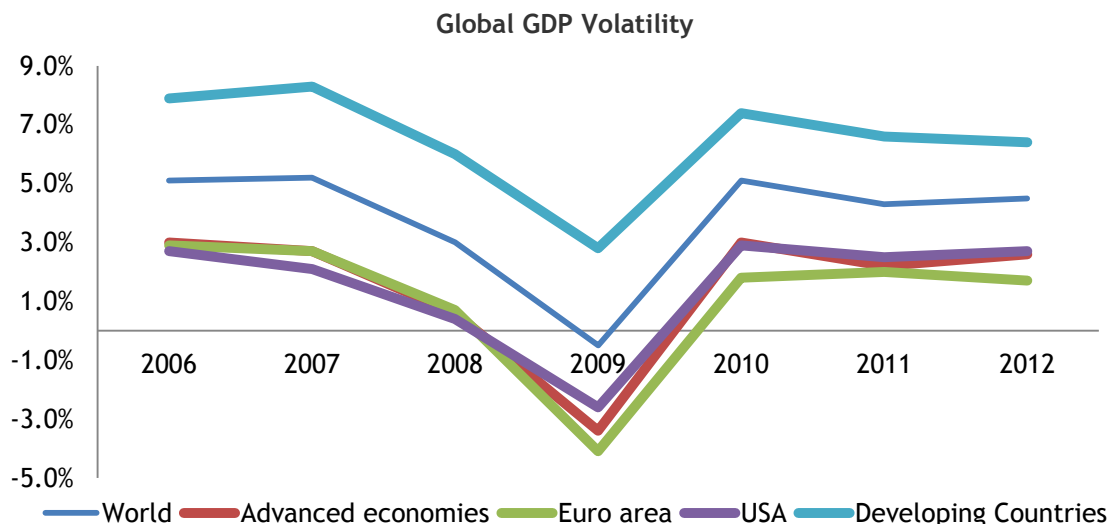
- 58% of the companies highlighted the flexi staffing agencies ability to respond quickly to volatile demands, as the chief reason for employing their services.
- 42% companies indicated 'desire for greater flexibility' as another important reason

Source: Primary survey

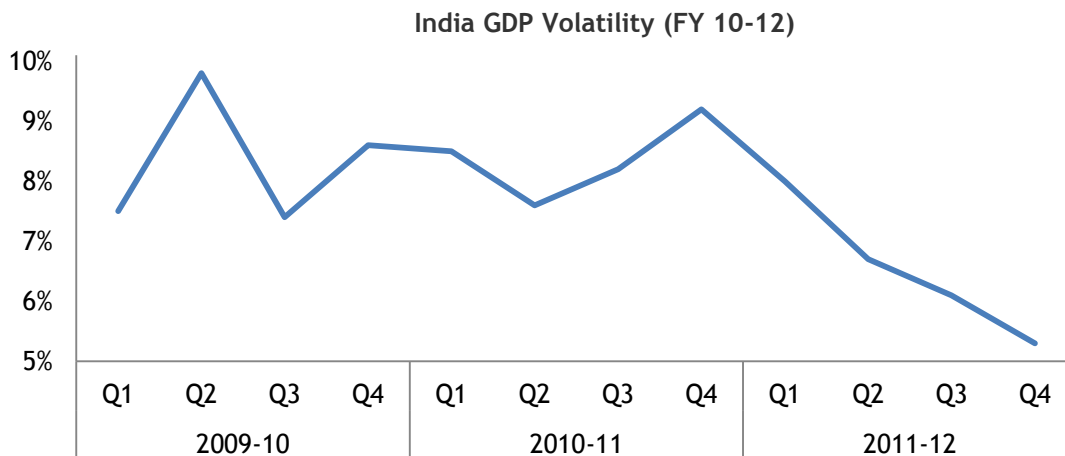
At the same time, interviews of user company HR executives revealed that 58% of companies believe that having temporary workers in their organization places them in a better position to address demand fluctuations and react better to market opportunities. It is the industry's ability to respond quickly to demand fluctuations and market dynamics that sets it apart and makes it a vital component in the growth of the country.

### Volatility in GDP

Uncertain outlook is reflected based on the world economies performance in the last 5 years

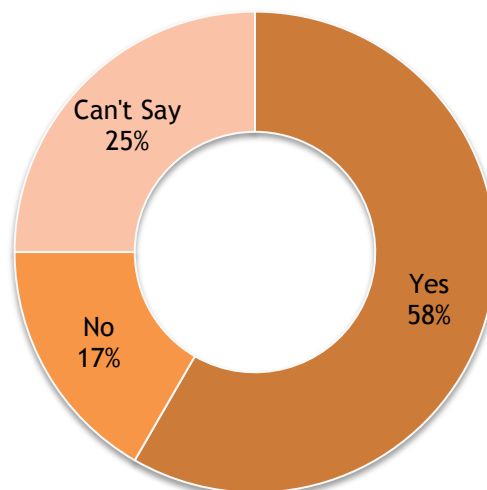


Source: IMF, World Bank, RBI statistics



Source: IMF, World Bank, RBI statistics

**58% of the firms agree that usage of flexi workers places them in a better position to manage volatility**



Source: Primary survey

***Create new jobs and skills and ensure a better match between supply and demand***

Flexi Staffing intermediaries create new jobs and help to boost employment by *turning available work into jobs*. The sector creates jobs that otherwise would not exist and is particularly effective in placing disadvantaged and under-represented groups in society, thereby providing a way for them to access job markets and join the world of work.

*The Survey finds that 92% of companies would not consider hiring permanent workers as an alternative to taking on agency workers. 42% of the companies would choose internal flexibility solutions (such as overtime, re-skilling, inter-departmental transfers, etc.) or not to do the work if they had no access to agency work.*

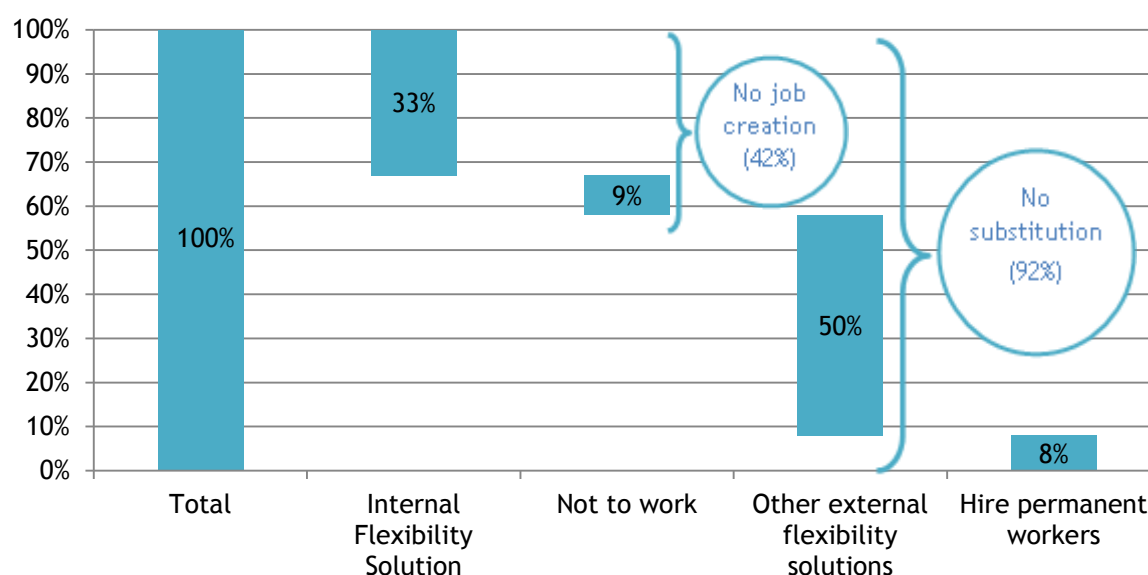
The role of the staffing agencies becomes all the more important in this regard owing to their ability to address the two forms of unemployment - structural unemployment by creating new jobs and skills; and frictional unemployment by ensuring a faster and better match between supply and demand of work and increasing transparency in labour markets.



In addition to job creation, the flexi staffing industry also enables matching of skills to market requirements and structural changes. The training provided by flexi staffing agencies helps re-skilling workers, allowing them to move from declining sectors to the ones where demand is high. It also has the potential for upgrading skills of workers and bridging the skill gap.

Insufficient supply of quality skills is one of the main impediments to further economic growth in India. Important sectors of the economy such as IT, Infrastructure and Power are particularly in difficult situations when it comes to unmet demand for skills. For instance, the IT sector reported lack of skills as the most serious obstacle for growth, and salaries rose 15% annually from 2003 to 2006 mainly due to the shortage of qualified workforce. The Roads sector also faces severe shortages of qualified manpower. The sector needs to increase its hiring by at least two to three times from the 2008 level to meet current requirements. The situation in the Power sector is also similar. According to the widely quoted report by the National Association of Software and Services Companies (NASSCOM) and McKinsey in 2005, only 25% of engineering graduates are employable by a multinational company.

**Alternatives to using services of Flexi Staffing Agencies**

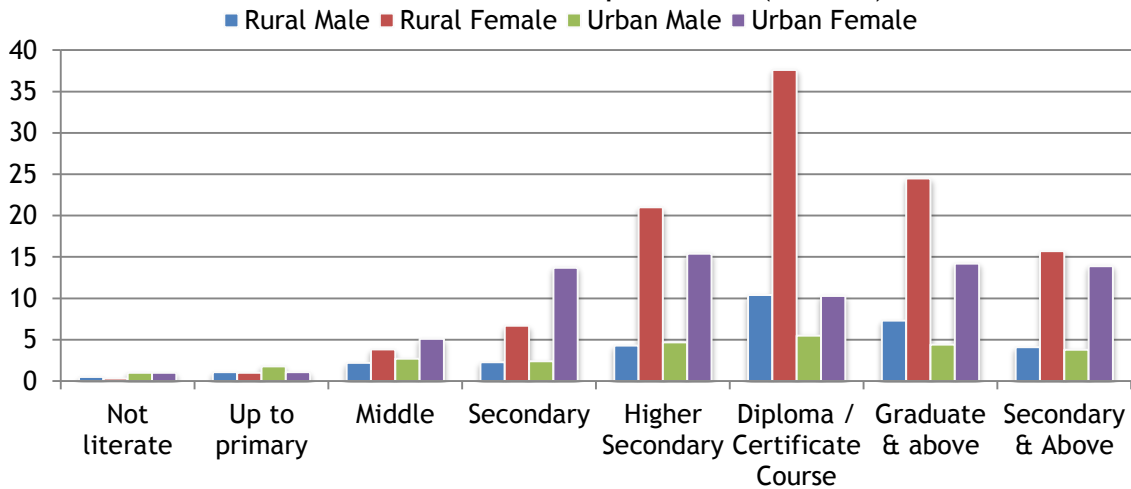


Source: Primary Survey

In summary, shortage of skill is one of the major constraints in a large number of sectors in India. The problem can be easily gauged by comparing the volume of new entrants in the labour force and prevailing unemployment rates among the youth and the educated. In India, persons aged 15-29 years, who are considered as the youth, account for 26 to 29 per cent of the total population. A substantial percentage of this section attains some level of education and generally constitutes a large proportion of the overall labour entrants in any given year.

According to the NSS 66<sup>th</sup> Round Survey (2009-10), unemployment rates were much higher in 2009-10 among the youth as compared to that in the overall population. The high unemployment rate under the category of diploma/certificate holders and graduates highlights the issue of mismatch between skills and available job opportunities.

**Unemployment rates (in %) for persons of age 15 years & above with different educational qualification (2009-10)**



Source: NSS 66<sup>th</sup> Round Survey (2009-10)

*“It’s highly unrealistic to assume that there is an ideal job available for everyone. In a scenario, where every penny counts, some employment is any day much better than no employment. We as temporary staffing firms facilitate this transition”*

*Head, Public Affairs of a staffing intermediary*

**Allows companies to focus on their core business**

*“For us, their biggest utility comes from their ability to handle everything from scratch to completion. This allows us to manage our core activities effectively.”*

*HR manager of an entertainment company*

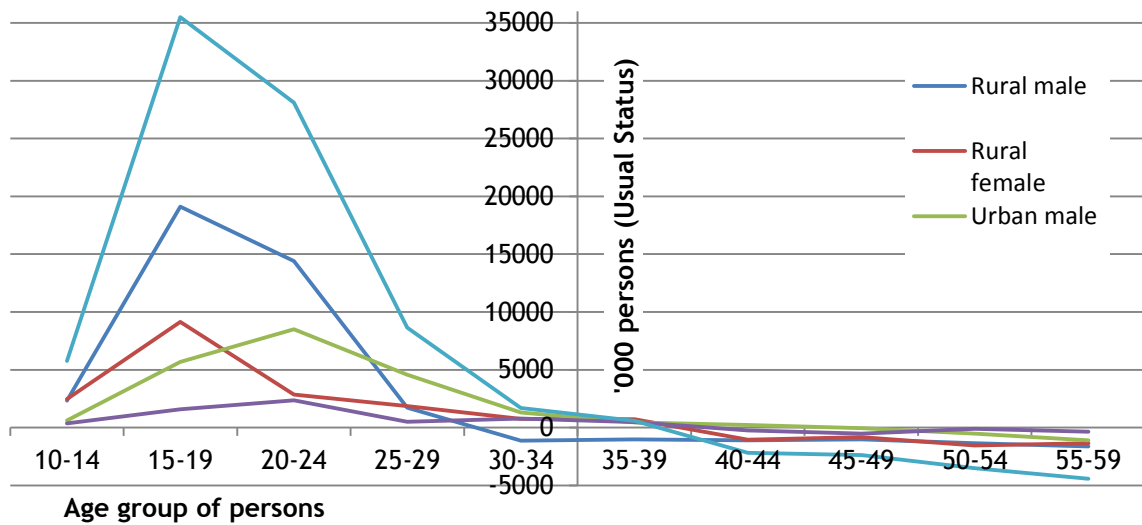
In the current economic situation, companies are experiencing a greater need to focus on their core activities and outsource others. To cater to this emerging need, the staffing industry has diversified its services portfolio and has emerged as a one stop shop for comprehensive services. The range of services being offered by these agencies extend from providing complete HR solutions covering consulting, outsourcing, training and assessment, to assisting the companies with temporary staffing and permanent recruitment.

The ISF/Indicus survey highlights the desire for lesser administration as one of the chief reasons for employing the services of flexi staffing agencies. Coupled with this, 75% of companies also highlighted that using these service has indeed benefitted them in lowering their search costs to find appropriate people.

*“It makes business sense for us to outsource activities, especially given the weak global environment. That ways, we can dedicate our internal resources on the thing that we are best capable of doing”*

*Branch manager of a leading EP&C company*

**Persons entering the labour force (+) and exiting from the labour force (-) during 2007 to 2012**

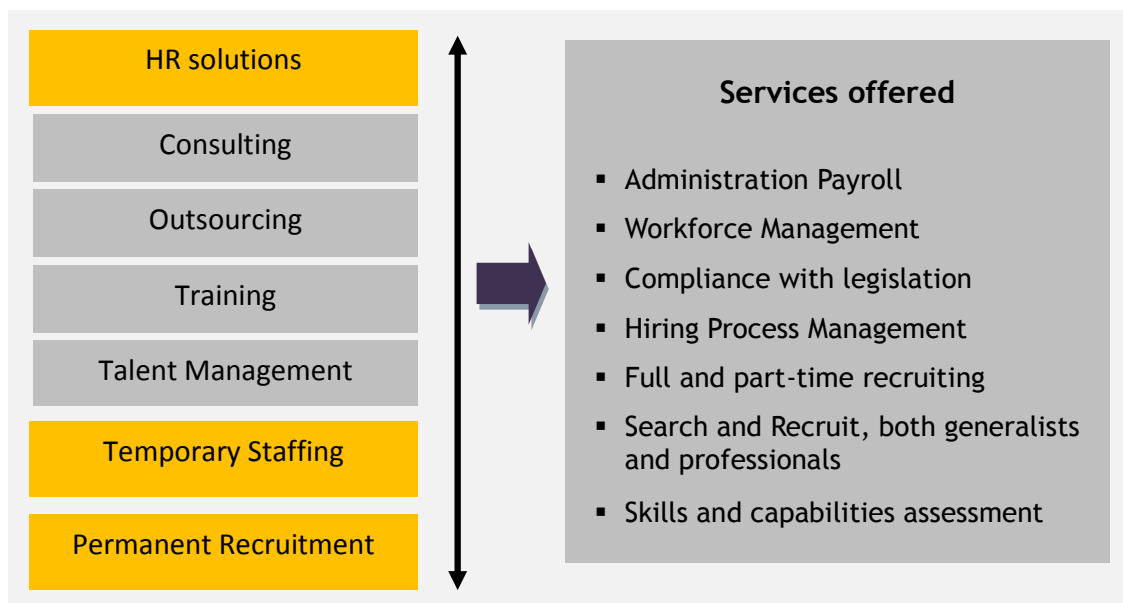


Source: Employment for the Eleventh Five Year Plan (2007-12), Planning commission Report

The temporary staffing agencies address key demands of the companies and help shed their administration burden. Based on survey findings:

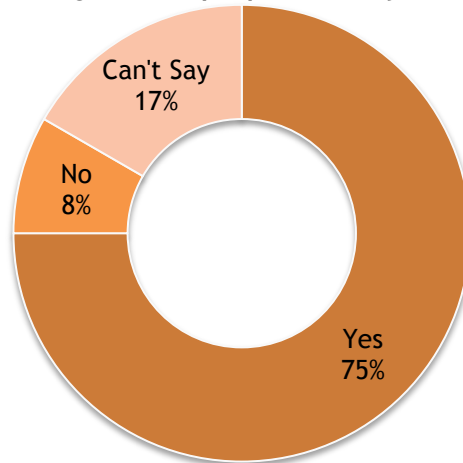
- 58% of the respondents feel that 'Reducing administration' is the main reason.
- 25% use the services to find substitutes to existing workers
- 17% employ these agencies because they experience difficulties in finding appropriate talent

Source: Primary Survey



Source: Primary Survey

**75% of the respondents claimed that their engagement with Flexi staffing agency lowers organization's search cost of finding suitable people for the job**



Source: Primary Survey

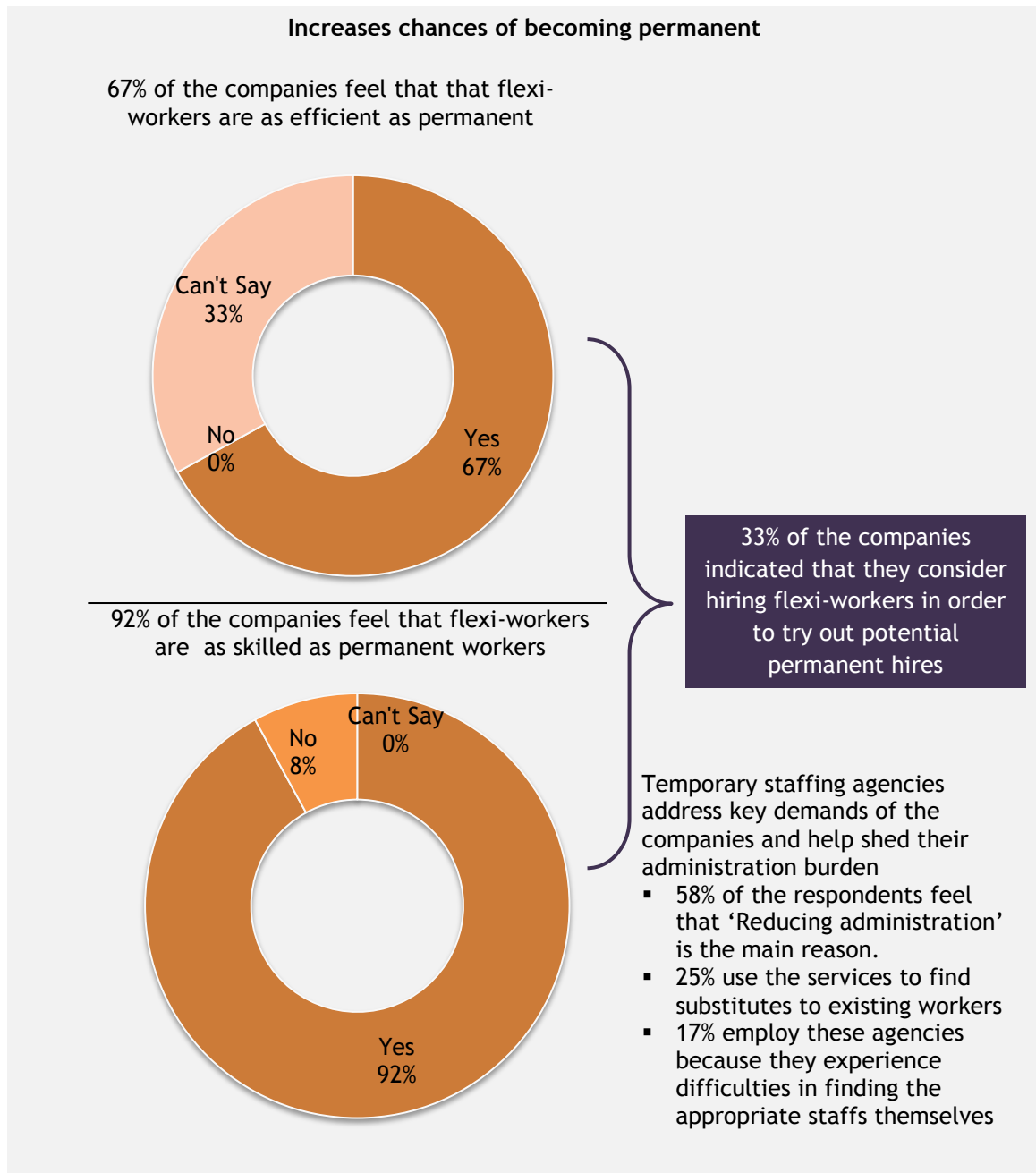
These agencies reduce the burden by managing and coordinating all hiring and screening processes of companies, adhering to various legal compliance requirements and eliminating issues with multiple billing processes. The agencies with their large networks of offices have the expertise to provide customised solutions to companies' staffing needs and to work with them in managing human resource planning and risks. They hold the potential to deliver results across all forms of staffing related issues, which allows organizations to explore growth and attain a competitive edge over others.

***Facilitates transitions and labour market mobility***

Staffing agencies are likely to be 'transition agencies' in the sense that they do not only facilitate an individual's transition from unemployment to employment, from education to work, but also provide a worker with the skills (and experience) that are relevant for future, permanent jobs. The industry also helps people move from part time to full time jobs (or vice versa), between sectors, across locations guided by aspirations, preferences, needs or suitable opportunities. The industry's ability to identify new work opportunities also ensures that workers remain gainfully employed and that the provision of the skills training necessary for available jobs serves to smoothen the process for both employers and workers. Flexi work often provides the first opportunity to the youth to acquire work experience and enhance their skill set, and in the process plays an important role in their transition from education to work.

*79% of surveyed flexi workers are under 30 years of age and temporary employment is often their first exposure to the labour market.*

They provide work experience for those entering the workplace and reassure them of decent work with a quality employer and access to skill enhancement opportunities. It also allows students to complement their studies by gaining useful work experience. The 'transition agencies' play a crucial role in smoothening the transition from temporary to permanent roles. Often hiring of flexi staff is just a screening process for companies to recruit potential permanent workers. The Survey finds that most companies consider flexi workers to be as efficient and skilled as permanent workers. Moreover, this stepping stone function provided by flexi staffing agencies is largely recognized by workers, who widely acknowledge that agency work is not only an efficient way of finding a first job but also of securing a permanent, full time position.



Source: Primary Survey

### Summary

The benefits of the industry are manifold - from enhancing companies' competitiveness to flexibility and work security in the labour market, acting as a buffer for the labour market and creating positive conditions for economic sustainability. Staffing intermediaries play a fundamental role in extending support to companies and augmenting the efficiency of the labour market. Given the increased incidence of cyclical fluctuations, the sector provides necessary innovative and reliable solutions that enable organizations to manage demand volatility by adapt their workforce needs accordingly. From the workers' perspective, flexi staffing intermediaries help in identifying suitable opportunities, provide opportunities to develop and update skills, and thereby increase the range of work options.

## 1.5 Major challenges for the flexi staffing industry

The Indian staffing industry operates in an exceedingly dynamic business environment and represents one of the key pillars necessary to sustain and accelerate growth of the Indian economy. The industry no longer functions solely in the capacity of replacing absentee workers with temporary ones but has emerged as a strategic partner for its clients by providing a range of employment solutions and services.

Performance and growth of industry is often obstructed by both internal and external challenges. The agencies which help other companies navigate through statutory and legal compliances often face a tough time steering their own way through the same complex regulatory environment. This state of affairs in the same industry which relentlessly works towards addressing one of the fundamental structural challenges of the economy, viz the unemployment, only highlights the unfavourable environment under which the industry operates.

### *Uncongenial regulatory environment*

*Restrictive, outdated, excessive and only selectively enforced labour laws, best describe the regulatory environment governing the operation of flexi staffing firms.*

It has been accepted globally that in order to maximise the benefits of intermediary agencies and in delivering greater market efficiencies, an appropriate regulatory environment must be in place. In other words, an appropriate and balanced regulatory framework is an essential prerequisite for acceptance and sound development of the industry. Instead of an appropriate and balanced regulatory framework, the legal environment pertaining to the labour industry is cluttered with too many labour laws having a considerable degree of overlap and ambiguities.

In India there are at least 44 labour laws at the national level and close to four times that at the level of state governments that directly impact the employment market. Such a high number not only imposes a legal burden on the players, but coupled with a lack of effective monitoring also drives down transparency and leads to sham practices and agreements within the industry. For instance, today, the rate of flexi job creations is significantly hampered primarily due to staffing companies not being considered as the Principal Employer. This not only increases the growth of the unorganised sector, but also leads to increase in agreements fraught with risk and non-compliance.

Additionally, the applicability of the labour laws, particularly the central labour laws, becomes questionable today, given that the laws are outdated and are not frequently updated. For instance, many labour laws only apply for workers within a certain salary ceiling like, Rs 6,500 per month in the case of the Employees' Provident Fund (EPF). Such a dated wage ceiling actually deprives deserving workers of benefits that should be mandatory for all employees.

### *Widespread prevalence of inconsistent practices*

The industry is largely characterized as an unorganized fragmented industry, with a very small percentage of temporary staffing happening in the organised segment. A low entry barrier makes it easy for all kinds of operators, including those looking for short term financial gains, to enter the segment. A fragmented market and vague laws create breeding grounds for abusive practices by temping agencies as well as employers, affecting the industry's growth and reputation.

Given the low regulatory supervision under which the industry operates, there is considerable headroom for small time contractors to enter the space and provide temporary staffing service

to industries, while adhering to little or no statutory compliance. Under such a scenario, where there is little monitoring from government agencies, this presents a dangerous situation not only from the legal perspective but also from the perspective of the employers and more importantly the temporary/contract workers.

*“The working environment has to become such that the more you adhere to regulatory compliances, the more you seem to be gaining”*

*Head of Public Affairs of a leading staffing solution company*

The research finds that given the over regulated environment, not all formal sector staffing agencies are able to meet all basic statutory requirements. The situation only gets amplified when seen at a broader level, where a large numbers of staffing companies directly competing with the large staffing firms save costs by not meeting statutory compliance requirements which leads to widespread prevalence of inconsistent and unethical practices. Such inconsistent practices drives down the price of staffing solution offerings, and leads to a situation where the industry players are compelled to charge low margins, leading to a state of unhealthy price wars.

### ***Unfair competition***

Given the fragmented nature of the industry, an estimated 10,000 very competitive organised and unorganized players in tandem with complex regulatory environment has created a situation of ‘Undue Advantage’ for the unorganised players. The actions of unorganized players, through non-compliance of labour laws, put them in a far better position which actively harms the position of others with respect to their ability to compete on equal and fair terms. The more competition of this unhealthy kind between actors in the industry the lower the profit margins, which forces agencies to compete with lower price rather than with more value added strategies.

To compete with this challenge, the staffing intermediaries have begun to differentiate themselves by offering customized solutions and adopting different growth models to drive up profitability. But unless there is an immediate response to these discriminatory practices, continuation of innovation seems to be highly short lived.

*“Staffing Companies might be willing to invest in innovative practices such as vocational training of employees, but lack of partnered approach from the client, who can move on to another contractor who’d be willing to offer people at lower margins, dilutes the need for such an exercise”*

*Co-founder of a leading staffing agency*

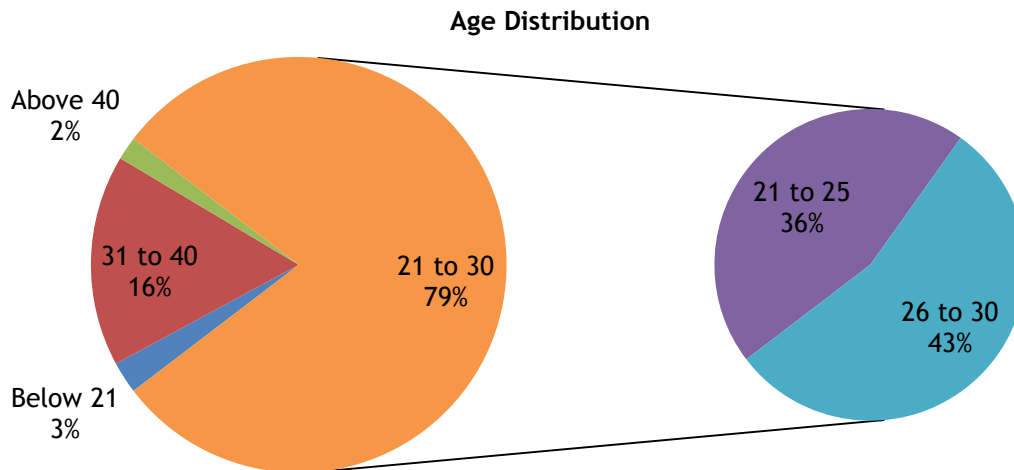
## 1.6 A survey of flexi staff in India

The survey of flexi staffing industry employees was conducted with the purpose of gaining a more objective understanding of the current status of the workers employed in the industry, reasons behind their joining this industry, their problems, their needs and aspirations. This survey shall hopefully help towards sensitizing the staffing firms and the Government about the current status of such workers, their various unmet needs and further aspirations, and thereby help in developing common industry practices and standards. Not only should this help in further growth of the temporary staffing industry, but this should also lead to better opportunities and working conditions for the workers. The feedback from the survey can form the basis of future actions by Indian Staffing Federation and its members for improving the fortune of the temporary staffing industry and people employed by it.

The survey sample consists of randomly chosen 1000 current flexi staffing industry employees. The interviews conducted over telephone, took place over the months of April and May 2012.

### *Flexi staff in India is largely young*

79% of the workers in the flexi staffing industry fall in the 21 to 30 years age group. The share of flexi workers as we move to higher age brackets falls drastically. This indicates the prevalence of flexi jobs in mostly the entry and junior level positions. On a different note, this also highlights the importance of the flexi staffing industry for the section of our youth just out of college or with minimal work experience. Utilising the work experience gained while working in flexi jobs to their advantage, they enhance their skill profile and increase their chances of being absorbed into the regular workforce.



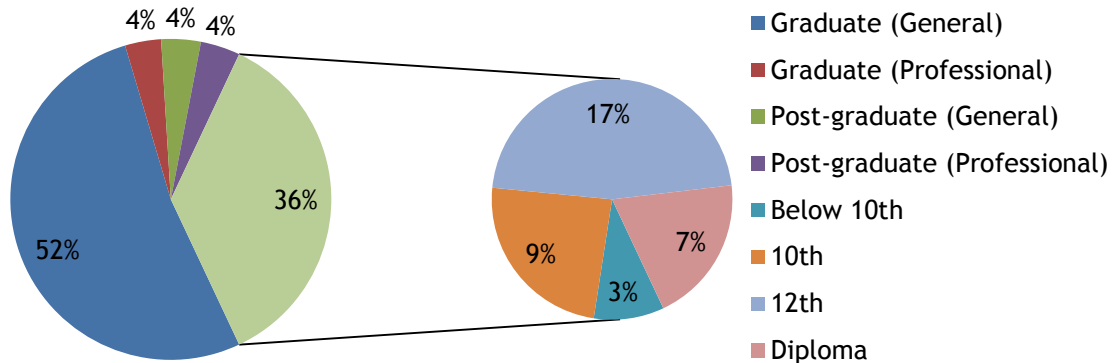
Source: Primary Survey

### *Flexi staffing industry in India has high potential to create significant job opportunities for those with average academic background*

Flexi staffing industry is an important avenue of employment for job seekers with graduate degree in general streams (Bachelor of Arts, Bachelor of Science, Bachelor of Commerce), or lower qualifications. The general graduate degree holders have the largest share (54%), followed by higher secondary certificate holders (17%), secondary certificate (9%) and diploma holders (3%). The growth of the flexi staffing industry thus can create significant job opportunities for youth with an average academic background and lacking any specific set of skills, reducing the number of educated unemployed.



### Educational Qualification

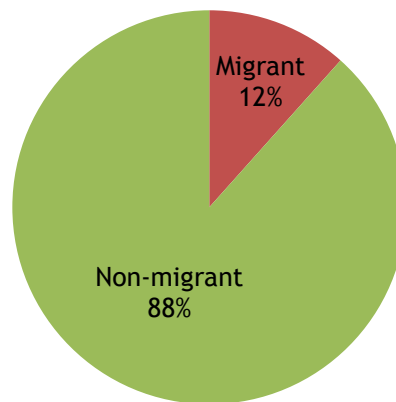


Source: Primary Survey

### *Flexi staffing industry yet to provide geographical mobility*

The extent of interstate migrant workers working in the Indian flexi staffing industry is 12%. Of the 116 cases of interstate migration observed in the sample of 1000, 62 migrated to a neighbouring state. Only around 5.4% workers had moved far away from home to work in the flexi staffing industry.

### Inter-state migration for Temp job



Source: Primary Survey

### *Gaining work experience and search for permanent job are the main motivating factors*

A majority of workers credit the flexi staffing industry for enabling them to enhance their exposure and gaining hands on job experience and they see it as a stepping stone to permanent employment. Working in the industry also enables some of them to enrich their specialised occupational skills. Being in employment also enables them to expand their peer network, and increase their access to information about future potential employers. 35% of respondents, most of whom were not the main earning member in the family, worked as flexi staff to supplement their family income or as a source of extra income. The flexibility and the independence of a temporary job was also an important positive for most of the respondents.

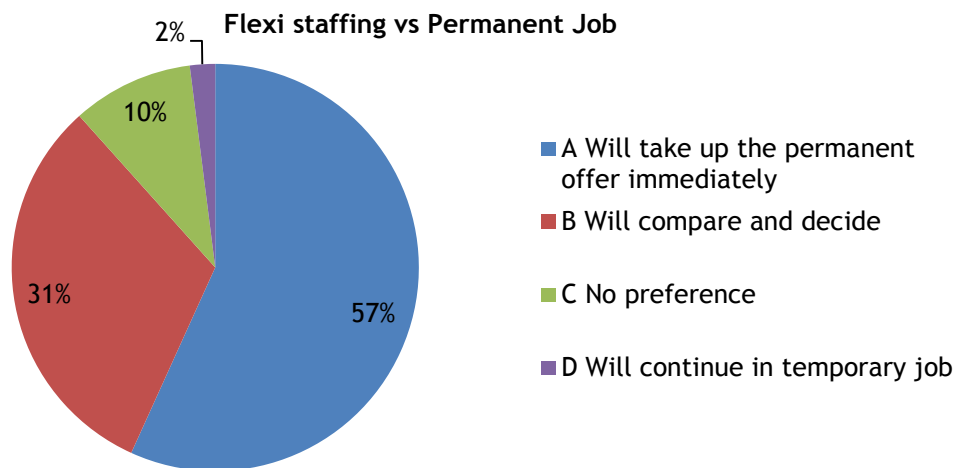
The reasons cited for working in the flexi staffing sector gains support from the level of work experience observed among the workers. The majority of the workers in the industry have

worked for up to three years only (78%). The shares of workers in the higher experience brackets fall progressively. As the flexi staffs gain in exposure and experience, develop job skills required, they tend to progress to a direct and permanent employment relationship.

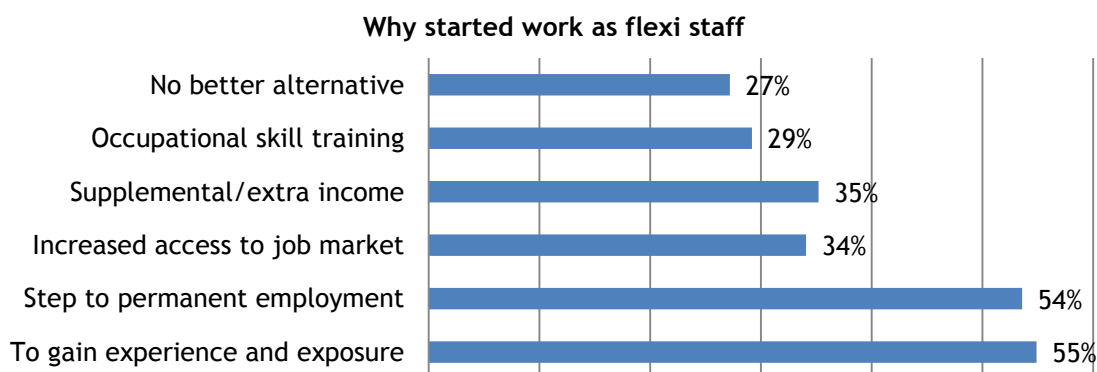
The preference for permanent job among the respondents is also observed to be high - 57% of respondents said that they will immediately accept a permanent job offered to them. Though client companies regularly make direct and/or permanent job offers to hired flexi staff, the frequency and extent of absorption is not known. This also depends on a match between job requirements and skill profile on offer as well as on job performance.

*Around 19% of respondents showed awareness of any of their peers in flexi staffing industry being absorbed into direct employment at their client company. 24% of respondents also ranked their own chance of being absorbed by their client company as very high.*

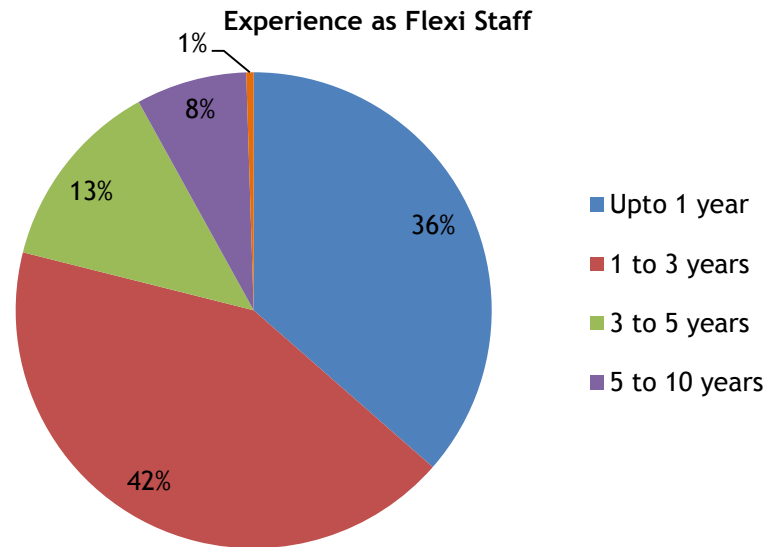
One important point to note here is the lack of movement across sectors among flexi staff. Only 19% of respondents were observed to have prior experience in working in a sector other than the one in which they were currently employed. Though this is not a bad thing per se, but to an extent limits the diversity of skills acquired.



Source: Primary Survey

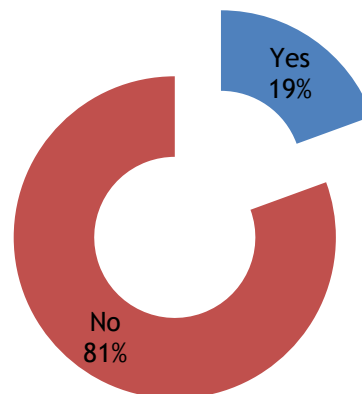


Source: Primary Survey



Source: Primary Survey

**Have prior experience in working a sector other than the one currently working in**



Source: Primary Survey

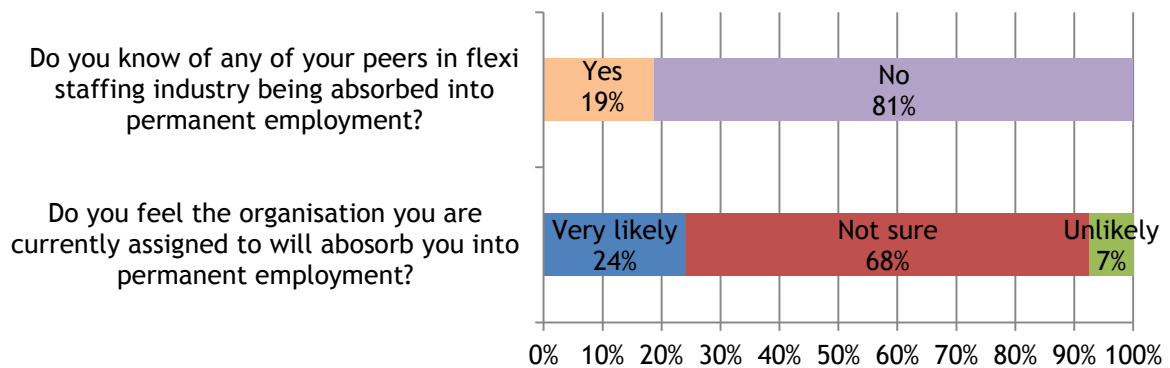
***Despite typical short term contracts, the flexi staff are typically getting re-employed***

Though by nature the affiliation of a flexi staff member to an assignment is temporary, most of the respondents reported working without any break and being in continuous employment for more than a year. This indicates the ample demand in the market for short duration employment contracts and the ability of staffing agencies to successfully tap this market. As a result, workers easily get placed in a new assignment on completion of the old one, and thus despite being a temporary arrangement flexi staffing has the potential to be a steady avenue of productive employment.

***Flexi staffing industry significantly contributing towards raising work participation rate***

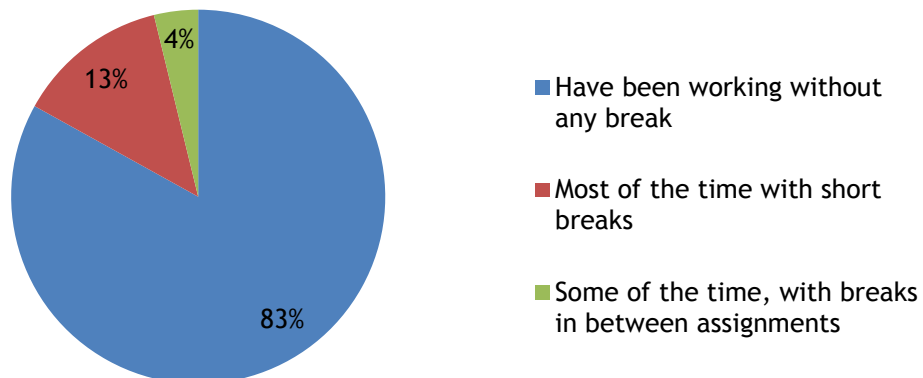
In the absence of the flexi staffing opportunity, 27% of respondents would move out of the workforce - 7% would not even look for any job opportunity elsewhere citing various personal and family constraints and 20% expressed their desire to go for further studies. This category has entered the job market only due to the flexibilities offered by this industry, and would withdraw from the workforce in its absence.

### Absorption into client organisation



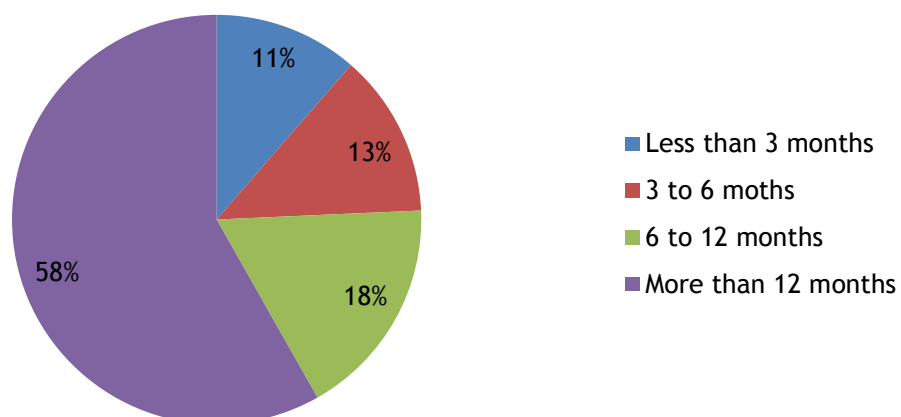
Source: Primary Survey

### Work flow

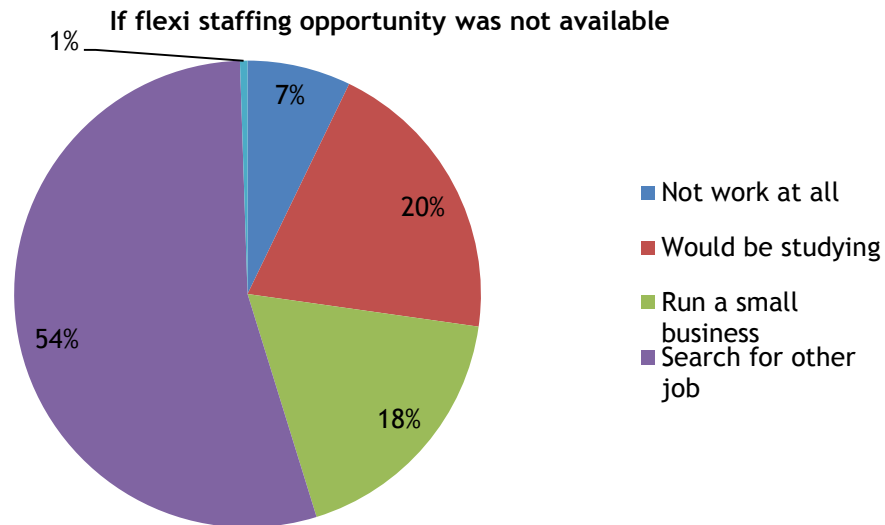


Source: Primary Survey

### Continuous Employment as Flexi Staff



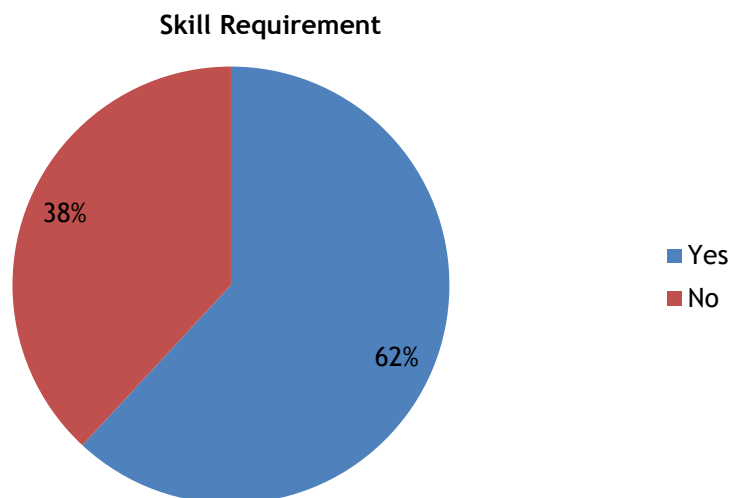
Source: Primary Survey



Source: Primary Survey

***The industry is contributing towards skill enhancement of the workforce***

Most respondents felt specific skill training was required to perform their job. Almost half the respondents received such training from the client company, where they were trained as per client requirements. Another substantial 40% picked up their skills while working without any specific training. Many of them would have remained unskilled and at the bottom of the employment ladder if the opportunity of working in the flexi staffing industry, albeit the temporary nature, was not there. This highlights the potential of the flexi staffing sector as bridging the skill gap the industry regularly laments about.



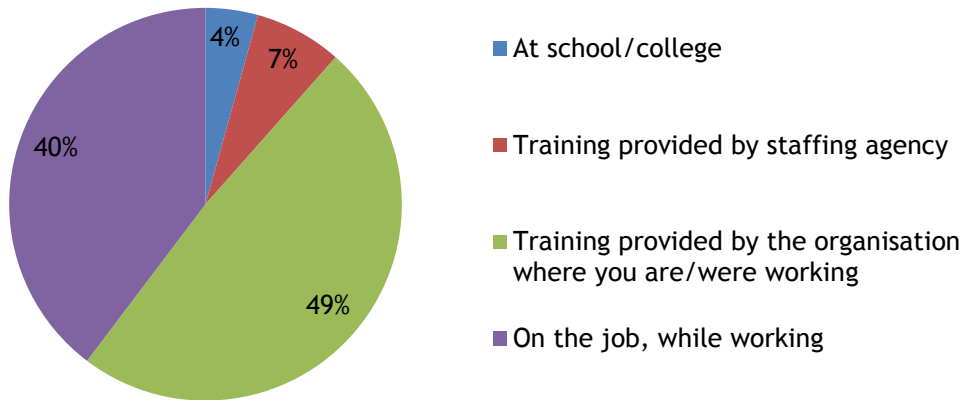
Source: Primary Survey

***Work load on flexi staff in terms of working hours largely the same as general workforce***

Most of the flexi staff are working 8 hours a day and 6 days a week. Thus, in terms of workload, most flexi staff were working the same hours as the general workforce. Most of the flexi staff

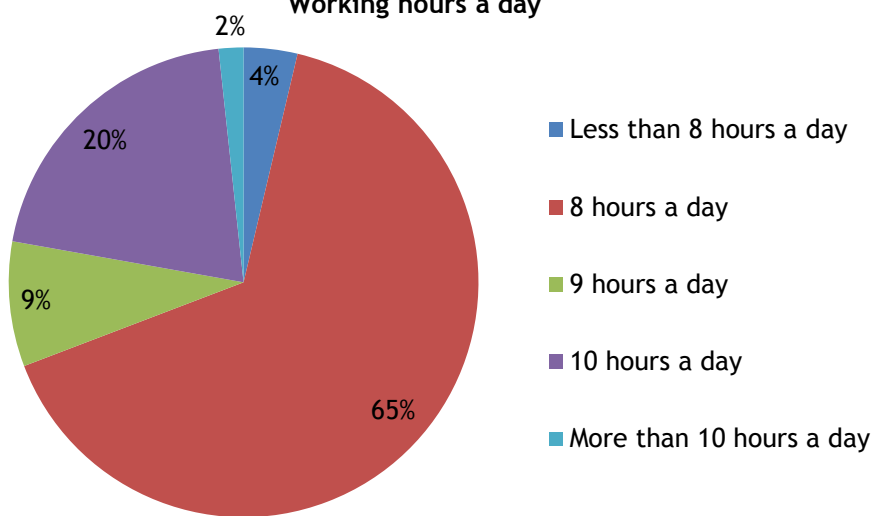
working on all seven days in the week were in the Retail, Telecommunication and Automobile sectors.

### Provider of skill training



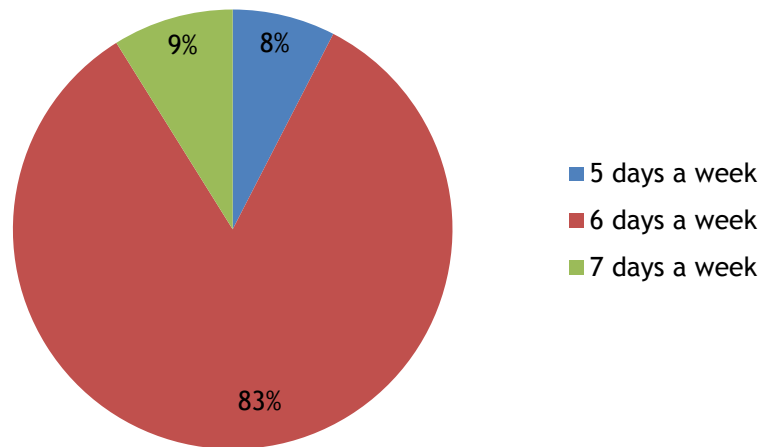
Source: Primary Survey

### Working hours a day



Source: Primary Survey

### Working days a week

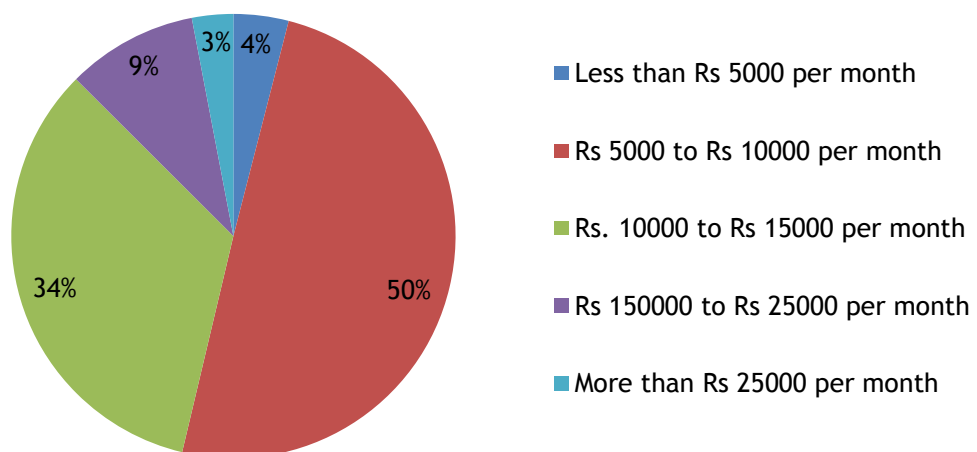


Source: Primary Survey

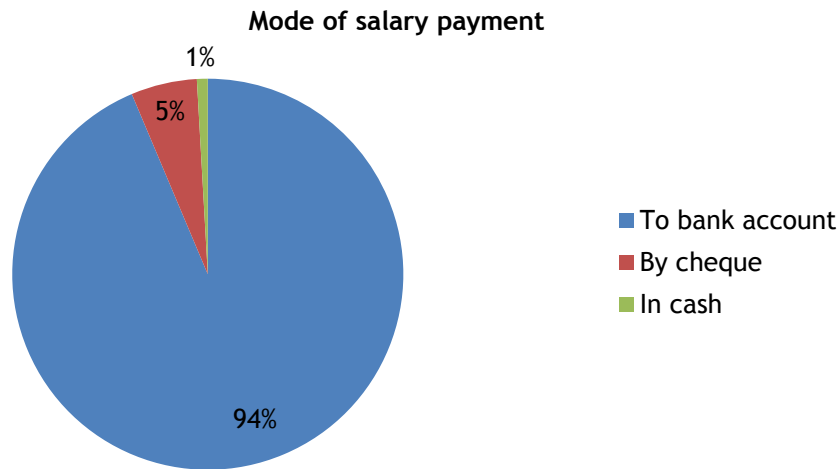
***Average salary of flexi staff is around Rs 10000 per month, paid in monthly cycles, mostly through banking channels and most receive employers' contribution to Provident Fund***

The fact that the Indian Staffing Industry currently caters to mostly the low end job market is also evident from the response to the query on the flexi staff monthly salary. 54% of the respondents were earning less than Rs 10000 a month, with another 34% in the Rs 10000 to Rs 15000 per month bracket. Irrespective of their salary, 99% of the flexi staff were receiving their salary through banking channels. This is a major positive feature of the organised flexi staffing industry as payment through banking channels brings transparency to the system and can be readily verified to ensure that workers are receiving their due salary and benefits, and requirements under various statutes are being adhered to.

### Salary per month

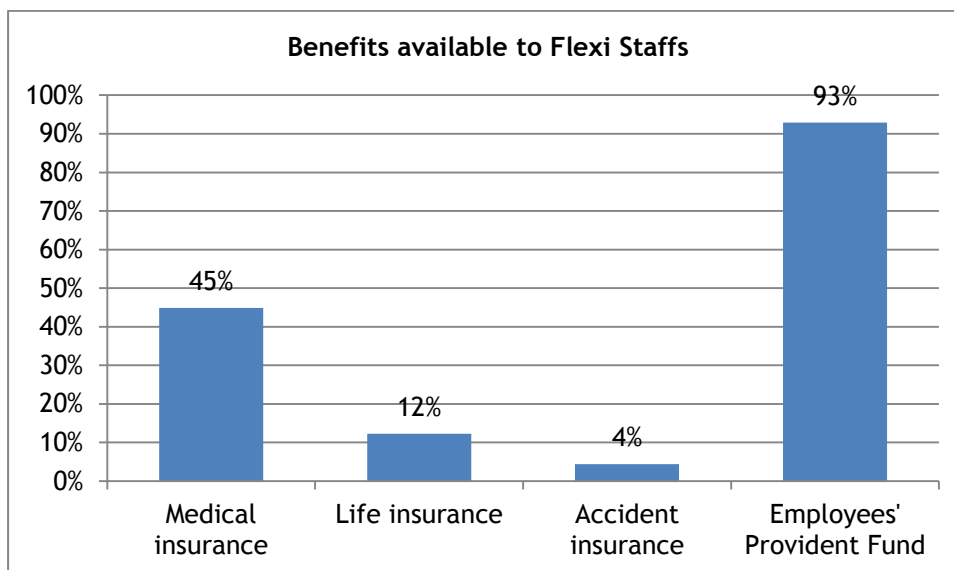


Source: Primary Survey



Source: Primary Survey

We get a mixed picture in terms of the social benefits available to organised flexi staff surveyed. Employees' Provident Fund was the main benefit available to them. Almost half of the respondents also had access to medical insurance. However, the providing of life insurance or accident insurance was low. Considering that Government is pressing for comparable benefits for regular and contract workers, the staffing industry will need to give more attention to this aspect.

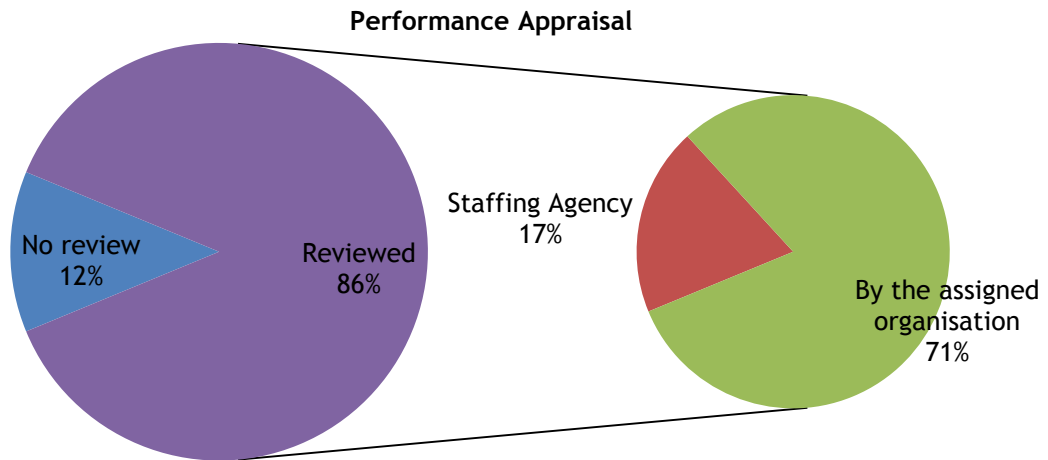


Source: Primary Survey

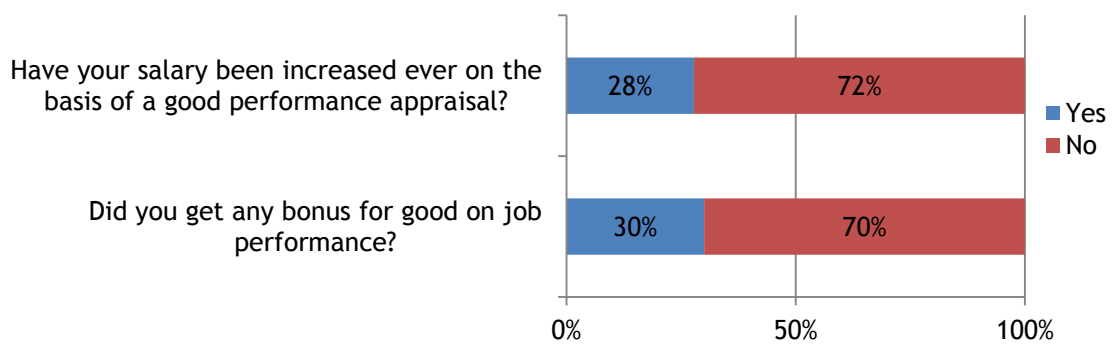
### ***Have regular performance appraisal***

The performance of the flexi staff are also regularly reviewed, in most cases by their primary employer. Around a quarter of the respondents also had an increase in their salary and/or received a bonus based on their favourable performance appraisal. The figures are quite close to the 24% of respondents expressing confidence that they will be absorbed by their current primary employer.





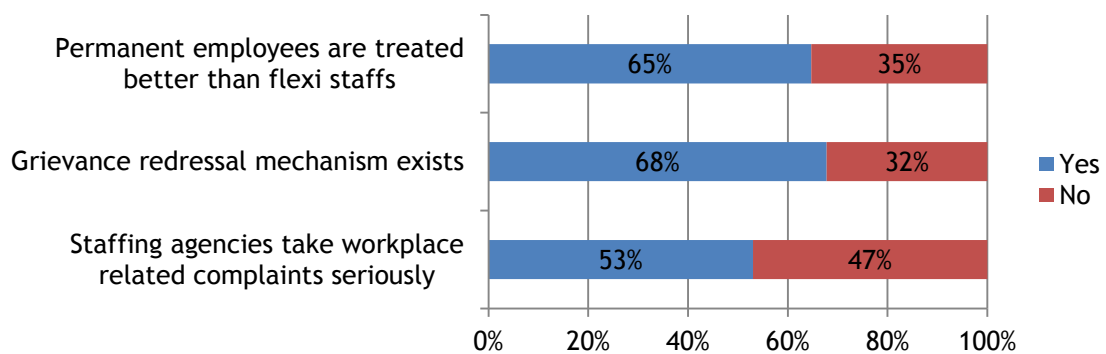
Source: Primary Survey



Source: Primary Survey

### ***Most of the staffing firms have put in place a grievance redressal system***

Even though almost two thirds of the respondents experienced some level of differential treatment between regular and flexi workers, the number not reporting any such discrimination faced is also sizable. Most staffing firms have put in place grievance redressal systems. The others also should do the needful at the earliest. There is also a need to raise the awareness level among their employees and distil more confidence in them that their workplace related complaints will be taken more seriously.



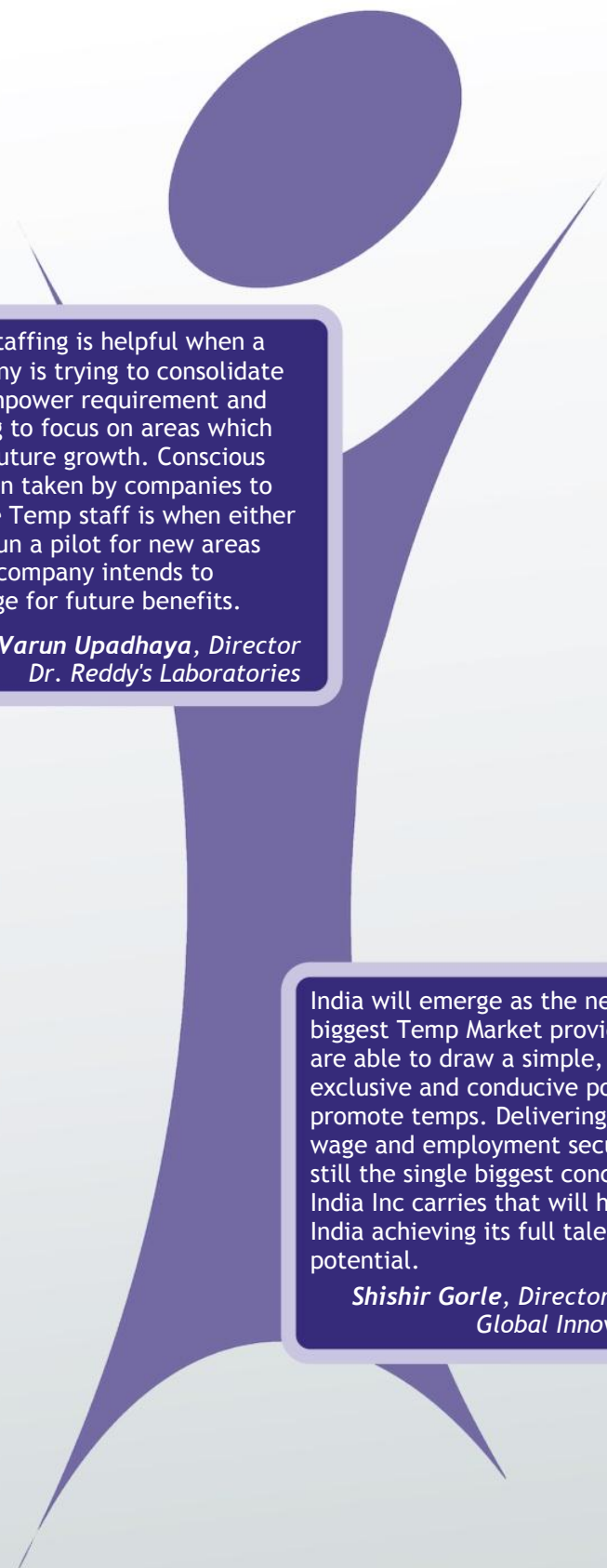
Source: Primary Survey





## *Chapter 2*

# **Reform of Labour Laws - A Call to Action**



Flexi staffing is helpful when a company is trying to consolidate its manpower requirement and looking to focus on areas which drive future growth. Conscious decision taken by companies to engage Temp staff is when either want run a pilot for new areas which company intends to leverage for future benefits.

*Varun Upadhaya, Director  
Dr. Reddy's Laboratories*

India will emerge as the next biggest Temp Market provided we are able to draw a simple, exclusive and conducive policy to promote temps. Delivering social, wage and employment security is still the single biggest concern India Inc carries that will help India achieving its full talent potential.

*Shishir Gorle, Director & CEO  
Global Innovsource*

The Indian flexi staffing industry came into being in the post liberalisation era in response to shifting business dynamics and has grown into a million plus strong workforce within a short span of time. Most of the reasons for its growth and many of its characteristics are quite in sync with international experiences (discussed later in detail in chapter 3). India now boasts of one of the largest flexi staffing workforce across the world, just behind China and USA. However, the labour laws of India have failed to keep pace with the fast expansion of this particular segment of the workforce, which is creating a number of problems for the employment service providers in this industry.

As discussed earlier, the flexi staffing industry is unique in its structure in comparison to other employment services. With its tripartite employment relationship between the worker, user company and flexi staffing intermediary, it creates some challenges for a legal system which is essentially designed for a bipartite direct employer-employee relationship. Moreover, the Indian labour laws are largely a relic of the colonial system even after more than half a century since independence and have seen few reforms in the post liberalisation era. Consequently, a large disconnect has emerged overall between business reality and legal provisions. This disconnect is even more acute in the case of the flexi staffing industry due to its unique characteristics.

As international experience shows, the flexi staffing industry has been on the rise worldwide, not only in developed countries but in developing countries as well. In fact, four of the BRICS nations - China, India, South Africa and Brazil come in the top 5 positions in flexi staffing market size in terms of number of workers. It is pertinent to note that among this group, India stands out as the only one where the flexi staffing industry does not have a regulatory recognition as yet.

Considering the size the flexi staffing market has already assumed in India, its international position and the problems the flexi staffing industry is facing, it is high time that we had a closer look at the labour law reforms that need to be initiated to cater to the needs of all the three stakeholders involved - the industry players, its user companies and the workers. The current chapter is devoted to focussing on this objective. Section 2.1 argues for the need for labour law reforms from the perspective of a balanced protection of the interests of the workers, the intermediary agencies and the user company. Our recommendations on the outline for reform are broadly based on the International Labour Organisation (ILO) suggestions. As such, section 2.2 elaborates on the two specifics: Private Employment Agencies Convention 1997 (No. 181) and Private Employment Agencies Recommendations 1997 (No. 188) of International Labour Organisation (ILO). Considering the extent of legal work and wide consultation that will be required to put the reform agenda in practice, we fully recognise that the process shall take some time. In the light of this, a discussion on how the existing labour laws can be recalibrated in the interim to bring them more in line with the current business environment and market practices is presented in section 2.3.

## 2.1 The Need for Reforms in Current Labour Laws

### A complex web of too many labour laws

Article 246 of the Constitution of India puts labour in the concurrent list<sup>4</sup> where both the Central and State Governments are competent to enact legislations<sup>5</sup>. As a result, a large number of labour laws have been enacted by both the Central and State governments, catering to different aspects of labour such as minimum wages, contract labour, industrial disputes, and provident fund, and with different levels of Central/State jurisdiction.

Moreover, India follows the tradition of common law, which includes innumerable case laws from different court rulings. Over time these case laws have accumulated and also changed with new disputes and new rulings, further contributing to the complexity of India's legal system.

In addition, there are the "Administrative Laws", consisting of government orders, regulations and rules. In case of both the State Statutes and Administrative Laws, the problems are compounded by lack of proper documentation and dissemination of the orders, regulations or rules, both at the level of the Central and State Governments.

This plethora of labour laws has created situations like an item being covered under multiple statutes, lack of uniformity in definitions of same/similar terms across different Acts. This has created a lot of confusion. There is an immediate need to reduce the clutter by unifying different labour laws into limited number of cognate groups<sup>6</sup>.

### Complexity is leading to labour market rigidity

The complex web of laws has led to labour market rigidity. The main rigidities in the labour laws include a very wide scope for initiating industrial disputes (which can be initiated on the basis of "interests" rather than "rights"), lengthy procedures for settlement of industrial disputes, inflexible provisions relating to change in conditions of service (instead of being part of the collective bargaining process), and provisions enabling government interventions in areas such as lay offs, retrenchment and closures<sup>7</sup>.

In a situation of labour market rigidities, growth in output does not necessarily translate into an increase in employment. Rather, production becomes more capital intensive. A direct consequence is limited base and low growth in formal employment<sup>8</sup>. As the NSSO 66<sup>th</sup> round data shows, only around 10% of India's workforce worked in the formal sector<sup>9</sup>. Similarly, only 16% of manufacturing sector workers was in organised manufacturing. The share of organised manufacturing workers was even lower (13.4%) if we consider only the private manufacturing sector.

---

<sup>4</sup> In the concurrent list, item 22 covers trade unions; industrial and labour disputes, item 23 covers social security and social insurance; employment and unemployment, and item 24 covers welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

<sup>5</sup> With a few exceptions like labour and safety in mines and oilfields, industrial disputes concerning Union employee, etc. as listed in items 55 and 59 in the Union List in Seventh Schedule.

<sup>6</sup> The Working Group on Labour Laws and other Regulations for the Twelfth Five Year Plan (2012) suggested the following groupings: industrial relations, wages, social security, working conditions and welfare and welfare cess laws. Earlier, the Varma Committee (2000) had also suggested a largely similar groupings: Employment Relations, Contract Labour, Wages and Piece Rate Wages, Working Conditions, Welfare, Safety and Health, Social Security, Miscellaneous Matters

<sup>7</sup> World Bank report "India: Policies to Reduce Poverty and Accelerate Sustainable Development" accessed on 15<sup>th</sup> May 2012 from <http://go.worldbank.org/V6QX10UQ20>

<sup>8</sup> World Bank, Op. Cit.

<sup>9</sup> Defined to include Government/Public Sector, Private/Public Ltd companies, and Cooperatives

So, in an attempt to protect existing jobs, the current labour laws in India have quite counter intuitively reduced the scope for creation of new jobs in the formal sector. In addition, labour legislation creates high wage islands in the organised sector, as a result of which India's comparative advantage in an abundant supply of labour cannot be efficiently tapped. What is more pertinent is the fact that the unorganised sector, where the bulk of India's workforce is employed, remains untouched by India's extensive labour laws and virtually left unprotected.

### **Labour laws have lost touch with current business reality**

Our current labour laws are more of a legacy of our colonial inheritance, than an original piece of work reflecting the aspirations and realities of an independent India. In spite of many periodic amendments and additions, the superstructure of the labour laws has remained rooted in British colonial times. Moreover, most of them were enacted in the pre-liberalisation era.

*A case in point is that of the 44 Central labour laws in force<sup>10,11</sup> - only three were enacted post 1990, barely one third of the 9 such Central laws which came into force in 1947 or earlier. Of the 35 post independence Central labour laws, 26 came in the 1948 to 1979 period, and 6 more in the 1980s.*

It is then not a surprise that a high number of our labour laws are currently quite out of touch with the changed socio-economic reality and the needs of the employers, employees and society at large. This needs to change. The labour laws should reflect the needs, aspirations and realities of the current times, and should not be prisoner of our past.

Historically, India has a mixed economy, with joint participation of both public and private companies in economic activity. But strict sectoral delineation and close Government controls limited private participation. Moreover, prior to the economic reform initiatives since the early 1990s, India had a largely closed economy with little linkage to the world economy. Both these scenarios have changed post liberalisation. Private participation is increasing and the Indian companies, large and small, Public and Private, now need to prove their competitiveness internationally to ensure their long term survival. However, the existing labour laws have remained unaffected by the changed business dynamics.

### **Labour laws have failed to adjust to recent labour market developments**

Some of the important changes that have taken place in the Indian labour market as a result of the changes in the economic and business scenario are:

- Corporate India now needs to respond quicker in the face of increased competitive pressure and fast paced business dynamics. An important requirement to ensure a quick response time is greater flexibility in workforce management. A company needs to be able to quickly adjust its workforce to transient, seasonal or structural demand volatility, both in terms of numbers and composition.
- Companies also need a mechanism to address such transitory needs as in the case of temporary unavailability of internal staff without any loss in productivity. In addition, there is also a need to minimise search costs.
- With the need to focus on core activities and to keep a tight leash on costs, a trend to outsource non-core activities has also emerged.
- The need for skilled labour is also increasing in today's knowledge economy. However, identification of skilled manpower, ensuring a match with company needs and retention of staff is never an easy job, and this is further compounded by the short supply of such skilled labour and high attrition rates experienced recently.

<sup>10</sup> A complete list is given in Appendix A2.1.

<sup>11</sup> Report of the Working Group on Labour Laws & other Regulations for the Twelfth Five Year Plan (2012-17).

These features of the emerging business scenario have played a pivotal role in the development of a new segment in the labour market - the flexi staffing industry. In India the industry currently employs as many as 1.3 million workers, and in term of employment size is already one of the largest across the world.

*However, the Indian labour laws, designed to address a bipartite environment of direct employment relationship between employer and employee, have failed to adapt to this recent labour market development. Forced application of such a system on a tripartite environment involving an intermediary has bared this labour market segment open to legal fuzziness where the applicability of different provisions as well as responsibilities of flexi staffing agencies and user companies is not well defined. This is forcing the Indian business community to operate in a suboptimal environment.*

### **The limitations of the laws are hurting growth of the organised flexi staffing industry**

The organised players, many of whom are Indian affiliates of multinational employment services agencies, are desirous of following international best practices. However, the limitations of the Indian labour laws in addressing the peculiarities of the flexi staffing industry are creating hindrances.

Firstly, a large share of the flexi job market is currently with small, unorganised players. As is well known, the current legal system suffers from a lot of shortcomings with respect to its coverage of the unorganised sectors. The non-recognition of the flexi job system has further compounded these problems.

Secondly, as the law does not explicitly outline the responsibilities of the user company in such a tripartite labour arrangement, it leaves open a deal of scope for bottom fishing by such end users. They may easily end up compromising the interests of workers in the quest for best prices by user companies.

The sufferers in such a complex and archaic legal environment are the organised players who are committed to follow international best practices and ethical standards. The unequal competition with unorganised players not always following the law, along with unethical practices at times by user companies is limiting the growth potential of the responsible organised players. Reform is imperative to push the 'undeclared work' taking place currently outside the purview of the legal system towards a formal setup.

### **Reform is also necessary to protect the interests of the workers**

In the absence of clear regulations and for reasons discussed above, a large part of the flexi staffing activity is taking place in the unorganised sector. The organised players under the aegis of the Indian Staffing Federation are committed to protect the interests of the workers and have already adopted a set of best practice guideline for members. However, the same cannot be said about the business practices of the unorganised players. As has been the experience with the unorganised sector in India in general, effective protection available to the workers is very limited. So, even the interest of the workers calls for a legal system which encourages the growth of the organised way of doing business adhering to ethical norms and international best practices.



## 2.2 An Outline for Labour Law Reforms

The Private Employment Agency Convention of International Labour Organisation (Convention No. 181 of 1997)

One of the main attractions of the flexi staffing industry is its enabling role in responding better and faster to the seasonal, cyclical or even structural changes in the economy. In addition, it also reduces both structural and frictional unemployment, increases labour mobility and work participation, helps in matching and developing skills in demand and also delivers better work condition compared with other similar forms of external work like fixed term (direct) contracts. Consequently, as international experience shows, the flexi staffing industry is here to stay and cannot be wished away.

This very much necessitates a set of reforms to address the shortcomings of the present legal system so that the fledgling flexi staffing industry in India can develop further. Two main shortcomings of the Indian Labour Laws are the inflexibility imposed on the labour market and failure to adequately address the unique features of the flexi staffing industry. In our opinion, the provisions of the International Labour Organisation (ILO) Private Employment Agency Convention (Convention No. 181) in conjunction with Recommendation No. 188 can act as a guide for the reform initiative required in the Indian labour laws to specifically address the above mentioned lacunae.

### ***Objective of Convention No. 181 of 1997***

The overlying objective of the Convention is to “balance a firm’s need for flexibility to expand or reduce their workforce, with workers’ needs for employment stability, a safe work environment, decent conditions of work, and a safety net when they are unable to work.”<sup>12</sup> It recognises the productive role flexi staffing agencies can play in delivering certain employment services. At the same time, it also espouses the need to protect workers against abuses. In essence, the Convention is a guideline which seeks to assist member countries to formulate clear policies and appropriate legislations adapting to the evolving business scenario, and at the same time maintain a balance between the divergent interests of the employers, the flexi staffing agencies and employees.

### ***Salient Features of Convention No. 181 of 1997***

- ***Private Employment Agencies Defined:*** The convention is applicable to all private employment agencies (PrEAs). The point to note is that the definition of PrEAs in Article 1 does not limit the term to refer only to flexi staffing services but gives a broader coverage:
  - services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there from;
  - services consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks;
  - other services relating to job seeking, such as the provision of information, that do not set out to match specific offers of and applications for employment.
- ***Flexibility on implementation:*** One of the overarching features of the Convention is the flexibility it provides to member states to apply the various provisions according to their national situations and in consultation with employee and employer representatives. Article 2 recognises a member country’s rights to
  - prohibit flexi staffing agencies from employing certain categories of workers or operating in certain sectors of the economy

<sup>12</sup> Hansen, Ellen, 2006, *Implementation of Convention 181 through regulation - ILO experience in Merchant of Labour* by Christiane Kuptsch (ed.), pp 169 - 174.

- exclude workers in certain branches of economic activity from the scope of the Convention or from certain provisions, subject to ensuring adequate protection for such workers outside the purview of the Convention
- *Legal status and licensing:* Article 3 allows the legal status of flexi staffing agencies in a country to be determined according to the national law and practices. It also calls for a system of licensing or certification or similar legal provision to regulate the operations of flexi staffing agencies. It requires existing private agencies to be registered with the government authorities, although it does not provide for a time frame. Licensing requires natural or legal person/ entities to acquire authorizations before commencing private agency business.
- *Right to freedom of association and bargain collectively:* Article 4 requires all ratifying member states to ensure that workers employed by such agencies have the right to freedom of association and collective bargaining.
- *Protection from discrimination:* Article 5 requires flexi staffing agencies not to discriminate on the basis of race, colour, sex, religion, political opinion, age, disability, subject to the caveat that a special provision in the law may be introduced to allow for 'special services or targeted programmes designed to assist the most disadvantaged workers in their job seeking activities'.
- *No fees can be charged from workers:* Article 7 stipulates that flexi staffing agencies should not be allowed to charge 'directly or indirectly, in whole or in part, any fees or cost to workers', and any exceptions to be made should be in consultation with representatives of workers and employers.
- *Grievance redressal mechanism:* Article 10 requires the member states to set up an effective grievance redressal mechanism in consultation with representatives of various stakeholders.
- *Adequate protection and delineation of responsibility:* Article 11 and 12 are of special interest to flexi staffing agencies. Article 11 seeks to ensure adequate protection for flexi workers as per the national law and practice in relation to:
  - Freedom of association;
  - Collective bargaining;
  - Minimum wages;
  - Working time and other working conditions;
  - Statutory social security benefits;
  - Access to training;
  - Occupational safety and health;
  - Compensation in case of occupational accidents or diseases;
  - Compensation in case of insolvency and protection of workers claims;
  - Maternity protection and benefits, and parental protection and benefits.

Article 12 requires member states to specify the respective responsibilities of flexi staffing agencies and user companies as per national law and practices in relation to above items.

- *Other provisions:*
  - Ensure privacy of data collected from workers.
  - Prevent abuse and ensure protection of the interests of migrant workers.
  - Flexi staffing agencies should not work with child labour.
  - Promote cooperation between public and private employment agencies.
  - Develop a robust mechanism to periodically collect data on structure and activities of flexi staffing agencies.

### ***Recommendations of Convention No. 188 of 1997***

ILO also came out with a number of recommendations to supplement the provisions of the Convention discussed above. Some of the important recommendations are:

- ***For Competent Authority:***
  - Technical standards, guidelines, codes of ethics, and self-regulatory mechanisms can be used to supplement the legislative provisions.
  - Legal provision to combat unfair/misleading advertisements
  - Adoption of measures to eliminate unethical practices.
  
- ***For flexi staffing agencies:***
  - To the extent possible usage of a familiar language to explain the nature of job and terms and condition of employment, especially to migrant workers.
  - Should not supply labour to replace striking labours at user companies.
  - Should not recruit/place/employ workers in hazardous jobs or jobs where workers may be subjected to abuse or discrimination
  - Should cooperate with and consult public employment agencies in matters of information pooling, development of common terminology, exchange of vacancy information, development of joint projects, staff training, and professional practice standards
  - Workers should have a written contract specifying the terms and conditions of employment
  - Such agencies, subject to the provisions under national laws concerning termination of contract, should not
    - Prevent the user company from hiring a flexi worker assigned to it by the agency
    - Restrict occupational mobility of an employee
    - Impose penalties on an employee for shifting to another enterprise

### ***Relevance for India***

First and foremost, Convention No. 181 and Recommendation No. 188 can be the model for reform of the Indian Labour Laws for explicit recognition of the flexi staffing agencies and formulation of a legal system which shall ensure balanced protection of the interests of all the three players (the flexi workers, flexi staffing agencies and the user company) in a flexi staffing arrangement.

Based on suggestions in the Convention, an explicit legal definition of the industry should be introduced by enactment of new legislation or appropriate amendments to the existing laws governing employment relations. The legal system has to provide for adequate protection for flexi workers. To prevent worker abuse, the enabling provisions should delineate the regulatory obligations of the flexi staffing agencies along with their responsibilities towards their employees. This should effectively impose limitations on the bargain hunting tendency of user companies. Specific obligations need to be imposed on the user company to also limit the scope of worker abuse. Such a system will not only ensure protection of workers' interest, but also allow easy monitoring of regulatory compliance.

The Convention provides sufficient flexibility to the member states to design and implement suitable policies for regulating the industry in accordance with the existing provisions of national laws and practices and through consultation with all concerned parties. Thus ratification of the Convention does not require designing and adoption of a wholly new legal system. Most of the workers' interests mentioned in Article 11 like right to freedom of association and collective bargaining, minimum wages, and social security benefits are already being dealt with, albeit in a system designed for a bipartite environment. Thus, the job before India is more in the nature of fine tuning the existing Acts to explicitly address the unique

situations arising out of the tripartite nature of the flexi staffing industry. The main task will be to draw a clear demarcation of the respective responsibilities of the flexi staffing agencies and the user companies.

Certain features like ensuring access to training, protection of claims against insolvency, and written contract can be easily ensured through enactment of proper legislation and/or development of industry standard, code of conduct, and ethical standards in joint consultation with all parties involved. The Indian Staffing Federation, the collective body of flexi staffing agencies in India, has already taken an initiative by voluntarily adopting a set of best practices and a code of conduct for its members in sync with international standards and ILO recommendations.

## 2.3 Interim reform of the existing labour laws, rules and practices

The previous section provides an outline of an ideal regulatory mechanism for flexi staffing industry. However, as we stand, the industry is yet to be recognised in India and development of such a system in consultation with representatives of all stakeholders is going to take some time. This section, therefore, looks to do two things: firstly, identify many of the lacunae in the current legal system and how they are affecting the operations of the flexi staffing industry (in some cases, this is common with many other industries), and secondly, to suggest how the existing provisions can be recalibrated for a balanced optimal outcome keeping in mind the best interests of all.

The debate over labour reform in India has been going on for a long time, and various opinions have been put forward by various parties on different statutory provisions. In addition to putting forward our views on these matters, the chapter will also cover select aspects of critical reviews by different commentators - Government, independent as well as industry bodies. In particular, the following documents have been widely consulted in addition to the statutes in preparation of this chapter:

1. Report of the Working Group on Labour Laws & other Regulations for the Twelfth Five Year Plan (2012-17)<sup>13</sup>
2. The Second National Commission on Labour Report<sup>14</sup>
3. Why we need labour reform (by Bibek Debroy)<sup>15</sup>
4. Temporary Staffing In India - Issues and Prospects<sup>16</sup>
5. India Labour Report (Various issues)<sup>17</sup>

The discussion here does not limit itself to the laws which affect the flexi staffing industry in a unique way, but also includes legal provisions which affect the flexi staffing activity in a common fashion as many other industries. The idea is to identify all aspects of current legal provisions affecting the industry, and generate an informed dialogue on how the same can be rectified in an optimal and balanced fashion.

### ***Focus on 'Regulation' rather than 'Abolition' of contract labour***

Contract Labour (Regulation and Abolition) Act allows the Government discretionary power to prohibit contract labour in selected "process, operation or other work" under certain circumstances. However, various judgments by different courts have affected this flexibility accorded to the Government<sup>18,19,20</sup>. This has greatly reduced flexibility in the labour market.

Competitive pressure have increased manifold in the Indian business landscape post economic liberalisation. To be competitive, most businesses now want to focus on their core businesses rather than doing everything in house. Even the definition of "core activities" varies across companies based on resources and competencies available at their disposal. The current restrictive contract labour regulation is proving to be a big hindrance in providing Indian companies this much required flexibility. Moreover, with economic cycles becoming more

<sup>13</sup> [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wg\\_labour\\_laws.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wg_labour_laws.pdf)

<sup>14</sup> [http://labour.nic.in/lcomm2/nlc\\_report.html](http://labour.nic.in/lcomm2/nlc_report.html)

<sup>15</sup> <http://www.india-seminar.com/2001/497/497%20bibek%20debroy.htm>

<sup>16</sup> <http://indianstaffingfederation.org/images/ISF%20Issue%20Paper.pdf>

<sup>17</sup> [http://www.teamlease.com/index.php?module=research&event=india\\_Labour\\_Report](http://www.teamlease.com/index.php?module=research&event=india_Labour_Report)

<sup>18</sup> Standard Vacuum Refining Company of India Limited vs. Its Workmen (1960 III SCR 466) and Vegoils Private Limited vs. The Workmen (1972 1 SCR 673).

<sup>19</sup> The Supreme Court's judgments in Denanath vs. National Fertilizers Limited (1992 1 SCC 695) and Gujarat Electricity Board vs. Hind Mazdoor Sabha (1995 5 SCC 27). The decision was effectively left to the Industrial Tribunal.

<sup>20</sup> Air India vs. United Labour Union (1996 9 SCC 70).

volatile, demand for labour in the core functions itself is changing cyclically. Added to it are the structural changes that are taking place in the economy.

This reduced flexibility can adversely affect the competitiveness of Indian firms. The trend worldwide is to outsource and hire contract labour with a view to create a hassle free, cost effective and flexible atmosphere for the industry. And as India becomes increasingly an integrated part of the world economy, the same flexibility will also be required by Indian firms to remain competitive in the international scenario.

It is to be noted that the said Act in its introduction itself has observed:

*The general consensus of opinion was that the system of contract labour should be abolished wherever possible and practicable, and that in cases where the system of contract labour could not be abolished altogether, the working conditions of contract labour could be regulated so as to ensure payment of wages and provision of essential amenities.*

Keeping to the spirit of this observation, the Contract Labour Act should be amended to take focus away from 'Abolition' and give more emphasis on 'Regulation' to legally protect the interests of contract labour in areas like payment of minimum wages and statutory cover of social security benefits provided under ESI and EPF Acts.

Some issues:

- It needs to be noted that the current provisions of the Contract Labour Act do not recognize the role and responsibilities of service providers in matters of employment under contract. The Act should be suitably amended to explicitly recognise the role of service providers and include statutory provision to define the responsibility of such agencies to the workmen/employees employed through them.
- It has been recently proposed that contract workers should get same wages, facilities and benefits as regular employees. However, it needs to be noted that regular employees generally have more years of experiences, higher skill levels and are generally better qualified. Moreover, the selection process also differs. Under such circumstances, the wages of a regular and a contract employee cannot be equated even if both are employed in the same line of activity. Rather than 'wage equality', 'parity in terms of employment' of both contract and regular workers in the same line of work and in the same grade can be considered.

***Laws governing industrial relations should better reflect the current business environment and practices***

*(i) Requirement of 'Notice of change' should be removed, or provision for exemption incorporated*

The requirement of a prior notice of minimum 21 days to a workman under the Section 9(A), Industrial Disputes Act whenever an employer proposes to affect any change in the condition of services needs a relook. There are 11 items in total mentioned in the fourth schedule of the Act, of which items 10 and 11 need immediate attention:

- Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
- Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control

The inclusion of these items in the Fourth Schedule reduces an employer's ability to readily respond to market developments, induce a lag in operational response, often leading to business loss. Keeping the changing business scenario post economic liberalisation in mind, as a consequence to which the competition and need to respond to market developments with alacrity has increased, there is a need to reconsider the utility vis-a-vis the hindrances created by the continued inclusion of the above two items in Fourth Schedule. They should be deleted, or at the least exemption may be granted to specific industries and classes of employee/workmen by the appropriate Government under provision of section 9(B), to ensure continued competitiveness of an industrial unit.

*(ii) Last come, first go procedure of retrenchment should go*

Section 25G (Procedure for retrenchment) requires that from a particular category of workmen the employer shall ordinarily retrench the workman who was the last person to be employed in that category. This section is oblivious to the difference in merit or calibre among workmen, and creates undue hindrance in retaining a more capable employee just for being junior in terms of period of service completed.

An amendment is required to this provision so as to ensure that employees with calibre, competencies, knowledge and skills can be retained by employer irrespective of his/her commencement of tenure with the employer. The provision should allow employer to exercise the option to select employees to be retrenched based on performance, need and disciplinary ground.

*(iii) Provision for prior notice in case of strike should cover non-public utility services*

Section 22 includes a provision of requirement of giving prior notice before going on strike. However, this section covers only public utility services. Section 23, which applies to the other industrial establishments, only prohibits strikes under certain circumstances and fails to make serving a notice in advance a prior requirement on the part of the workmen. This section can be amended to require prior notice in the case of strikes for all industrial establishments. There can even be a requirement that a certain threshold percentage of workers must be in favour of the strike.

*(iv) Special provisions relating to Layoff, Retrenchment and Closure should be applicable to industrial establishments with 300 plus workmen*

The provisions of this Chapter V-B applies to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. When this chapter was added to the Industrial Disputes Act in 1976, the initial minimum required workmen number was set at 300. It was reduced to 100 through an amendment in 1982. Considering the developments over the last 30 years when the economy and business sizes have grown many times, the Government should consider raising the cut off. At least, it can be reset to the originally prescribed limit of 300.

*(v) Consider provision for additional compensation in case of layoff, retrenchment and closure in lieu of prior Government permission*

Under sections 25M, 25N and 25O of this chapter, the Industrial Disputes Act requires all industrial establishments coming under the purview of Chapter V-B to seek prior permission of the appropriate Government before layoffs, retrenchment and closure. As a consequence, the Government becomes a third party to the 'dispute' even if the employee is satisfied with the severance package. These sections need to be considered in conjunction with Section 2-A, which makes any dispute between an employer and an individual workman an industrial dispute

‘notwithstanding that neither other workmen nor any union of workmen is a party to the dispute.’

In today’s competitive business situation, the need to obtain prior permission can impose unwarranted rigidity in the business decision making process. Additional compensation of 15 days of basic salary for every completed year of continuous service or part thereof in excess of six months subject to a maximum limit up to Rs.500,000 can be considered to replace the existing provision of obtaining prior permission for a smooth settlement of industrial disputes.

*(vi) A formal notification for setting up grievance settlement authority*

Section 9-C of the Industrial Disputes Act provides for setting up of grievance settlement authorities in industrial establishments employing 50 or more workmen. This section was inserted in the main Act more than two decades ago by the Industrial Disputes (Amendments) Act, 1982, but no formal notification has been issued so far. A formal notification to enforce this section would expedite settlement of grievances at the shop floor level, which may otherwise snowball into major industrial conflicts resulting in interruption in production programmes.

***Clear delineation of the responsibilities of the user company and contractors/flexi staffing agencies***

*(i) The user company should be responsible for overtime records and termination of a contract labour*

Since it is the user company which is getting work done by the employee, the user company should be held responsible for authorising and maintaining a record of overtime. Similarly, all terminations of contract labourers are as per instructions of the client and not of the flexi staffing agency. Hence, all responsibility and liability arising due to termination should be borne by the user company.

*(ii) Liability in the event of accidental injury should lie with the user company*

The establishment and workplace where the contract workman met with an accident belongs to the user company. Therefore, the user company should solely be held responsible for ensuring safe and secured work environment, and bear all the liability of compensation.

*(iii) User company should be liable to pay gratuity to contract employee*

As per the Payment of Gratuity Act, 1972, contractors are liable to pay gratuity to contract employees. However, firstly, the length of continuous service of an employee in the flexi staffing agency’s rolls primarily depends on the user company’s choice of retaining the old employee on its rolls. Secondly, the actual service is rendered to the user company, and not to the flexi staffing company. Moreover, such agencies work on thin margins and hence it becomes difficult for them to pay Gratuity on eligibility (or in Death or Permanent Disablement cases).

It should be noted that employee benefits like PF and ESI Contribution of Employer is paid by the user company. The provisions of the Act should thus be amended on similar lines to hold the user company liable for payment of Gratuity to contract employee. Filing of Nomination Form (Form-F) should also be the responsibility of the user company for contract employees. The staffing agency’s liability should be restricted to payment of wages / salary to contract employees.



***Reform archaic processes, reduce paper work, adopt more IT based solutions***

***(i) Provision for national/state wise registration and license for engaging contract labour***

Contract Labour Central/state Rules currently requires the Principal Employer and Staffing Agencies to apply for Registration and License respectively at the location where Contract Labour is to be engaged. The process is quite cumbersome and time consuming, more so in the case of flexi staffing agencies which typically deploy staff on a short term contract. This requirement of obtaining locationwise registration or licenses could be replaced with a system of nation/statewise registration, or both can be run in conjunction. It is suggested that a new Rule 21(1a) be introduced which would prescribe the conditions for granting state / nationwide license as follows:

“Every such as under Rule 21(1) shall be granted only if the following conditions are fulfilled by a contractor:

- Should be a Company incorporated under the Companies Act, 1956
- Should have offices in all the metropolitan cities
- Should have PF/ESI registrations.
- Should employ one direct employee for every 200 contract labour
- Should possess IT infrastructure to provide help desks on salary, benefits and rights of Contract Labour.”

The process of registration and licensing, including the security deposit rate and license fees payable, should also be uniform across the nation.

***(ii) Compensatory leave in lieu of extra wages for overtime***

The Factories Act entitles a worker to twice his ordinary rate of wages for any overtime work. Rather than restricting the method of compensation only to extra wages, an amendment in Section 59 of the Act may be made to allow the employer an alternate option to grant compensatory off to workmen for overtime rendered, provided such compensatory off is granted within six months of extra working.

The provision of ‘wages at the rate of twice his ordinary rate of wages’ can be made applicable in case an employer is unable to grant such compensatory off in part or full, and to the extent the overtime working could not be offset by the compensatory off granted to the workman. Accordingly the provision of extra wages for overtime under Section 59(1) may be amended suitably to provide for overtime wages only to such number of hours worked beyond 48 hours in a week and to the extent cannot be set off against compensatory off within six months of such working.

***(iii) Encourage wage payment through banking channels; reduce paperwork, remove archaic rules on wage payment***

Rule 67 requires all payments of wages to be made on a working day at the work premises and during the working time and on a date notified in advance. Rule 68 requires the wage payment to be made directly to the contract labour or to another person authorized by him in this behalf. Rule 71 requires display of a notice showing the wage period and the place and time of disbursement of wages at the place of work and a copy sent by the staffing agency to the Principal Employer under acknowledgement. Rule 72 requires the principal employer to ensure the presence of his authorized representative at the place and time of disbursement of wages by the contractor/ staffing agency to workmen and the contractor/ staffing agency to ensure that disbursement of wages takes place only in the presence of such authorized representative from Principal Employer. This whole set of rules make the process of wage payment very cumbersome and introduces a great deal of redundant paperwork.

Rules should reflect the current realities of the wage payment methods adopted by the Industry. Wages should be paid by through banking channels as much as possible, and payment in cash should be made only as a last resort with due acknowledgement from the contract labour by way of a signed receipt. It is suggested that these rules should be replaced with the following rule:

“All the payment of wages shall be by way of cheque or by way of transfer of funds to the bank account of the contract labour.”

*(iv) Adopt IT solutions, do away with registers of workmen, muster roll and wages, allow online filing of returns*

Most Indian companies today have adopted the use of IT in their day to day business. An inclusive format can easily be developed to contain all required information included in the registers of workmen, muster roll and wages in a single database. This can reduce a great deal of unnecessary paperwork, duplication and overlapping. Maintenance of such updated databases on a regular basis will also become easier.

The Information Technology Act 2010 recognises records maintained in electronic form to be admissible as evidence in any court of law. Therefore, all records maintained in electronic form should also be admissible and acceptable to all authorities set up under various labour laws. Suitable instruction to this effect can effectively reduce the compliance burden.

In addition, the filing of returns other than those that are annual in nature should be allowed online or in soft copies as duly authorised by the relevant signatory. Gradually all the returns should be allowed to be filed online and/or in soft copies.

*(v) Do away with the requirement of physical display of Contract Labour Act and Rules at contractors' office premises. Directly incorporate relevant details in written contract with the contract labour.*

Rule 78 requires every contractor to display an abstract of the Act and Rules. Rule 81 requires the contractor/ staffing agency (along with Principal Employer) to display notices showing rates of wages, hours of work, wage periods, dates of payment of wages, names and addresses of inspectors having jurisdiction and date of payment of unpaid wages. Considering that the contract employees are on the worksite of the Principal Employer, the inherent objectives behind the rules can only be fulfilled if such information is displayed at their normal place of work.

Such rules which serve little purpose should be done away with. We should encourage a written contract at the time of hiring a contract staff, and most of the information covered under Rule 78 can be incorporated in the contract itself. Display of notice may be required only for items such as date of payment of unpaid wages, and that too at principal employers' office only.

*(vi) Reform the operations management at Employees' State Insurance*

All the branches of ESIC should be seamlessly connected with the headquarters using better IT solutions. For employers this shall help in streamlining the process of compliance code generation. Better adoption of IT systems shall also enable hassle free payment of ESIC dues and submission of half yearly returns at any ESIC branch at employers' convenience.

➤ Centralized compliance with sub-code number allotment

As per ESIC rules, companies are required to obtain a sub-code number from the local branch office of ESIC in every location where there are employees eligible for ESI benefits, in addition to the registration at the principal place of business. For obtaining this sub-code, a company

currently needs to have a local address. However, many employers, typically in the services sector, may not have offices in a location but will have a number of employees working in that particular location. Currently, these employees located at such locations are being denied ESIC benefits.

It is suggested that ESIC:

- Accepts the corporate address of an employer as the address for communication for all the sub-codes across the country.
- Allot sub-code numbers at all locations wherever employees are present
- Such sub-code could be issued with the prefix/suffix of the locations from the main branch office itself.
- Internally the communication could be forwarded to the respective branch offices of ESIC by the main branch as and when they are allotted. With development of a centralised e-database, even this can be done away with.

➤ Access to ESIC benefits from day one

The current process of issuing insurance number and identity cards is ideally suited for a single location employer, and has become out of tune with the business realities of today. The number of cases where an employee has to join work on short notice, or he has to travel immediately on joining duty are fast rising in today's business scenario. However, the current system cannot address such eventualities which are increasingly becoming common, leading to delays in submission of declaration forms and consequent denial of services. The situation can get even more complicated for employees working at locations where the employer does not have an office.

It is suggested that employees should be allowed to avail medical benefits at any of the ESI Facilities for the first six months from the date of joining. Due processes and safeguards should be developed in consultation with the employers.

➤ Use IT solutions for faster issuance of identity cards

Currently a temporary identity certificate (TIC) is issued to an employee on joining. The employee has to go to the ESIC office with the TIC along with a photograph and subsequently a smart card is issued. Typically, the whole process requires three months from the date of joining. Moreover, the cards are issued by ESIC offices to the employer, who in turn has to distribute them to their employees. This process does not work well in cases where employees work at distant locations away from employers' offices.

It is suggested that identity cards should be generated once the photo of the employee is uploaded on the site along with identity and address proof. The same can then be despatched direct to the employee at the registered address. This can lead to a reduction in time taken in the whole process and also reduce the unnecessary expenses involved in the current process.

*(vii) Reform the operation management at Employees' Provident Fund*

On a similar note, there is also an urgent need to streamline the operational processes at the Employees' Provident Fund Organisation too. Special attention is called for in areas such as registration and code number allotment, procedure and turnaround time for transaction processing, reduction of administrative charges, and streamlining of the exemption process. There should also be a debate on the dual role of EPFO as regulator as well as administrator of the EPF scheme. Engaging third party outsourcing service providers should also be considered to better manage the work load.

➤ Registration and code number allotment

The process to obtain registration for an employer is very tedious and takes a minimum of a month to complete. The application process also demands information details and documents that are not directly relevant from the perspective of registration and allotment of a code number.

There is a need to simplify the application form with the following details:

- Certificate of incorporation, PAN/TAN allotment letter issued by Income Tax Authorities, to substantiate ownership
- Of Responsible Person(s) for the relationship with EPFO with the details such as his/her address, phone number, and email id
- Number of employees for whom coverage is sought.

➤ Procedure for Transaction Processing

There are multiple forms for different types of transactions, and each transaction has its own unique set of processes. This creates many unnecessary problems. There is a need to simplify the forms and processes, and aim to devise a common form and process for all types of transactions.

Moreover, differences in processes have been observed across different EPFO offices. For want of proper records, EPFO many times relies on employers for processing transactions of the employee members. This has led to employers and employee members not being clear about the processes and requirements. The lack of clarity often leads to incomplete applications being filed which leads to delays in processing and multiple visits to the EPFO. Such administrative issues need to be addressed immediately.

➤ Turnaround Time for Transaction Processing

Currently, there is no fixed timeline for completion of any transaction. Internally, EPFO offices insist on a 30 day timeline for settlements. It has also been noticed that to meet internal deadlines, EPFO staff refuse to accept application forms beyond a certain number. This sometimes leads to rejections on frivolous grounds.

To reduce the turnaround time, there is a need to adopt stringent Service Level Agreements (SLAs) for every transaction. Interest should be payable to the employee member if the EPFO delays payments beyond SLAs.

➤ High Administration Charges

The EPFO charges Employers 1.11% of the Basic Pay of all employees for providing the PF Services. With the process of exemption (process allowing the employer to run the PF scheme internally with no intervention from EPFO) being completely stopped, employers are forced to pay these high fees. As a result of this, there is resistance from employers to participate in the PF scheme.

It is suggested that the process of granting exemption, which is a right of an employer under the PF Act and Scheme, should be immediately reinitiated.

➤ Exemption Process

The process of granting exemption is very tedious, and generally takes more than a year. The power granted to Regional Provident Fund Commissioners (RPFCS) under Para 79 of the EPF

Scheme 1952 to issue relaxation orders now stand withdrawn. The delays cause avoidable friction between the Companies and the EPFO. New companies on crossing the threshold of 20 employees are compulsorily required to comply by remitting their contributions to the EPFO. There is no provision to grant exemption to new companies that have large growth plans (e.g., multinationals) and would like to provide retirement benefits including Provident Fund by setting up a private trust from day one. This exercise involves the EPFO allocating resources for an employer who, in any case, wants an exemption.

It is suggested that

- Conditions to be fulfilled for grant of exemption (e.g. based on size of employees, profitability, management records, etc.) are unambiguously specified and documentation process is simplified.
- Provision for an automatic approval or time-bound approval process is introduced subject to fulfilment of the conditions. E.g. any employer employing more than 500 employees can be considered for automatic exemption.
- Reinstate the power of relaxation to RPFCS with a caveat that it should only do so if it is satisfied with the compliance status of the applicant. There is a need to delegate the power to notify exemption to the Central Provident Fund Commissioners or even RPFCS.
- Exemption may be granted to new companies too under clearly laid guidelines in a time bound manner allowing them to remit their contribution to their PF Trust from day one. To safeguard the interest of the employees, EPFO may insist on a Bank Guarantee from the new companies.

➤ Regulator vs. Administrator

EPFO enjoys the powers of a Regulator while being the administrator of the PF Scheme. As a result, EPFO's role as a service provider is compromised and its regulatory role is emphasized. There is often a conflict of interest in decisions regarding granting of exemptions. The focus of the EPFO staff is not on service but on compliance.

It is suggested that EPFO should only be an administrator providing PF services to the Employers and Employee members. All regulatory powers should be shifted to the recently constituted Pension Fund Regulatory and Development Authority (PFRDA).

➤ Third party outsourcing

It is suggested that outsourcing service providers in the area of PF administration based on certain minimum criteria such as infrastructure, and professional capability be recognised. These recognized outsourcing agencies can be made responsible for the compliance of their clients and allow them to play the role of facilitators between EPFO and Employers.

***Enable social inclusion***

*(i) Enable increased work participation of women*

According to Section 66 of the Factories Act, no woman worker can be required to work between 7.00 PM and 6.00 A.M. That is to say they cannot work in the night shift. Restrictions in this regard are antiquated with women playing a more assertive role in society today. This also poses problems for the industry in certain seasons when skilled manpower is not readily available.

The relevant section, therefore, should be suitably amended to reflect the current social developments, and allow women workers in night shifts. Suitable provisions requiring the management to make adequate transport and security arrangements for the women workers

should also be introduced. If required, the relaxation may be made for select industries like information technology, consultancy, research and development. The Punjab Government has already allowed employment of women workers during night shifts in the units dealing with information technology. Even in manufacturing, some states have started relaxing the rules. Engine manufacturing firm Cummins Group secured relaxation from the Maharashtra State Government in 2011 to employ women in evening shifts at Cummins India Ltd plant at Phaltan near Pune. At Nokia's factory in Sriperumbudur, 1500 women have been working in the night shift for sometime.

*(ii) Parity in maternity benefits*

The maternity benefits to be made available under the ESIC Act should be in sync with benefit available under the Maternity Benefit Act.

*(iii) Evolve better protective measures for migrant workers*

Despite the enactment of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, there is little effective protection for the migrant workers as in its present form it probably has never been implemented. The shortcomings and reasons behind non-implementation should be analysed and the Act needs to be suitably revised accordingly and made implementable. Clarity on cases like National Capital Region of Delhi, where people from surrounding states travel to and from for work, should also be incorporated.

***Address the health and safety related issues of workers in a more practical and better way***

*(i) Ensure better coverage of employees not covered by ESI Act*

ESI Act, 1948 provides for day to day care to covered employees but in areas where this has not been implemented and which are covered under the EC Act, 1923, employees are only entitled to receive benefits in case of accidental injury out of employment and no daily medical care such as sickness or medical benefits are provided under the EC Act, 1923. It is suggested that a provision should be made for a Dispensary Service or service from a State Hospital for enabling employees to avail sickness and medical benefits.

*(ii) Address issues of inadequate infrastructure under ESI system*

Employees complain about the inadequate medical treatment at ESI hospitals/dispensaries. This can be attributed to an inadequate number of ESI dispensaries and hospitals which are situated at distant places, insufficient number of doctors and paramedical staff and non-availability of medicine, dressings and injections.

It is suggested that in addition to setting up more dispensaries and hospitals and appointing more doctors and medical staff, the Medical Superintendents should have adequate financial powers to make local purchases of medicines which may be out of stock.

In fact, the Central Government should make a sufficient budget for medical care available to Medical Superintendents to remove the dissatisfaction amongst the workers for non-availability or inferior quality of medical treatment or else allow medical facilities to be contracted through local leading Hospitals/ Medical practitioners.

Under Section 58 of the Act, the State Government is required to provide reasonable medical, surgical and obstetric treatment for the insured persons. The state government may, with the approval of the ESIC, arrange for medical treatment at clinics of medical practitioners.

*(iii) Reduce delay in reimbursement of medicine bills*

To avoid delays in the reimbursement of medicine bills, it is suggested that the powers and duties of Medical Referee be vested in Medical Superintendent of ESI Hospitals. The time limit for reimbursement of medicine bills should be specified.

*(iv) Address the issue of partial reimbursement of outside bills*

Currently bills of outside agencies are reimbursed at ESI rates, which are below market rates. Provisions should be incorporated to reimburse bills of select nominated certified outside agencies at actuals in case ESI hospitals/dispensaries cannot provide such services due to paucity of infrastructure.

*(v) Improve administration of accident claim benefit*

A claim benefit under ESIC Act is required to be made offline with multiple follow up and processes for realizing the benefit. This leads to delays in getting benefit for the employee and dependants and problems for employer in the administrative follow up route.

Any accident claim should be allowed to be made or registered online. In case of Death/ Permanent disablement, the compensation should be at par with Employees' Compensation Act.

*(vi) Introduce provision for exemption if existing coverage provide better benefits*

Provision of the ESI Act should be exempted in case the insurance cover provided offers better benefits than those stipulated under ESIC Act. This would be more beneficial for the employees as they will get better coverage and medical benefits. This would also exempt the agencies/ employers from dual payment of premium.

*(vii) Other recommendations to improve the ESI system*

- Period of disability under ESI Act should be reduced to 24 hours (1 day) from existing 72 hours (3 days) to enable an employee to avail the benefit.
- Coverage for ESI benefits should be extended to employees in any class, specifically those who are beyond ESI coverage.
- Compensation payable to the employees under ESI should be insured to protect against insolvency of the principal employer.
- The annual inspection of each and every establishment may be dispensed with. Random inspections, after giving due notice to selective employers, may take place instead to check defaulters. In this regard a certificate of compliance could be obtained from all employers in lieu of this inspection.

*(viii) Evolve a practical solution to the perennial shortage of safety officers:*

Lack of adequate safety training facilities in various states is leading to a shortage of Qualified Safety Officers in states as required under Section 40(B) of the Factories Act. Also the Diploma in Safety offered at Kanpur is very detailed with a lot of focus on chemical related safety, whereas most industries may not require such detailed knowledge.

State Governments should organize such safety training program in the State. It may hold industry specific programs with relevant inputs for the industry concerned. Qualified engineers attending such programs should be made eligible for the Safety Officer role in concerned industry.

## ***Adopt uniform definitions across labour laws to the extent possible to reduce ambiguity***

### ***(i) Minimum wages:***

All the components of 'Minimum Wages' should be clearly defined and stated. It should include basic and dearness allowance only. There should be one single minimum wage for the entire nation below which wages in any form of employment cannot be paid. A single wage rate by its very simplicity will be easy to understand and implement and enhance compliance by reducing procedural complications. We also need to move towards payment of wages by through banking channels.

### ***(ii) Industry and Workmen:***

The Industrial Disputes Act makes provision for the investigation and settlement of industrial disputes, where 'industry' has been defined as any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen. The term 'workmen' has been defined to include only specific classes of employees by the nature of work performed and not on the basis of salary/wages.

There has been significant confusion with the way the terms "industry" and "workmen" have been defined, as both of them are open to competing interpretation leading to large number of litigations. The case law under the Industrial Disputes Act has held even organisations such as panchayat samitis, state hospitals, primary health centres, religious institutions, universities and research institutions as industry. A clear delineation of coverage and beneficiaries of the legislation is thus necessary. Here 'workmen' can be replaced as 'employees', which may include workmen as a class of employee with specific nature of job in specific nature of industries. There is also a need to maintain parity in definition across different labour laws. Clause VI in Section 2(s) may be amended so that it is line with other labour enactments like ESI, Bonus Act, and PF Act.

### ***(iii) Retrenchment:***

Similarly, the Industrial Disputes Act gives a wider meaning to the term 'retrenchment' to include all types of termination of services of workmen except disciplinary action, resignation/voluntary retirement/ retirement on reaching the age of superannuation, expiry of contract period or termination under a stipulation contained therein, and continued ill health. This leaves uncovered situations like workmen leaving the establishment, not coming to work, or overstaying sanctioned leave without any intimation. In such cases where a workman fails to report to work without any intimation, a termination notice on the part of the employer remains open to be interpreted as retrenchment. This creates problems in manpower planning for an employer. Here applicability of Section 2(oo) should be confined only to cases of termination of surplus labour. It may be amended to include abandonment of service in terms of standing orders, or conditions of employment as voluntary retirement of the workman.

### ***(iv) Strike:***

Under Industrial Disputes Act 'strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under common understanding of any number of persons who are, or have been so employed to work or to accept employment. This definition fails to include practices like 'go slow' or 'work to rule', which have become major means of industrial action in the recent times. Even though the Supreme Court has held that 'go slow' is a pernicious and dishonest practice, in legal terms 'go slow' or 'work to rule' cannot still be called a 'strike' since technically there is no cessation of work, just a deliberate delay in production.



It is suggested that the term 'strike', as defined in Section 2(q), be enlarged to include obstructive practices such as 'go slow' or 'work to rule' and 'mass casual leave'. The Fifth Schedule of the Industrial Dispute Act 1947 also lists 'go slow', squatting on the work premises after working hours or gherao as unfair labour practices on the part of workmen and trade unions of workmen.

### ***Other issues***

#### ***(i) Point of Taxation Rules 2011 for Service Tax***

On 1<sup>st</sup> March 2011, the Point of Taxation Rules 2011 (POTR) with regard to the levy of Service Tax was notified by the Central Government, and the rules came into force from 1<sup>st</sup> April, 2011. Under the new rule, 'point of taxation' shall be -

- Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of the service
- Date of completion of the provision of service payments, if the invoice is not issued within the prescribed period of 14 days.

The new rule necessarily changed the point of payment of service tax from 'collection' to 'accrual' basis, i.e. as soon as invoices are raised rather than on collection of proceeds. From a cash flow perspective this means that service providers now have to arrange for increased working capital to fund service tax payouts.

This rule does not follow the principle of credit and service tax becomes payable even in case of bad debts! As such, it needs to be revised and the earlier system of payment on collection restored.

#### ***(ii) Inspections Woes***

Labour inspections should be regulated in such a manner that it serves the purpose of guidance in compliance with the statutory provisions, instead of causing harassment. The plethora of labour laws should at least be consolidated into a manageable number of cognate groups, and the number of routine inspections should also be reduced accordingly.

Each establishment is liable for inspection by several Inspectors with little coordination. Such inspections should also be coordinated and organized jointly by different agencies to the extent possible. The inspections happen without any intimation. The person attending to the inspector may not be aware of the availability of certain documents in their premises. Hence there is a need for reasonable prior notice so that the clerk/officer concerned is there to make available the requisite records.

## 2.4 Concluding remarks

The flexi staffing industry in India, despite its recent vintage, has grown into one of the top five international markets. However, it suffers from the dubious distinction of being the only country at the top of the table that neither recognises the industry nor has a set of enabling regulations for the market. The current chapter has highlighted why reform is an absolute necessity to ensure a balanced approach to the development of the industry. Such enabling statutes are required not only for regulating the business practices of the corporate players - both the employment services intermediaries and the user company, but also for the protection of the interests of the workers.

In the absence of a set of legal provisions, the growth in the industry is likely to be more in the unorganized sector. However, as has been India's experience, ensuring legal compliance by such players will be a problem. This shall not only tarnish the image of the industry, but also pose unequal competition for the responsible players in the industry desirous of following international best practices. Any further slippage towards the unorganized sector will also have an immediate direct adverse impact on the welfare of the worker as the wage and social benefits due to them cannot be ensured in practice. Keeping the interests of both the responsible industry players and workers in mind, we suggest entry regulation to weed out such unscrupulous players.

The unique feature of the tripartite work relationship is that the workers are hired by the flexi staffing agencies but work under the supervision of the user companies. This necessitates clear demarcation of the individual responsibilities of both the parties. It needs to be pointed out that apart from the relation between the worker and the flexi agencies, there is also need to ensure that user companies are following certain minimum standards, like not replacing regular positions with flexi jobs, and following occupational health and safety standards for the flexi workers.

We also recognize that it shall take some time for the suggested regulatory mechanism to develop. Therefore, an interim set of suggestions on how the present legal provisions can be suitably amended has also been presented. To increase ease of compliance, there exists a well-reasoned need to shift from complexity to simplicity. A single labour law covering all aspects may not be possible. But as recommended by the Working Group on Labour Laws and other Regulations for the Twelfth Five Year Plan (WGLL-12FYP) and the Second National Commission on Labour (under the chairmanship of Shri Ravindra Varma), labour laws should be unified into different cognate groups. Different labour laws serving similar purposes can be integrated into a single unified enactment using uniform definitions and made applicable to all categories of employees and establishments. For example, Trade Union Act, 1926; Industrial Employment (Standing Orders) Act, 1946; Industrial Disputes Act, 1947 can be combined into a single 'Industrial Relations Act'. Similarly, all Acts related to social security (or wages or work conditions) can be amalgamated into a single Act. A comprehensive social security cover could make a single contribution and a single return possible instead of separate contributions and returns under the Employees' State Insurance Act, 1948 and Employees' Provident Fund and Miscellaneous Provisions Act, 1952. This shall also reduce confusion prevailing over differing definitions of similar terms across different Acts.



## *Chapter 3*

# **International Experience with Flexi Staffing**



Indian temp staffing market is largely driven by employers' needs to outsource liabilities associated with permanent workforce and businesses that require staff augmentation based on seasonal spikes, unlike other global markets where the industry is mostly driven by the need for temporary workforce.

*Sanjay Pandit, MD  
Manpower Group*

Well run staffing companies can be a valuable institutional innovation, much needed in India, to resolve the dilemma between flexibility to adjust employee levels that companies need and the commitment to their skill development and employability that employees need.

*Arun Maira, Member  
Planning Commission*

The previous two chapters attempted to provide a broad understanding of the fledgling flexi staffing industry in India and the legal problems being faced. In this chapter, we take a comparative glance at the Indian scenario from an international perspective. Considering this is the first known attempt to record the developments in the Indian flexi staffing industry, the main hurdle faced in this endeavour is the limited information on many aspects of the industry. We attempted to address many of these gaps, but capturing the vast international information within the limited scope of a single study is well nigh impossible. Considering the guiding value such international experiences can have for India, we highlight a few select.

The chapter has been structured in the following manner - section 3.1 gives an overview of the role flexi staffing industry plays in the labour market. Sections 3.2 to 3.4 present a comparative picture of international markets in terms of number of flexi workers, penetration of flexi workers and sales revenue. This is followed by discussions on the characteristics of flexi workers, and their motivation behind joining flexi work. The reasons cited by user companies in different countries for using flexi staff and the working conditions the workers face are reviewed subsequently. The contribution the industry can make in its role as a skills developer and an agent of social inclusion gets attention in sections 3.9 and 3.10. Challenges facing the industry are set out in section 3.11. Considering Indian law does not explicitly recognize the flexi staffing industry, we have a look at the legislative initiative taken by a few countries in the recent past in section 3.12 and 3.13. The former predominantly looks at the developed markets whereas the latter reviews the Chinese flexi staffing industry.

### 3.1 Labour market and flexi staffing industry

The flexi staffing industry has traditionally acted as a bulwark for companies in times of seasonal and cyclical fluctuations in the economy. The industry provides services ranging from consulting and recruiting to HR services and outsourcing. This allows companies to easily adjust their workforce according to fluctuating demands. In more recent times it is adapting itself to address the challenges posed by the structural shifts many countries are experiencing across the globe due to globalization, demographic changes, sectoral and IT shifts, and changing attitudes towards work. Such structural shifts have led to high levels of unemployment, need for new skills for new jobs, increased occupational and geographical mobility requirements, call for decent working conditions, and demand for more socially inclusive work participation.

The flexi staffing industry is uniquely positioned to address these evolving complexities and volatility in the labour market. Some of the important roles that this industry can play in this scenario to facilitate adaptation to changes are discussed below<sup>21</sup>:

#### ***Allows both employers and workers to better adapt to increasing volatility and complexity in labour markets***

The most attractive feature of the flexi staffing industry for an employer is the flexibility it accords to adjust manpower according to demand dynamics. Flexi staffing enables a company to promptly adjust its workforce with seasonal or unforeseen changes in demand. It enables corporates to seize opportunities even in times of uncertainties by limiting downside risks.

This significantly reduces the time lag between economic recovery and creation of new jobs. Past experience with US and European economies shows that the flexi staffing industry acts as a bellwether to the economy and picks up several months earlier in times of recovery. The significant expansion in the range of professional solutions provided by this industry has further enhanced its ability to assist companies in adapting faster to volatile economic cycles.

From the viewpoint of workers, the industry enables the creation of more work opportunities and reduces the time required in finding jobs. This is supported by a survey of French flexi workers<sup>22</sup> where a majority (60%) of the participants responded to say that they had entered the industry to find a job quickly. It also better addresses the increasing diversity in expectation, needs and attitudes related to work by offering a variety of work contracts, and opportunity to acquire and develop new skills and competencies. A majority of flexi staff in UK (66%), Poland (60%), Netherlands (58%) and Belgium (52%) also cite the industry's ability to allow workers to strike a suitable a work life balance as another important attraction<sup>23</sup>.

#### ***Better manages seasonal and temporary spurt in labour demand***

The industry is better placed to help companies manage seasonal and temporary increase in demand more efficiently. Some sectors where such a phenomenon arises regularly are financial auditing during finalisation of accounts; hotels, restaurants, and drivers during the tourist season; commerce and retail during the festival season. With access to a ready talent pool and the ability to train people in the required skills to meet demand/ supply gaps, the flexi staffing industry is well placed to meet such seasonal fluctuations in labour demand. The construction sector in Switzerland, postal services in Netherlands, the football season in Belgium are some examples of such transient demands that are met by this industry. In India the retail sector is

---

<sup>21</sup> For more details, see Boston Consulting Group/CiETT report 'Adaptation to change' (2011).

<sup>22</sup> Regards croisés sur l'intérim, l'Observatoire des Métiers et de l'Emploi, April 2011; as reported in Adapting to Change report by CiETT.

<sup>23</sup> Regards croisés sur l'intérim, l'Observatoire des Métiers et de l'Emploi, July 2010; as reported in Adapting to Change report by CiETT.

one such example where hiring of shop floor staff increases substantially during the festive season.

### ***Reduces structural and frictional unemployment***

A flexi job has its own unique characteristics and is not a substitute for permanent jobs. A user organization survey by Ciett-BCG finds that 62% of companies hiring flexi workers will either opt for internal solutions such as overtime or will not hire at all if the labour market flexibility provided by the industry is not available. The industry thus adds to employment opportunity and does not replace existing jobs, helping the economy to address the problem of structural unemployment. Over the period 2002 to 2007, the industry generated 1.3 million new jobs in the European Union (EU). It added another 0.9 million new jobs even in the aftermath of the economic downturn post the 2008 financial crisis. In general, countries with higher flexi industry penetration rate also showed lower unemployment<sup>24</sup>.

The additional job creation and broadening of job options facilitated by the flexi staffing industry also reduces frictional unemployment by ensuring a better and faster match between job seekers and employers. This role gains more importance in times of uncertainty due to the flexi industry's ability to cut downside risk for an employer.

### ***Reduces labour market segmentation***

Flexi staffing industry reduces labour market segmentation by increasing labour mobility and increasing labour market participation. It is seen as an effective channel to find the first job across many countries in Europe (92% in UK, 86% in Belgium, 71% in Italy, 59% in Germany). It also enhances occupational mobility by allowing a worker to acquire skills. In South Africa, compared to 66% work participation rate amongst workers with prior flexi industry work experience, the rate falls to 15% for the group without any flexi job experience.

Flexi work often provides the first opportunity to youth to acquire work experience and enhance their skill set, and plays an important role in their transition from education to work. 35% of flexi workers in Europe are below 25 years of age. The industry helps people move from part time to full time jobs (or vice versa), between sectors, and across locations - guided by aspirations, preferences, needs or suitable opportunities.

The job opportunities created by this sector are particularly relevant for the disadvantaged groups like older people seeking employment or women seeking to return to the labour market. The share of older workers in the flexi staffing industry in France and Belgium is increasing at double the rate of older workers in the rest of the labour market.

### ***Matches and develops skill set***

In addition to improving labour market efficiency by enabling easier and faster matching of labour supply with demand, the flexi staffing industry enables adaptation of skills to market requirements and structural changes.

Sectoral training funds managed jointly by flexi staffing agencies and labour representatives were established in seven European countries to increase workers' access to vocational training with an annual investment of more than €500 million.

Flexi workers in Netherlands, one of these seven EU countries, flexi workers receive more training than fixed term workers. Case studies from Sweden also showed that short term learning and personal development is high among flexi staff. The available evidence indicates

<sup>24</sup> Ciett, Adapting to change, 2011.

that training norms and programmes play an important role in deciding the extent of training facilities available to the flexi staff in any particular country.

This skill development and enhancement role of the industry becomes more pertinent in the face of the periodic structural shifts in the economy which also alters the demand for different skills. The training provided by the flexi staffing agencies helps reskilling of workers, allowing them to move from declining sectors to ones in demand. It also has the potential for upskilling workers and bridging the skills gap. For example, whereas only 36% of flexi staff in USA in 1995 belonged to the professional segments (higher skilled flexi staff), the share has increased to 55% in recent times. Similarly, following a shift towards a more service sector oriented economy, the share of flexi workers placed in services industries have increased by more than 10% in France over the previous decade while the share in manufacturing has dropped.

### ***Better positioned to deliver decent work opportunity***

Since flexi workers are direct employees of the flexi staffing agencies, the organized flexi staffing industry is in a better position to deliver on International Labour Organisation's Decent Work Agenda<sup>25</sup> compared to alternate temporary worker formats like fixed term (direct) contract. Because of this direct employee-employer relationship, the workers are in a position to negotiate their employment and working conditions, directly or through labour unions where such bodies exist.

Currently, in more than twentyfive countries across the world (eighteen EU nations plus seven non EU nations), the flexi staffing industry work conditions are regulated by collective labour agreements negotiated at various levels (across sectors, individual sectors, and user companies). These agreements led to establishment of funds to introduce additional protective and development measures for flexi staff like vocational training (Belgium, France, Luxembourg, Netherlands, Italy, Spain, Austria), health and safety (Belgium, France, Netherlands), pensions (France, Netherlands, Italy, Switzerland), and complementary social benefits (Belgium, France, Netherlands, Italy). In some of these countries, the industry has also ensured portability and transferability of workers' benefits like health insurance and pension.

Such bipartite bodies also played a significant role in ensuring quality standards and adherence to regulation or collective agreements (e.g., in France, Belgium and Netherlands). An Ombudsman has also been established in Belgium and Portugal to deal with flexi workers' complaints. Sweden and Netherlands have established a certification system to check conditions under which private employment agencies operate.

---

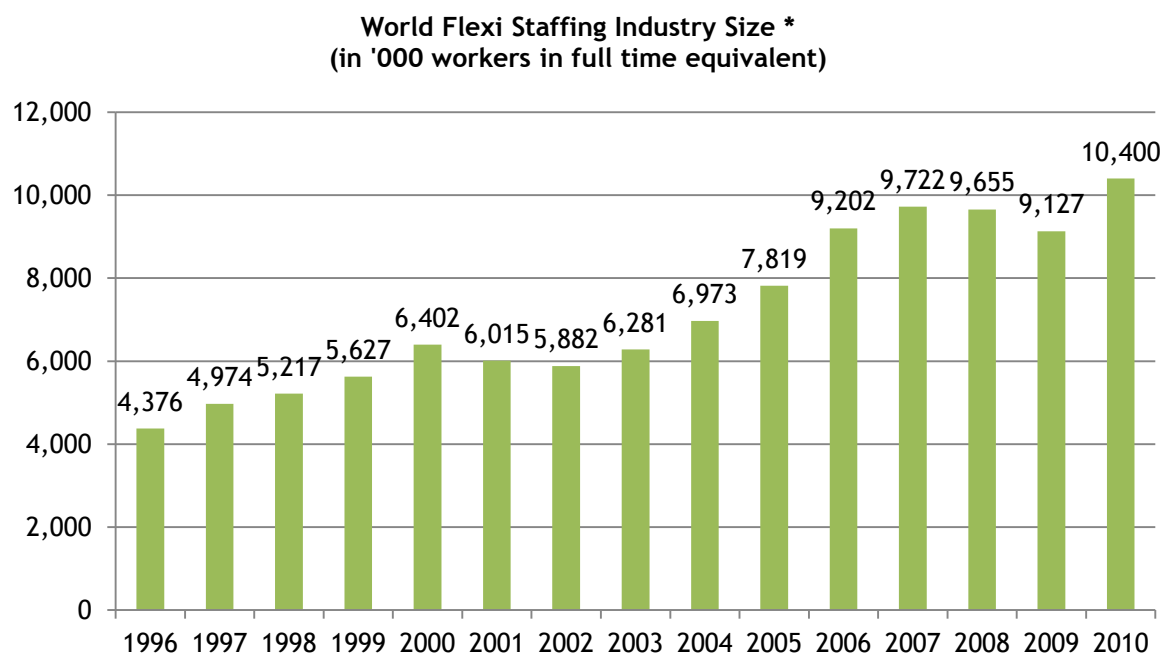
<sup>25</sup> In its Decent Work Agenda, the International Labour Organisation (ILO) identifies four strategic goals:

- creating decent and productive employment;
- promoting access to social protection systems;
- respect for core labour standards;
- stronger dialogue between the social partners.



### 3.2 Staffing industry size across select countries

Internationally the staffing industry has been growing quite significantly over the last few years. According to the CIETT Economic Report 2012, the global size (measured in Full Time Equivalents) had reached 10.4 million by the end of 2010. Thus, despite the slump in the aftermath of the financial crisis and resultant global economic slowdown, the industry still showed a 5% growth rate over the last decade. Here it needs to be noted that many countries where flexi staffing is not legally recognized do not report the size of the industry, and for many others data is unavailable. The figure reported by CIETT above is based on data from 43 countries for which data was available. Two large countries omitted are China and India.



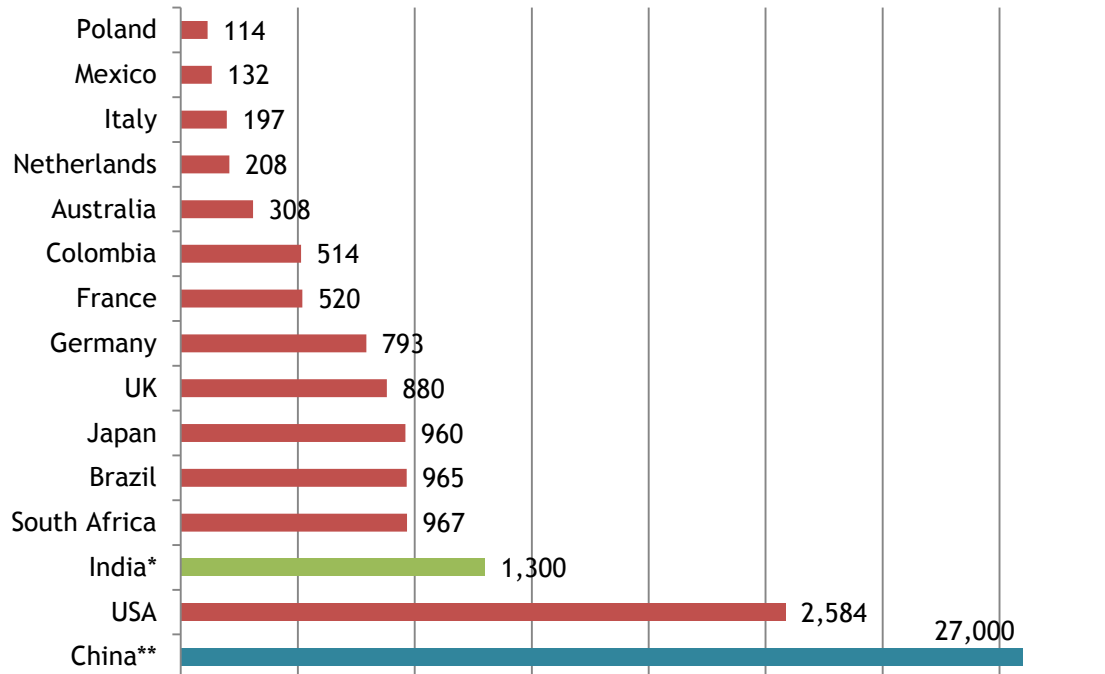
Note: \* China and India, among the major economies, are not covered in the CIETT studies.

Source: CIETT Agency Work Key Indicators 2010<sup>26</sup>, CIETT Economic Report 2012.

The American Staffing Association estimated the US staffing industry at 2.6 million at the end of 2010. It was closely followed by South Africa and Japan at slightly below the 1 million mark. The paths followed by these two countries in recent times have been quite opposite. Whereas the number of flexi staff in Japan declined from 1.4 million in 2008 just before the start of the economic turmoil to 0.96 million in 2010, the numbers in South Africa almost doubled over the same period from 0.50 million to 0.97 million. UK, Germany, France, Netherlands and Italy were the top five countries in Europe in terms of number of flexi staff. All these countries except South Africa and Brazil showed an immediate decline in the aftermath of the 2008 economic crisis. However, the fortune turned for the better soon for most of them (except UK, Netherlands and Japan) as flexi staff hiring showed an increase in 2010 over the previous year.

<sup>26</sup><http://www.ciett.org/index.php?id=162>

**Countries with largest flexi staffing industry  
(figures in '000 workers in full time equivalent, as on 2010)**



Note: \* In numbers, for the year 2011. \*\* In numbers, for the year 2008.  
Source: Indicus Analytics Estimate for India; Ministry of Human Resources and Social Security estimates for China; CIETT Agency Work Key Indicators 2010 and CIETT Economic Report 2012 for the rest.

As mentioned earlier, CIETT Reports do not give figures for China and India. The Ministry of Human Resources and Social Security of the Government of China estimated the flexi staffing market there at 27 million in 2008. The trade union body All China Federation of Trade Unions, however, disputed this figure and put up its own estimate at 60 million for 2010<sup>27</sup>. Even the 'conservative' official estimate puts China at the top globally. With an estimated 1.3 million workers, India is also one of the largest markets.

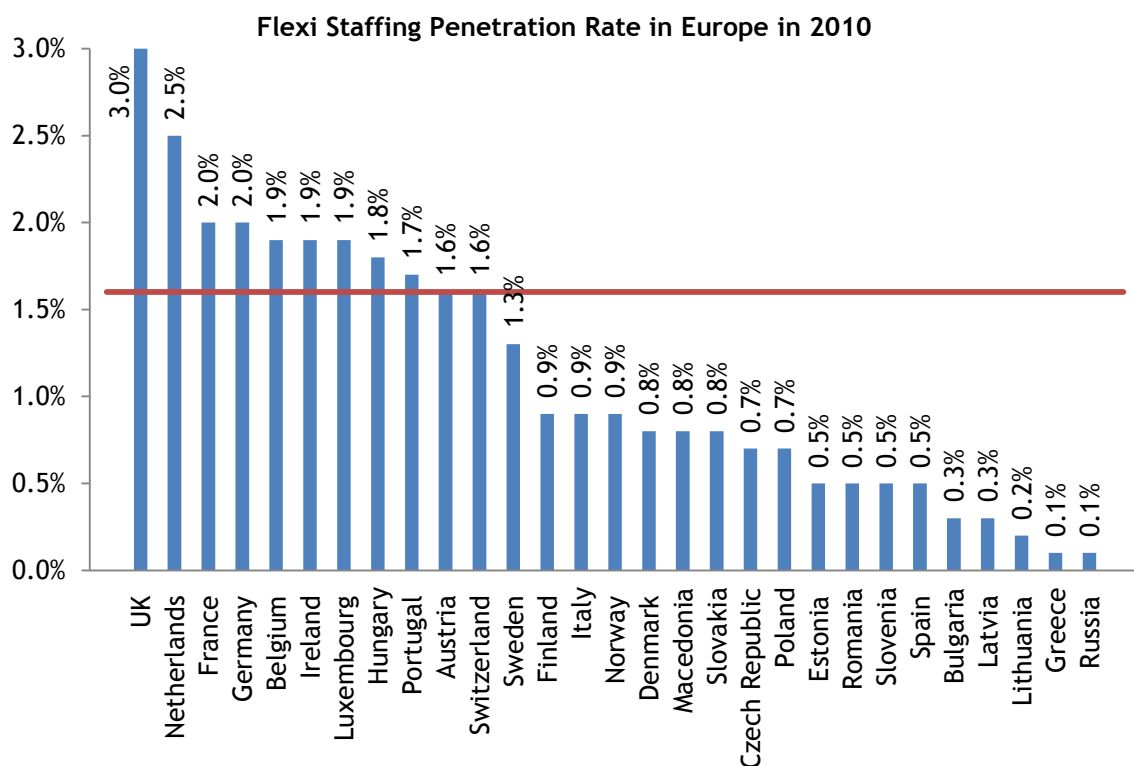
<sup>27</sup> Rights of 60 Million Labour Dispatch Workers Hard to Protect, Published in Jinan Daily, 28<sup>th</sup> Feb, 2011. (Chinese Original: <http://news.163.com/11/0228/10/6TVN8SE300014AED.html>; Translation provided by China Labor News Translations: [http://www.clntranslations.org/file\\_download/140](http://www.clntranslations.org/file_download/140))

### 3.3 Staffing industry penetration

An international comparison based on the absolute size of the flexi market is susceptible to partial obfuscation by the size of a country. For example, India may have a larger number of flexi workers as compared to UK, but the dependence of Indian economic activity on flexi workers is relatively far lower if the vast difference in size of the workforce in these two countries is taken into account. An alternate measure for an international comparison, therefore, is the penetration ratio. This ratio basically standardises a country's total flexi workforce by its total workforce. Expressed in the form of number of flexi workers per 100 workers (in %), it neutralises the cross country size differences.

The European average agency work penetration rate recovered partially to 1.6% in 2010 from 1.4% in the previous year, but remains still lower than 1.7% registered in 2008. The penetration level over the last three years though was better than the 1998 weighted average European penetration ratio of 1.1%. The highest penetration ratio (2%) was observed in 2007. The recent fall can thus be mainly attributed to the fall in economic fortune in the European countries post the economic slowdown. This figure, however, masked the wide country variations in penetration. The overall trend showed that the mature markets in Western Europe (UK, France, Germany and the Benelux countries) were all above average whereas the newer markets in Southern and Eastern Europe were all below average. The penetration rate in Russia was particularly low.

The variation observed above was not limited to Europe only. According to CIETT, "mature agency work markets are characterised by high penetration rates, indicating a potent blend of large user bases, strong economic growth, and generally regulated markets". The extent of employment protection provided to regular workers was also an important factor in determining the growth of the staffing industry.

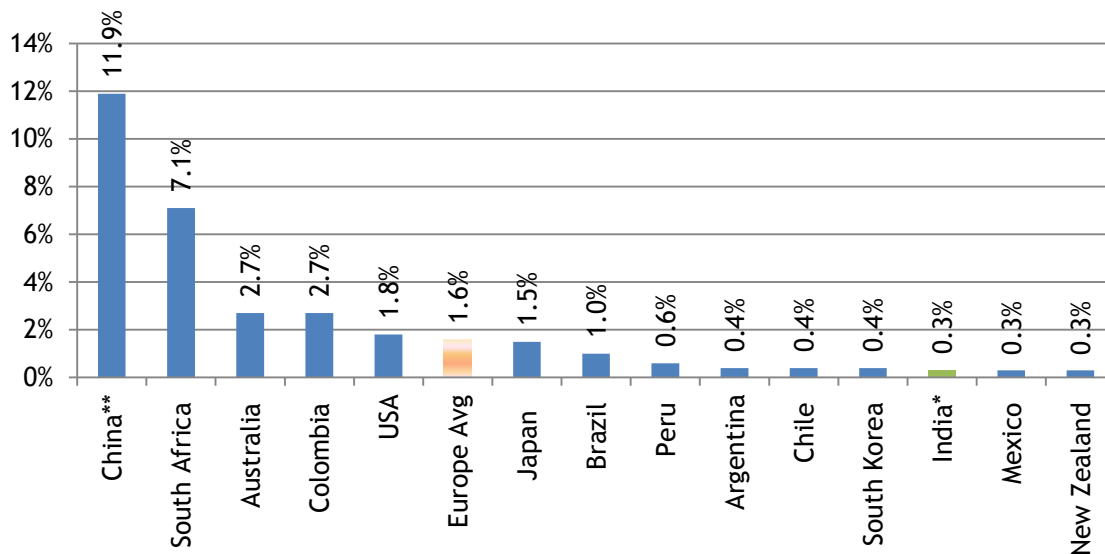


Source: CIETT Economic Report 2012

An interesting and opposing trend could be seen in the relation between level of protection for regular workers and the penetration of flexi staffing industry.

On one hand, countries with the least protected employment markets such as USA, UK, Japan, Brazil, and South Africa showed a high penetration of flexi staffing. On the other hand, flexi staffing industry penetration was also high in countries with a high level of job protection for regular employees.

**Flexi Staffing Penetration Rate in Other Countries in 2010**



Note: \*Estimates by Indicus Analytics for 2011.

\*\* Estimates by Sichuan Department of Human Resources and Social Security. The data relates to Sichuan province only and for 2008.

Source: CIETT Economic Report 2012 for all countries except China and India

According to the Indicators of Employment Protection data published by OECD (based on 2008 data), Germany, Italy, Luxemburg, Sweden and China were the top five countries with the most stringent protection for permanent workers. Following the pecking order, Staffing Industry Analysts' figures showed Germany, Italy and Sweden among the fastest growing flexi staffing industries in Europe in 2011<sup>28</sup>. China, which also ranked among highly protective nations, is already the largest flexi staffing market. Even in countries like France and Belgium, where hiring flexi workers is also highly regulated, the penetration rate is high. A very high level of protection provided to permanent workers was the common factor behind this higher reliance on flexi staffing in many of these countries.

The above observation, however, is subject to the caveat that most of the countries with high penetration of flexi staffing, irrespective of the level of labour market protection, legally recognise the flexi employment system and a regulatory mechanism has been put in place.

<sup>28</sup><http://www.staffingindustry.com>

**Table 3.1: Most and Least Protected Employment Markets (based on OECD Indicator of Employment Protection 2008)**

Most-Protected Employment Markets	Least-Protected Employment Markets
1. Germany	1. Brazil
2. Italy	2. New Zealand
3. Luxembourg	3. Chile
4. Sweden	4. United States
5. China	5. Japan
6. Slovak Republic	6. India
7. Belgium	7. South Africa
8. Mexico	8. Canada
9. Slovenia	9. Ireland
10. Netherlands	10. United Kingdom

### 3.4 Staffing industry size by revenue

Having had a look at flexi workforce numbers and their penetration ratios across countries, let us take a look at how the industry has grown over time in terms of sales revenue, and how much share in the pie different countries command. The CIETT Economic Report 2011 reported the global annual sales revenues for the agency work industry in 2009 as €203 billion, following two consecutive years of decline matching the downward spiral in business activity post the onset of economic slowdown. A turnaround in 2010 saw world sales revenue rebounding sharply to €247 billion (CIETT Economic Report 2012) with revival in hiring. For the 14 countries for which CIETT Agency Work Key Indicators 2010 reported data for both 2009 and 2010, the total annual sales revenue increased from €147 billion in 2009 to €171 billion in 2010. This turnaround was led by USA, France, Germany and Australia.

In 2009, Japan was the world leader in terms of global annual sales (24%), closely followed by USA (22%). The order reversed in 2010, with USA taking the first place with 27% share. In comparison to a 5% increase in USA's share, Japan's fell by the same margin. UK remained the third largest market worldwide in 2010 despite a year-on-year fall in its share with 9% in 2010 compared to 12% in 2009. Among these top grossers, USA, France, Germany and Australia recorded an increase in annual sale revenue in 2010 over 2009. At the regional level, Europe accounted for 38% of the world market followed by North America 29% and Asia/Pacific at 26%.

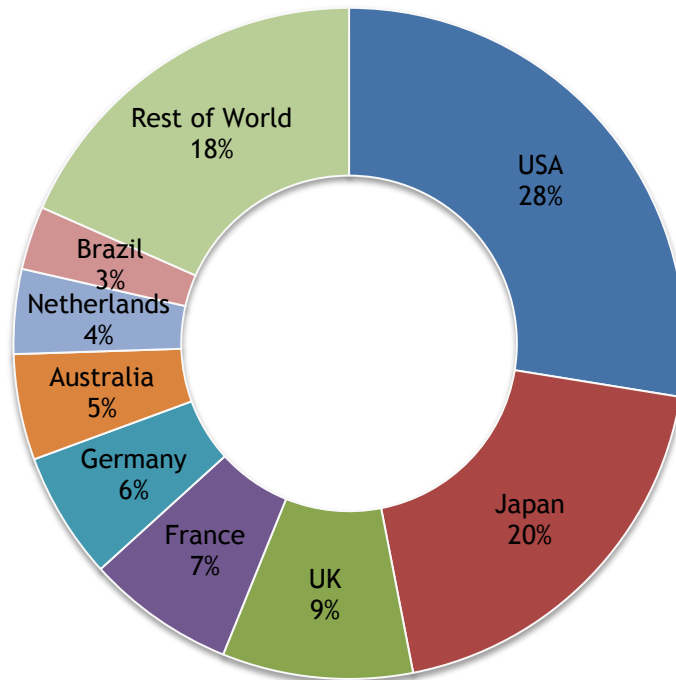
Among the BRICS nations, Brazil's annual sales revenue was €7.8 billion in 2009. The size of the South African market in 2010 was roughly half of Brazil (€3.8 billion). Whereas the market in Brazil remained more or less stagnant over the period 2007-2009, flexi staffing revenues increased rapidly in South Africa from €1.7 billion in 2005. The revenue data on China, India or Russia was not published by CIETT<sup>29</sup>.



Source: CIETT Economic Report 2011, 2012

<sup>29</sup> Global turnover 2010 series (<http://www.ciett.org/index.php?id=162>)

**Share of countries in global annual sales revenue of flexi staffing agencies in 2010**



Source: CIETT Economic Report 2012

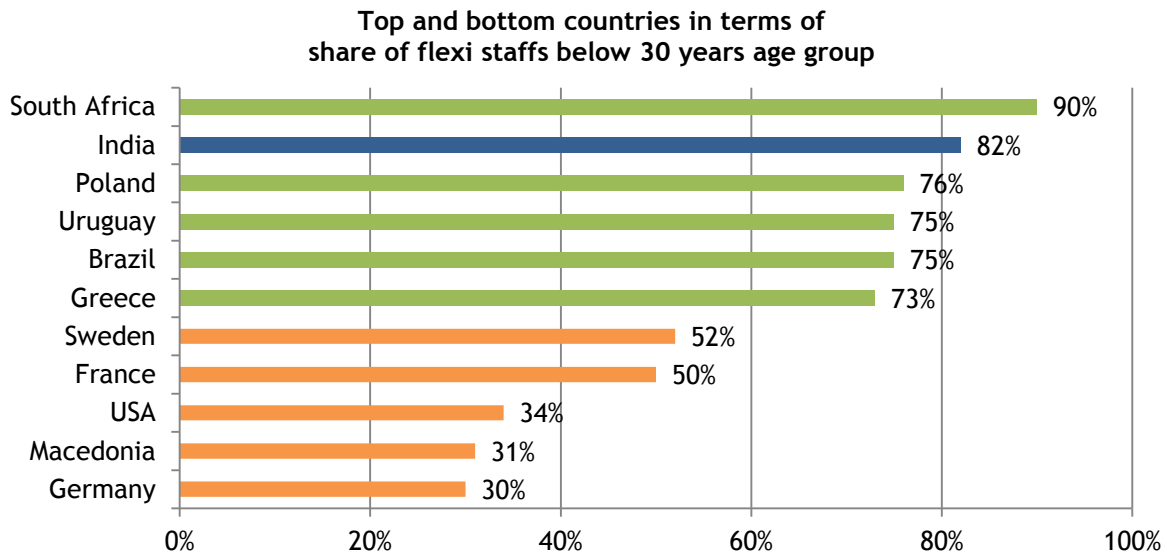
### 3.5 Characteristics of Flexi Workers

Now that we have an overall idea about how the Indian flexi market is positioned vis-a-vis the international markets, this section focuses on the general characteristics of flexi workers in various countries. Wherever possible it also juxtaposes it with the Indian condition as presented in detail in Chapter 1. The international data presented in this section has been sourced from the surveys conducted by the European Foundation for the Improvement of Living and Working Conditions and various CIETT reports<sup>30, 31</sup>.

#### **Mostly young in age:**

The flexi staffing industry provides a source of job opportunity for the young population just out of school or college, with limited work experience. According to the European Foundation of Living and Working Conditions Report 'Temporary Agency Work in the European Union 2007', one of the most distinct features of flexi staffing workers was that they were generally much younger than other employees. Data from Spain revealed that as much as 84% of all flexi staff were younger than 34 years, and 47.2% were younger than 25 years old. In Germany, the average age of flexi staff was 37.5 years compared with 41.4 years among employees in the total economy.

CIETT Economic Report 2011 also confirmed the same trend. On an average three in five agency workers were below 30 years of age. Except the three countries - USA, Germany and Macedonia, a majority of the flexi staff workers in all the other countries were below 30 years of age. A common feature observed was that most of the countries at the top half of the ladder were developing economies with the exception of Japan.



Note: India data is for 2012. The data for the rest of the countries as on 2009.

Source: CIETT Economic Report 2011 for all countries except India. India data from ISF/Indicus Survey.

With 82% of flexi workers in the below 30 years bracket, India had the second youngest flexi workforce.

<sup>30</sup> European Foundation for the Improvement of Living and Working Conditions, 2007, *Temporary Agency Work in the European Union*.

<sup>31</sup> CIETT Economic Report, Various Issues

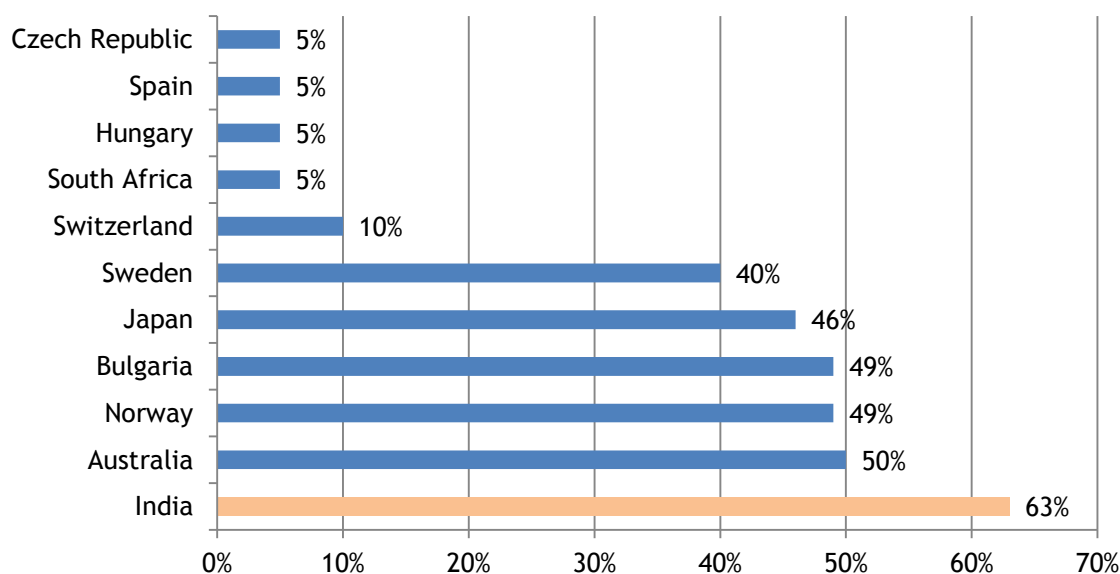


**Lower than average level of education:**

Decent employment opportunity for people with limited education is always scarce. The flexi staffing industry is an important employment avenue across the world for such people by enabling them to enter the job market, gain valuable experience and have career growth. The 'Temporary Agency Work in the European Union' Report of 2007 also found flexi staff in general having a lower educational level than other employees. For instance, whereas 5.7% of all German flexi staff in 2001 did not have a school leaving qualification and only 13.2% held a university degree, the comparable figures were 1.5% and 20.8% respectively at the overall level. Similarly in Spain, 62% of all flexi staff had received education level beyond the compulsory education and only 6.8% had a university degree in 2002. Finland, France, Netherlands and Sweden also showed a similar trend.

More recent data obtained from the CIETT Economic Report also gives a similar picture. On an average, 23% of flexi staff had not finished school education, whereas 51% had education up to this level. A select number of countries, however, have a significant flexi workforce who had completed higher education. India falls among this group of countries with a significant 63% of the flexi workforce having a graduate degree or higher. An overwhelming 89% of them though completed their education in the general stream, without any specific professional qualification. The growth of the flexi staffing industry thus can help to reduce the pangs of unemployment in this distinctly disadvantaged group.

**Top and Bottom countries in terms of share of flexi staff who has completed higher education**



Source: CIETT Economic Report 2011; India data from ISF/Indicus Survey.

**Higher use of flexi workers by larger firms:**

The Temporary Agency Work in the European Union report<sup>32</sup> cited the Swedish and German experience to indicate that employing flexi staff was more common in larger companies. In Sweden, 42.4% of companies with more than 100 employees used flexi staff, whereas

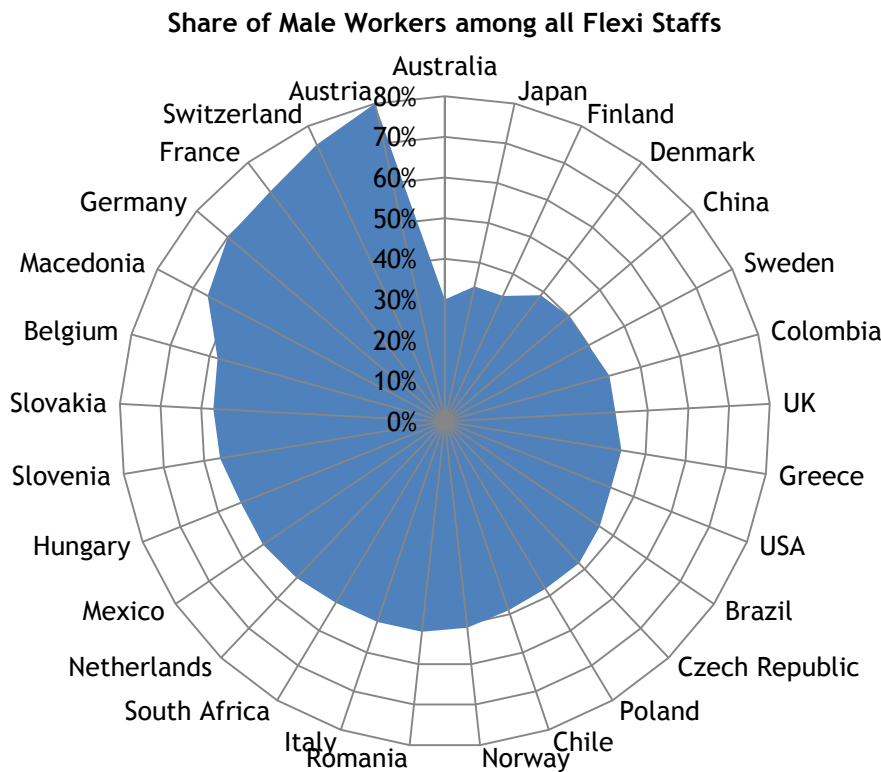
<sup>32</sup> European Foundation for the Improvement of Living and Working Conditions, 2007, *Temporary Agency Work in the European Union*.

comparable figure among companies with 20-99 employees was only 18.4%. According to the German Federal Employment Agency data, the penetration of flexi staff was 1% among small firms (1-49 employees), 16.5% among firms with 40-499 employees and as much as 35.7% in case of firms with more than 500 employees. Even in India, all anecdotal evidence points towards higher penetration of flexi staffing large companies.

**Sectoral distribution of flexi staff varies across countries:**

The main development in relation to sectors and occupation was that there is a move away from using temporary agency work in the industrial sectors towards more use in the service sectors. However, the use of flexi staff in the manufacturing industry is still high in many former communist countries like Poland (70%), Hungary (61%), the Czech Republic (52%) as well as in larger economies like Germany (46%), Italy (41%), and France (39%). On the other hand, countries like Bulgaria (90%), Greece (67%), Norway (64%), Spain (62%), Sweden (57%), and Belgium (53%) had a majority of their flexi staff working in the services sector. In the Scandinavian countries (Denmark, Finland and Sweden), flexi staffing is very common in the Healthcare sector. For instance, Healthcare workers constituted as much as 27% of the turnover in the flexi staffing industry in Denmark. In Finland, 19.5% of all flexi staff are employed in Healthcare.

Almost two-third of all Indian flexi staff are working in the services sector, mostly in the areas of Banking and Financial services, Telecommunications, Retail, Media and Entertainment, and Information Technology. Among the manufacturing industries, usage of flexi staff was common in FMCG, Automobile, and Energy.



Source: CIETT Economic Report 2011

***Gender penetration largely reflects user industry characteristics:***

Gender differences vary among countries and are related to the particular sectors using flexi staff. Germany, France, Switzerland Austria show a 70% plus male dominance in the flexi staffing industry. On the other hand, Australia has 70% female penetration. Some other countries with fairly high female participation are Japan, Finland, Denmark, China and Sweden - all with 60% or more female participation in the staffing industry. In general, a higher female participation is observed in countries with a more service sector oriented staffing industry, whereas markets with a strong manufacturing base employ relatively more males. However, the gender balance in India is skewed towards males despite the industry catering to mostly the services sector. Some countries with a balanced male/female penetration are the Czech Republic, Poland, Chile, Norway, Romania, Italy and South Africa. The difference in gender distribution was less than 5% among these countries.

### 3.6 Motives behind accepting temporary job

Following a review of the general characteristics of flexi workers in the previous section, this section takes a closer look at the varied reasons cited by them across different countries for taking up flexi jobs<sup>33</sup>. Broadly, the motivations can be classified into three heads:

- Desire for flexibility
- Lack of any alternate choice of employment
- Signalling - letting one's qualities be known by making oneself available for screening, and enhancing the signal quality by gaining in working experience, and acquiring additional skills.

The order of the reasons most cited, however, differs across countries. As such, the choices are likely to be determined by local considerations like economic growth, labour market condition, lifestyle choice, and demographic features. Desire for flexibility is seen to be particularly high among Finn (47%), Japanese (45%) and American (41%) flexi workers. Even 18% and 10% of flexi workers in large developing countries like Brazil and South Africa respectively mention flexibility as a motive for joining the temporary job market. In France 22% of flexi workers have adopted it as a way of life and 40% of respondents have entered the flexi work market as it suits their needs perfectly.

In the ISF/Indicus survey of Indian flexi staff, 27% of respondents have entered the industry due to lack of any alternative opportunity. Cases of joining flexi work out of desperation are lower in European countries like France (15%) and the Czech Republic (12%). Surprisingly, joining flexi work on account of not having any other alternative choice is relatively higher in developed economies like Japan (39%) and USA (32%) alongside a large developing country like Brazil (32%). Flexi workers in USA and Brazil though look forward to finding a permanent job through flexi work utilizing the opportunity it provides to gain access to training, information and experience. If such expectations are based on past experience, flexi work may indeed be helping these workers to move up the career path. Japan's case, however, is a bit of an aberration. Its high share of 'no alternative choice' type flexi workers is accompanied by a high share of workers who joined the industry for its flexibility along with the low number of workers looking forward to gaining experience or training.

Finding a permanent job is a big motivating factor among flexi workers in South Africa (65%), USA (59%), Brazil (39%), the Czech Republic (32%) and Netherlands (29%). In India, the share is 54%, ranking it among the top two motivations alongside experience gain factor. Apart from the fact of having a job being better than being unemployed, the workers in these countries joined this industry for the enabling factor of signalling their qualities to prospective employers.

As seen in the case of India (55%), the ability to enhance the 'signal quality' through work experience and access to training was also a major driving factor among flexi workers in a few other countries too. The prospect of gaining work experience was cited as the major attraction factor in Brazil (52%), USA (40%), Finland (30%), Japan (19%) and the Czech Republic (12%). Access to on-the-job training was also mentioned by a significant share of flexi workers in Brazil (41%), USA (40%) and India (29%).

In addition, many persons join flexi work just for some additional income, like students, housewives, and retired persons. Such a motivation is quite strong in Brazil (68%), Finland (38%), India (35%) and USA (25%).

---

<sup>33</sup> See CIETT Economic Report 2011 for more details.

### 3.7 Companies' rationale for using flexi staff

The previous section analysed the motivation behind flexi staff joining the industry. This section follows on by looking into the other side of the equation - why do the employers look for flexi staff? As the following discussion shows, two broad reasons can be cited for this. Firstly, flexi workers are employed to stand in for temporarily absent employees or vacant positions, for reasons as varied as medical/ maternity and other leave, and delay in recruitment. Secondly, such workers can be used to manage unanticipated increase in production levels or when there is some level of uncertainty as to whether such increases will sustain or if such increases are only seasonal or periodic in nature. In addition, flexi workers are also employed when employers wish to screen people before hiring them in regular positions. Non-availability of specific niche skills in house and labour supply issues, are also cited by some employers as reasons for hire.

The ISF/Indicus survey of Indian employers came up with the following main reasons for working with flexi workers:

- To respond quicker to volatile demand situations (58%)
- Lesser administration (58%)
- Desire for greater operational flexibility (42%)
- To try out potential hires (33%), difficulty in finding staff with required skills (17%), finding substitutes (25%)

As can be seen from the following discussion on the employer motivations in Italy, UK and USA, the reasons for Indian employers are broadly quite in line with their counterparts abroad. A study in Italy conducted in 2003 found three main reasons for an employer to look for a flexi worker<sup>34</sup>:

- In response to production peaks (78%)
- To substitute for absent workers (16%)
- Specific skills not available in house (6%)

A survey by Atkinson *et al.*<sup>35</sup> in UK reported the following motivations on the part of employers:

- To substitute employees on maternity leave (38%),
- To substitute employees on holiday or sick leave (59%)
- Matching peak demand (63%)
- Performing tasks of temporary nature (39%)
- To screen employees for potential regular hiring at a later stage (20%)

In a survey among US employers of flexi workers<sup>36</sup>, the main reasons cited were

- Variability in demand (79%)
- Variability in supply of regular labour (88%)
- To screen employees for potential regular hiring at a later stage (16%)

<sup>34</sup> Temporary agency work and collective bargaining in the EU 2009 Report by European Foundation for the Improvement of Living and Working Conditions

<sup>35</sup> Atkinson J., Rick J., Morris S. and William M., 1996, *Temporary Work and the Labour Market*, The Institute of Employment Studies Report No. 311

<sup>36</sup> Abraham K. G., 1988, *Flexi Staffing Arrangements and Employers' Short-term Adjustment Strategies*, in Hart R. A. (ed.), *Employment, Unemployment and Labour Utilisation*, Unwin Hyman.

In a later US based survey<sup>37</sup> in 2000, the reasons cited by employers for hiring flexi staff remain more or less the same:

- To handle unexpected increase in business (52%)
- To substitute employees on holiday or leave (47%)
- To screen for suitable employees for regular jobs (21%)
- In lieu of a vacancy until a regular employee is hired to fill the position (47%)

Another important motivation, especially in countries with strict employment protection laws, was the possibility of avoiding separation costs. In such countries, companies cannot readily adjust their workforce with demand fluctuations as retrenching labour would not be easily possible or be prohibitively costly if demand fell and settled at lower levels. Not cited that frequently, but flexi work also saved in transaction cost through outsourcing part of regular HR activities.

---

<sup>37</sup> Houseman S. N., 2000, *Why Employers Use Flexible Staffing Arrangements: Evidence from an Establishment Survey*, Upjohn Institute Working Paper No. 01-67

### 3.8 Working Conditions of Flexi Staff

Apart from understanding how the flexi job market is helping workers and employers to serve their respective interests, it is equally important to assess the prevailing working conditions. There have been a number of surveys assessing the level of work satisfaction among flexi workers<sup>38</sup>. The Foundation for the Improvement of Living and Working Conditions carried out its Third European Survey on Working Conditions 2000 (ESWC 2000) across 15 European nations to assess the working conditions in these countries. In addition, there have been smaller surveys, some of them country specific. Select relevant results from the surveys are summarised below:

#### *Job satisfaction*

As can be expected, job satisfaction among flexi workers was relatively lower compared to regular employees. In the ESWC 2000 survey, flexi staff showed significantly lower level of satisfaction compared to permanent employees. Whereas 78% of full time flexi employees showed some level of satisfaction with their job, the corresponding rate among the full time permanent employees was 86%.

There have also been a few studies, which though failing to compare satisfaction levels among flexi and regular workers, present a similar picture in terms of job satisfaction among flexi workers. The REC & BERR Study 2008 for UK reported that 40% of the flexi workers were 'very satisfied' with their jobs with another 41% 'fairly satisfied'. Barely 12% showed any level of dissatisfaction. The ABU/ECORYS 2009 survey done in Netherlands also showed high satisfaction levels among flexi staff. The survey assessed satisfaction levels across four different aspects of work life - number of working hours per week, content of work, variation in work and wages. More than 70% of flexi staff were 'satisfied' or 'very satisfied' with their working hours and content of work. Flexi workers also seemed to enjoy the variety in the work they did across different assignments with 64% showing some level of satisfaction. The satisfaction with wages was at 84%. OME Study 2010 on French flexi workers indicated some level of satisfaction among 77%. Satisfaction with job profiles was higher at 81%. The 'Adapting to Change' Report (2011) by CIETT also reflected high satisfaction levels among European flexi workers. 83% of flexi workers in UK, 76% in Poland, 74% in Belgium, 69% in France, 62% in Netherlands, and 55% in Italy would recommend flexi work to their family and friends. 93% of European flexi staff were happy with their job profiles. High satisfaction levels were also reported on work life balance and salary levels.

#### *Job control*

The Flexi staff were observed to be less empowered compared to other types of workers. The percentage of flexi staff respondents expressing having no control over work methods or pace of work was almost double the overall level. This reflected the reality that flexi staff are rarely appointed in decision making positions. Moreover, a flexi worker is by definition an 'outsider' at his workplace, and needs to adapt fast and frequently to differing work environments across different host companies.

#### *Work related stress*

Stress at work reported by flexi staff was lower than that of regular employees, mainly due to the low job demands at the work place. ESWC Survey 2000 reported that whereas 30% of full time regular employees across 15 European nations claimed to be stressed, the share among

---

<sup>38</sup> For a more detailed discussion, see the Third European Survey on Working Conditions 2000 and Temporary Agency Work in the European Union 2007 reports by the European Foundation for the Improvement of Living and Working Conditions and CIETT Economic Report 2011.

flexi workers was around 17%. However, even if stress at work was lower, insecurity about work continuity, waiting for work, and inequality in terms of employment themselves were potential serious stress factors.

### ***Training for flexi staff***

Access of flexi staff to training varied across countries with, differing industry norms are the most likely. The Third European Survey of Working Conditions 2000 showed that only 23% of all flexi staff had received some form of training within the previous 12 months. In comparison, 34% of all workers, 31% of fixed term contractual workers, 35% of indefinite contract holders and 40% of apprentices had been trained over the same period. Data from the German Socio Economic Panel Survey 2001 also showed that flexi staff in Germany considered their chance of being chosen for further training to be much lower than any other group of workers. The flexi staff were also likely to miss opportunities of participating in long term competence development initiatives.

On the other side, case studies from Sweden showed that short term learning and personal development is high among flexi staff, and more frequent job changes also enriched their work experience. Seven European countries have also implemented systems of compulsory training to be provided to flexi staff (discussed in detail in the next section). In Netherlands, one among these seven countries, survey results showed flexi workers receiving substantially more training (13%) than fixed term workers (7%). The Dutch flexi staff underwent such training regularly to find new job opportunities. 70% of flexi staff receiving training were less than 35 years in age compared to 50% permanent workers receiving training from the same age bracket.

The available evidence thus indicates that training norm and programmes in companies play an important role in deciding the extent of training facilities available to flexi staffs in any particular country.

### ***Occupational health and safety***

As per Dutch Labour Inspection Survey data for 2004, 13% of work related accidents involved flexi staff even though only 3% of Dutch jobs were flexi jobs. Similar trend was also observed in France and Germany. Various reasons for this disproportionate situation are:

- Flexi staff are usually new in specific jobs and therefore less informed about occupation health and safety standards.
- More flexi staff are engaged in hazardous jobs

**Table 3.2: Occupational accidents among Flexi Workers in the Private sector, Germany 1995-2000 (accidents per 1,000 insurance cases)**

Year	Flexi Workers	Overall
1995	70.21	38.67
1999	50.63	31.78
2000	48.32	37.10

Source: Temporary Agency Work in the European Union 2007



### 3.9 Training Program for Flexi Staff

Gaining work experience, and access to training to make oneself more competitive in the job market repeatedly ranked high among the motivations cited by workers for joining the flexi job market. Similarly, many employers were forced to hire flexi workers either to tide over shortage in in house skill or short supply of labour. In both the cases, skilling the workforce becomes an imperative to cater to all respective interests. In the survey conducted on flexi workers in India, 62% of respondents felt the need for some level of formal training to efficiently perform assigned tasks. About half these respondents received some training from the user company, and another 40% honed their skill on the job (without any specific training). The figure for staff receiving training from their staffing agencies was around 7%.

In this section, we will focus on comparing the current Indian situations with practices in select other countries to present an idea about where we stand. The comparison is mainly based on the information available from the Eurociett and UNI-Europa study on training opportunities provided to flexi staff<sup>39</sup> in 21 European countries.

In all the 21 countries included in the survey, the flexi staff had access to the general national training system as everybody else. A bipartite training body set up with the specific objective to ensure adequate training facility for flexi staff has been set up in 7 countries (Austria, France, Belgium, Italy, Luxembourg, the Netherlands and Spain). France and Italy been the forerunners on this front, where such bodies are now more than a decade old. Luxembourg is the newest country to set up such flexi staff centric training system. There have also been instances of flexi staffing agencies voluntarily setting up training facilities in countries with no such institutional requirements.

Training programmes were mostly in the areas of technical skills, health and safety, information and communication technology, and use of computers. The process of setting up the system, however, differed across countries. Where the training system for flexi staff was regulated only by law, as in Belgium and Netherlands collective bargaining exclusively governed the contours of the training systems. In the other nations, it was a mix and match of both. In this group, only France had a formal objective evaluation system to assess the training outcomes. In other countries, either it was non-existent or only some periodic reviews took place.

The major share of funding along with the initiative for such training programmes come from the flexi staffing agencies themselves. The training generally takes place at the user company or at training institutions, and is mostly delivered during the execution of an assignment. Use of external funds (European Fund, other funds, public employment services) is comparatively limited. The number of workers trained, extent and nature of training provided, and rate of contribution per worker varied widely.

The share of trained flexi workforce is highest in Italy (36%), subject to the caveat that this high rate might partially reflect the new regulatory requirement of compulsory short training on safety, health and workers' rights for all new flexi workers. The share in Netherlands and France is 19% and 12% respectively. The training system is least effective in Spain and Belgium, where the system has not reached even 5% of the flexi workers.

The diversity also extends to training duration. The Spanish flexi workers clocked 69.8 hours of annual training on an average, whereas their Italian counterparts had to manage with barely 6 hours of training. Countries with longer training duration were training a lower share of flexi

---

<sup>39</sup> Eurociett and UNI-Europa, 2009, *Temporary Work Agencies' contribution to transitions in the labour market: the example of vocational training*.

staff. The payment system during training also had a bearing on the training duration. In countries (France, Netherland and Spain) where flexi staff are paid only partially or at the discretion of the agency, the training duration was longer.

The amount invested in training of each flexi worker was lowest in Netherlands (€180). France invested the most (€1226), followed by Italy (€730). Obviously, the contribution rate (amount invested in training as share of total wages) also varied accordingly, ranging from 1.02% in Netherlands to 2.15% in France.

Despite all these diversities in systems, outreach and outcome, three broad common features were observed. Firstly, a strong social dialogue existed in the flexi staffing sectors, and the need for proper training was supported by all parties involved. Secondly, a compulsory training contribution by staffing firms was mandated by law or through collective labour agreements. This ensured regular funding to run the system. Thirdly, national federations of flexi staffing agencies and trade unions had set up bipartite bodies to set up training funds. In addition to supporting the training programmes, the fund also supported activities like development of training policies, and selection of trainers.

### ***Case Study: France***

Access to lifelong training enhances the sense of security and gives access to a system that ensures an upwardly mobile career path for flexi workers. Having looked at this across countries, we now have a brief look at the French system of compulsory training for flexi staff, which has evolved through collective bargaining with support from the government through legal reform. The system is one of the oldest and most developed. Another reason for choosing France is the higher per flexi staff investment (€1226) in training relative to other countries with similar systems.

The right to training for 'all workers' was established by law in 1971. The training system for flexi staff has developed through both legal mandates and collective labour agreements. The interest of the unions was to ensure the career path of the flexi staff. Advocating for compulsory training was aligned with this mandate since access to lifelong training gave the flexi workers access to a system to ensure an upwardly mobile career path. On the other hand, vocational training helped the agencies to effectively cater to the needs and interests of their clients by ensuring adequate supply of trained number of flexi staff.

French law stipulates a compulsory financing obligation on the flexi staffing agencies. The rate of contribution towards training varies with the size of the agency:

- minimum 2.00% of total payroll for agencies with more than 20 workers,
- minimum 1.35% of total payroll for agencies with more than 10 but less than 20 workers,
- minimum 0.55% of total payroll for agencies with less than 10 workers

There are also minimum targets for expenditure under specific heads (for companies with >20 workers):

- 1.2% of total payroll to fund training plans for flexi staff.
- 0.5% of total payroll to fund Professionalising contracts and specific contracts for flexi staff.
- 0.3% of total payroll fund individual leave for training.

The fund for training of flexi staff, known as FAF-TT (Fonds d'assurance formation du travail temporaire, or Temporary Work Training Insurance Fund), was set up in 1983. In its 20 member Board of Directors, half are from the employer confederation (PRISME) and half from the trade union side (CFDT, CFE-CGC-FNECS, CFTC, USI-CGT, CGT-FO). Large flexi staffing agencies have

their own training service. The smaller agencies deposit 100% of their required legal contribution to FAF-TT, and receive support in return.

The achievement of the French training system can be summarized below<sup>40</sup>:

• Percentage of trained Flexi Workers	12.3%
• Number of training hours per trained Flexi Workers	47.4
• Amount invested in training by temporary work agencies (million euro)	331
• Amount invested per trained Flexi Workers (euro)	1,225.9
• Amount invested in training as share of total wages (payroll)	2.15%

---

<sup>40</sup> Eurociett and UNI-Europa, 2009, *Temporary Work Agencies' contribution to transitions in the labour market: the example of vocational training*.

### 3.10 Social Inclusion

In addition to raising the skill levels of workers, flexi work also has the potential to act as an agent of social inclusion<sup>41</sup>. It can help disadvantaged groups like people in higher age brackets, students, disabled, women returning from maternity break, migrant workers, and minority communities to enter the job market. The present section focuses on international experiences in the inclusive role of the flexi job market, and compares it with the Indian situation wherever data is available.

#### *Higher age groups in flexi work*

In 2002, only around 2.5% of flexi workers in Italy were aged over 50 years. The penetration ratio more than doubled by 2010 to reach 6.2%. The share of the 50+ years in the flexi workforce was higher in France and showed a rising trend - penetration rate in 2009 was 8.4%, rising without a break from 4.1% in 1996. A similar trend was observed in Netherlands. The share of 45+ years old workers in flexi work in 2006 was 12%. This increased to 13% in 2008. In comparison, the Indian flexi workforce is mostly young, with only 2% in the 40+ age group. This is expected to increase as the industry matures and demand for flexi staff at the high end of skill spectrum increases.

#### *Students in flexi work*

Around 8% of flexi workers in UK were students. In Slovenia, flexi work done by students in a year was equivalent to 40,000 full time jobs.

#### *Migrants in flexi work*

Recent migrants formed a sizable part of the UK flexi workforce - 14% of flexi workers had arrived at UK since 2004. The comparable ratio in the overall UK workforce was 2%. 13% of 'work & stay' permissions granted by Denmark since 2004 had gone to East Europeans engaged in flexi work. Migrant workers' participation was likely to increase in countries with an aging population resulting in a lower than required growth in the workforce. Unlike Europe, where labour is mobile within the EU, India does not encourage international migration for work. However, among the Indian flexi workers, about 12% had migrated from a different state.

#### *Socially vulnerable people in flexi work*

The share of ethnic minorities in the Dutch flexi workforce in 2006 was quite high at 14%. The penetration rate increased further to 18% in 2008. Incidentally, ethnic minorities, together with labour in 45+ years age group, people with physical disabilities and long term unemployed accounted for 31% of Dutch agency workers in 2008. The ISF/Indicus survey provides the share of the socially backward classes. Around 15% of flexi workers in India were from Schedule Caste/Tribe community, and another 16% belonged to the other backward classes. Together, the backward sections of the society had a 31% share in the flexi job pie.

#### *Disabled workers*

In France, flexi staffing agencies assist disabled workers in entering the job market at all different levels. 43% and 34% of disabled workers in France worked in skilled and unskilled blue collar jobs respectively. Of the remainder, 16% were in white collar jobs and 7% were in middle management. In Netherlands, the share of the physically challenged in the total flexi workforce was 2% in 2006. However, this declined sharply to 1% in 2008.

---

<sup>41</sup> For more details, please refer to CIETT Economic Report 2011

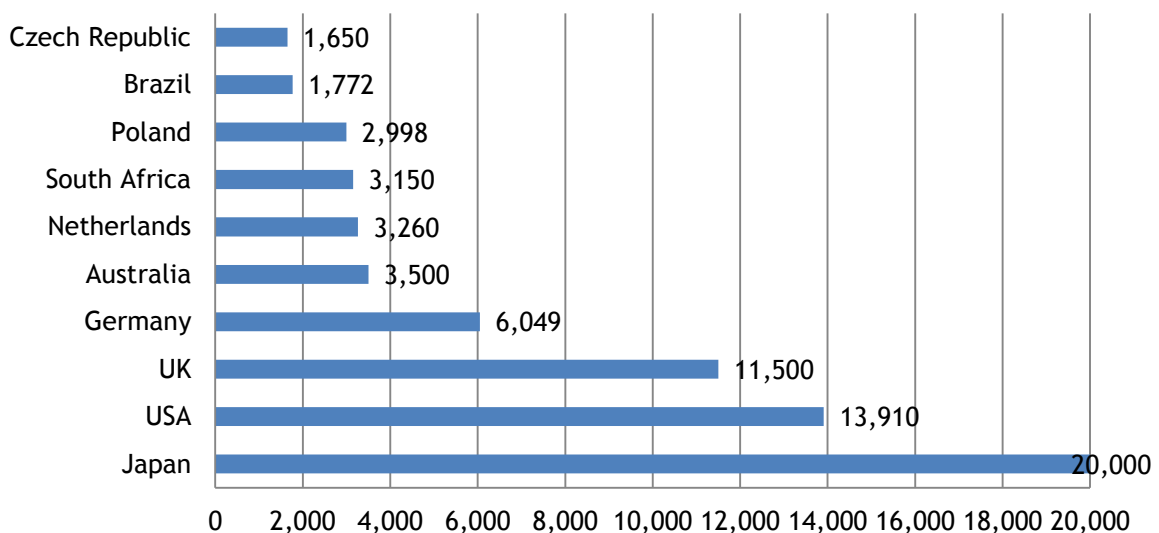
### 3.11 Challenges

Certain features of the staffing industry that make the environment challenging are as follows:

#### **Market Fragmentation:**

The biggest markets are highly fragmented. Japan has as many as 20,000 private employment agencies, followed by USA and UK at a distance. The impact of this fragmentation is in two ways - on the one hand it raises the competitive pressure, and at the same time opens up the opportunity to grow by strategic acquisitions.

**Top 10 countries in terms of number of private employment agencies**



Source: CIETT Economic Report 2012

#### **Regulation:**

Legal non-recognition of the flexi staffing industry itself poses a big challenge in many countries, including India. This creates an immediate confusion over the interpretation of existing laws and delineating the responsibilities of all parties involved. This allows the fly by night operators to enter easily and profit with total disregard for the law and interest of workers.

Even in countries where the industry is explicitly recognized and defined by law, the labour law framework has a significant influence on the staffing market size and growth rates. On the one hand, a very high level of protection reduces labour market flexibility, encouraging companies to hire temporary hands as the liability in case of job termination would be lower. On the other hand, an easy policy for flexi staff hiring also raises the penetration rates for staffing. UK, one of the most liberal labour markets, also enjoys one of the highest penetration rates (3.0 % in 2010) in temporary staffing. On the other hand, France with its more restrictive labour legislations shows higher penetration (2.0%) in 2010 than in USA (1.8 %).

#### **Economic Environment:**

The demand for HR services moves in tandem with the level of economic activity. In an upturn, demand for temporary employees generally increases, often ahead of the economic recovery. In a downturn, however, companies tend to reduce their temporary staff before they started

laying off their permanent staff. While, the staffing industry might gain from an upturn, the industry gets affected early in the case of a downturn.

#### ***Skill Shortage, External Talent Attraction and Retention:***

Skill shortage is a perennial problem, and the staffing industry is no exception. To be successful, staffing firms need to attract and retain external talent who possess the skills and the experience to meet clients' staffing needs. Arranging for a suitably qualified candidate in the face of a talent crunch and intensive competition over limited talent poses significant challenges and risks to its business model.

#### ***Lack of Openness in Public Companies:***

In many of the countries, the public sector accounts for a large part of the economy and workforce. However, this sector is not fully open to the flexi staffing industry. Consequently, a large part of the employment market remains outside the purview of the flexi staffing players. Interestingly in India the public sector has a high intake of flexi workers.

#### ***Triangular Employment Relationship:***

In many countries, especially if this form of labour is not explicitly recognized by law, the responsibilities of the primary employer and staffing agencies are not clearly delineated. This gives rise to disputes and at times denial or delay in payment of benefits to the workers. The fuzziness of the triangular relationship also at times makes deliberate non-compliance and circumvention of legal provisions much easier to perpetrate. The incident of 'check splitting' in Worcester, Massachusetts, USA<sup>42</sup> is a prime case in point. After working for 70 hours per week in a stone cutting business, the workers received two checks without any overtime pay - one check from the flexi staffing agency and the second from the granite business. This effectively robbed the workers of their overtime payments. Such legal obfuscation brings the industry a bad name, and eventually restricts its expansion.

#### ***Vulnerability of low wage temporary workforce:***

In 1985, blue collar flexi staff constituted only 6% of the flexi staffing industry workforce of USA. This has increased to more than 35% now. Some of the low wage staffing occupations like Janitors/ Cleaners, Shipping/ Receiving, and Construction/ Extraction workers are likely to grow by more than 20% over the 2006-16 period. The vulnerability of such low wage workers, generally having lower level of education and skills, is higher than others. This vulnerability is further exacerbated by the fact that a significant share of such workers in the US consist of immigrants and undocumented workers facing huge language barriers. Massachusetts, USA reported recurrent cases of wage theft and routine violation of occupational health and safety standards in case of low wage workers.

Considering that most of the Indian flexi staff workers are also working in generic low skill jobs, the same problems are also expected in India. As has been recommended earlier, banking channels should be used as much as practicable for payment of wages and other financial benefits to guard against the possibility of fraudulent practices.

---

<sup>42</sup>Freeman H and Gonos G, "The Challenge of Temporary Work in Twenty-First Century Labour Markets".

### ***Collective bargaining and representation<sup>43</sup>:***

Flexi staff normally do not continue with the same primary employer for long. At the same time, they also do not work at the premises of the staffing agency. This creates a unique problem in the sense that most of the flexi staff cannot access the benefits of collective bargaining and representation. Only three examples of specific trade unions or trade union sections for agency workers are there. In France, Union Syndicale des Intérimaires (USI-CGT) is the only trade union for the flexi staffing industry workers. Three trade union confederations in Italy have created internal structures to represent 'atypical' workers including the flexi staff. The third country with a union for agency workers is Greece.

More usually, the flexi staff join the regular unions. The membership density of flexi workers varies widely across countries. In Slovenia, it is as low as 0.18%. Figures for France, Italy and Netherlands is 0.9%, 1.4%-1.7% and 7% respectively. In Sweden the density is 17% among white collar flexi staff and in the 50%-60% range for the blue collar workers. Three other countries also report high level of union membership - Finland (44%), Denmark (~50%) and Belgium (~60%). However, examples of such countries are limited. Among the EU nations, union membership is observed to be particularly low among the newer EU member states.

---

<sup>43</sup> Refer to the 'Temporary agency work and collective bargaining in the EU 2009' report by European Foundation for the Improvement of Living and Working Conditions for more details.

### 3.12 Legislative Initiatives

India does not have any flexi staffing industry specific laws. The industry currently follows the Indian labour laws which are applicable to all. As seen in the earlier chapter, the current legal system suffers from a number of shortcomings, more specifically when looked at from the point of view of the flexi staffing sector. As the current legal provisions are not geared towards addressing the tripartite relationship peculiar to the industry, there is a lack of clarity on many of the relevant issues like the respective responsibilities of flexi staffing agency and the user company. Keeping in mind the major legal issues facing the industry, this section presents a brief review of legislative initiatives in a few select countries that have legally recognised flexi staffing.

#### *Italy<sup>44</sup>*

Legislation introducing flexi staffing was introduced in Italy in 1997 (Law 196 of 1997). Since then the industry has grown from just 10,000 in 1998 to 197,000 in 2010. Under the law, flexi staffing agencies needed to obtain licenses to operate. The licensing required formation of a joint stock company or a co-operative with a paid up capital of at least one billion lire and a security deposit of 700 million lire in the first two years of operation to cover for payment obligations to employees. The agencies were also required to provide hiring out of labour as a standalone business activity. The presence of an office in at least four regions of Italy was also legally mandated.

The law imposed the following obligations on the staffing agencies:

- Ensure parity in remuneration between flexi staff and comparable employees of the principal employer
- Provide required insurance and social security contributions
- Provide paid annual holidays
- Provide cover for occupational health and safety hazards
- In case of flexi staff with open ended contracts, agencies were required to continue payment even when such staff were not working. On termination, such open ended contract holders were also entitled to end-of-service allowance.

The law also imposed a few obligations on the user company:

- Share information and provide training in occupational health and safety measures
- Allow flexi staff access to all social and welfare facilities

The law also required inclusion of certain specific information in the contract papers to be signed between the flexi staffing agency and the flexi workers:

- The reason behind use of flexi labour
- Identity of the user company
- The work to be performed, relevant job classification, start and finish date of assignment, working hours, location, etc.
- Probationary period, if any
- Financial terms and conditions
- Regulatory terms and conditions, if any
- Occupational health and safety requirements, if any

---

<sup>44</sup> Please refer to the Temporary Agency Work National Report 2001 on Italy for more details.



The user company was also required to specify the above information in its contract with the flexi staffing agency. In addition, the following also needed to be included:

- Number of workers required
- Undertaking by the agency to pay the worker directly. In case of default, the obligation transferred to the user company.
- The details of the license issued to the agency

If the flexi staff were required to continue to work beyond the 10 days from expiry of contract period, the status of the flexi worker was deemed by law to change to an open ended contract employee of the user company. The law also stipulated a 20% rise in the daily rate for this 10 day period.

The law also imposed certain restrictions on the supply of flexi labour. Agencies could not supply labour

- To replace employees on strike
- Where an enterprise carried out mass layoffs in the preceding 12 months
- In such tasks where work flow was affected due to introduction of shorter timings in the preceding 12 months
- For hazardous jobs

Though flexi workers were not allowed to be employed by public authorities in the initial period, the Framework Agreement 2000 allowed it up to an upper limit of 7% of total employees.

A bilateral fund for vocational training was also required to be set up under the law. A flexi staffing agency was required to allocate 4% of cost of flexi agency work to employee training.

### ***Netherlands<sup>45</sup>***

The flexi staffing industry in Netherlands was governed by two laws: WAADI (Law on allocation of labour force through intermediaries) and Flexicurity Act. Important provisions of these two laws are discussed below.

#### ***WAADI***

The objective of this law was to set industry norms. Some salient features were as follows:

- Agencies no longer needed to obtain a license.
- Flexi staffing agencies needed to meet all social security and tax obligations.
- There could be no discrimination between flexi workers and workers at the user company in same/similar position in terms of employment
- Agencies needed to provide information to prospective employees on safety regulations in the user company. Both the agency and the client had to bear joint responsibility in case of a shop floor accident.

#### ***Flexicurity Act***

It came into force in Netherlands in 1999. The objective of this act was to '*adequately match employers' demand for flexibility and employees' demand for working life security and income.*' Some of the salient features of the act were:

---

<sup>45</sup> Please refer to the Temporary Agency Work National Report 2001 on Netherlands for more details.

- It brought the flexi workers under the cover of the regular labour laws ensuring parity in rights between flexi workers and regular contract employees.
- It recognised the agreement between the flexi worker agency and the flexi worker as an employment contract. All regulations of an employment contract became fully applicable to such flexi contracts after six months from the date of signing.
- Trial period in contracts with less than two years duration was limited to one month, extendable to maximum two months in case of a collective agreement.
- In case of termination of contract, an employer needed to serve a notice of one month in case of contract duration of less than 5 years. For contract durations of 15 years or longer, the notice period could extend up to 4 months. In case of employees, the notice period was always one month.
- In case of dismissal, such cases needed to be referred to the Public Employment Service for permission.

#### *Dutch tripartite agreement*

The Dutch government signed an agreement in 2004 with flexi agency body ABU (Algemene Bond Uitzendkrachten or General Union of Temporary Agencies), trade unions and user companies. The agreement looked to improve the working conditions for flexi workers. A few important provisions of the agreement were:

- To ensure that occupational health and safety standards were maintained
- To develop a new sick leave registration system to better capture sick leave data to enable inter-sectoral comparison
- To enhance support to flexi workers on sick leave

#### *Spain*

Temporary employment agencies ('Empresas de Trabajo Temporal', ETTs) were first introduced in Spain by Law 14 of 1994. It defined a flexi staffing agency ('Empresa de Trabajo Temporal') as an enterprise 'whose activity is intended to transfer hired employees to a user company on a temporary basis.' The industry was regulated by a set of laws and royal decrees. Some of the salient features of the Spanish laws covering the flexi staffing industry were:

- Flexi staffing agencies could solely engage in intermediation in flexi jobs
- Flexi workers had full representation rights at the agency, but not at the user company
- Flexi workers were entitled to the same pay as similar employees at user company
- Flexi staffing agencies were required to invest at least 1% of total salary volumes in staff training
- Flexi staff could be employed on three grounds:
  - To do a specific service or work temporary in nature. In such cases, the contract period needed to coincide with the duration of the work.
  - To meet need arising out of any special demand or increase in work load
  - To stand in for temporarily absent employees

In addition to adhering to the applicable laws, the Spanish association of large temporary work agencies AGETT (Asociación de Grandes Empresas de Trabajo Temporal) had developed a 'Code of Quality' and a 'Code of Behaviour' which all members needed to follow. These codes were introduced to improve the social perception of the flexi staffing industry. The association had also embarked on a corporate social responsibility initiative by signing an agreement with FAMMA (Federation of Associations of Physically Disabled people in Madrid) offering to undertake joint activities to integrate the disabled into the labour market.

### ***Finland***

Finnish flexi staff have been enjoying the same pension rights, sick pay and annual holidays as permanent employees since 1998 under its Employment Act. The enactment of the Contracts of Employment Act in 2001 resolved the dispute over the contract terms of flexi workers. The legislative piece ensured that the contract terms of flexi workers had to be the same as for permanent employees.

### ***Germany***

The German Temporary Employment Act was amended at the end of 2002. Consequently, the German flexi staffing agencies were required to ensure starting from 2004 that their workers' pay and employment conditions were no different from permanent staff as part of a wider reform of the labour market. The revision of the Act implied a fundamental change of the legal situation for flexi staff. From 2004, temporary work agencies were obliged to guarantee their workers the same pay and employment conditions that permanent staff were entitled to in the user firm. The new law allowed a deviation from the principle of equal treatment and equal pay for flexi staff only on the basis of collective agreements.

### 3.13 A Review of the Chinese Flexi Staffing Industry

In the 1980s when the new economic policy to open up the economy was adopted, foreign companies were not allowed to directly employ workers. The Chinese authorities feared at that point that Chinese employees would face difficulties in pursuing labour rights in a foreign company. Local service units were set up to act as an intermediary between the Chinese workers and these foreign companies. In the system that was developed, the Chinese personnel were first hired by these intermediaries and they would then despatch the workers to the foreign companies. This can be viewed as the initial phase of flexi staffing in China, although this new form of employment was neither the voluntary choice of the company nor of the worker.

When China began its transition away from planned economy, its focus on efficiency led it to downsize its state owned and collectively owned companies. This led to mass lay off of redundant labour. These laid off workers together with the surplus labour from the rural areas, the unemployed and the new job market entrants created a huge unemployment problem despite the remarkably high economic growth brought by the reform initiatives. In such a situation, the Government favoured and encouraged the flexi employment system because of its ability to match demand and supply quickly and also help companies in significant cost savings.

Initially, flexi staffing services were provided by the Public Employment Service Agencies. Such agencies were focused on providing employment opportunities to the laid off workers and the rural migrants. Within a short period, however, Private Employment Agencies entered the fray, resulting in a gradual broadening of the group. This expansion also brought a set of provincial and municipal regulations, which also gave flexi staffing its local name - '*labour despatch*', a name also used in Japan and Korea. However, no regulation or legislation at the national level covering this specific industry was introduced at this initial phase.

The active role of the flexi staffing industry in job promotion continued even after the introduction of the provincial regulations due to the sustained pressure of excess labour on account of increasing rural outbound migration and expansion in college enrolment. However, in the absence of a national regulation, the flexi staffing industry operated randomly and many workers became victims of illegal activities. This finally led to promulgation of the Employment Contract Law (ECL) in 2005 that came into force on January 1<sup>st</sup>, 2008. This legally recognised the flexi staffing industry and introduced regulation for the industry under the Chapter of Special Provisions. Currently, in addition to the ECL, there are two more legal documents covering the industry - (a) Regulation on the Implementation of the Employment Contract Law (a supplementary legal document to ECL) and (b) Legal Reply to the Labour Ministry from the Legal Affairs Committee of the Standing Committee of National People's Congress (SCtNPC) on the restrictions of job positions of labour despatch (a semi-judicial interpretation but not legally binding).

#### ***Provisions of the Chinese Legal System:***

##### ***Registration of Flexi Staffing Companies:***

Flexi Staffing companies were treated as a normal private business, sharing the same registration system with other private corporations subject to the minimal capital requirement of RMB 500,000. There was no requirement of personal and professional qualifications and no license was required to set up a flexi agency. Neither was there any sectoral restriction under national law.

#### *Who cannot set up Flexi Staffing Agency:*

Specific provisions had been included in the statutes proscribing an employer from setting up a flexi staffing agency (either alone nor through its subsidiary or partner) to dispatch employees to itself or subordinate units.

#### *Obligations of Flexi Staffing Agencies:*

The Chinese law puts the following obligations on the flexi staffing agencies:

- No fees can be charged from the flexi workers.
- Flexi workers cannot be employed on a part-time work basis.
- An employment contract must be concluded with flexi staff.
- Such a contract, in addition to the regular items, must specify information such as the name of the user company, the length of assignment, the posted job position, and so on.
- The contract period should be fixed with duration of no less than 2 years.
- Wages have to be paid monthly for flexi staff. In periods when there is no assignment, the agency shall pay the minimum monthly wages according to the standard set by the government in the local place.
- The flexi staffing agencies have to enter into an agreement with the user company which shall explicitly mention the job positions, the number of workers, the length of assignments, amount and the means of payments of remuneration, social insurance and the corresponding default liability.
- The terms and conditions of such agreements between staffing agencies and user company have to be fully disclosed to the workers.
- Remuneration paid by the user company can neither be withheld nor any deduction made.

#### *Obligations of User Company:*

Under the Chinese legal system, a user company has to undertake the following obligations:

- No fees can be charged from flexi workers.
- Cannot despatch flexi workers to another enterprise.
- Clearly communicate the job requirements and remuneration and other benefits payable/available.
- Provide necessary position related training for TA workers
- Ensure working conditions and labour protection as per the national labour standards
- Pay overtime, performance bonuses, welfare benefits appropriate for the job positions.
- Develop and implement a system of wage adjustment in case of continued employment of flexi workers

#### *Restriction of length of assignment and job positions:*

Article 66 of the Employment Contract Law prescribes that “*temporary agency workers may in general be posted to job positions with a temporary, assistant or substitute nature*”. However, the terms ‘temporary’, ‘assistant’ or ‘substitute’ are not explicitly defined in the law. In response to query from the Labour Ministry, the Legal Affairs Committee of the Standing Committee of the National People’s Congress (SCtNPC) defined the terms as follows:

- Temporary: Duration of each assignment should not exceed 6 months
- Assistant: Job positions filled by flexi staff should not be core positions at the user company
  - Substitute: Positions where permanent/direct employees are absent.

Such restrictions were sought to be imposed with the objective to ensure that flexi staff did not supersede the regular employees, but remain as a supplementary work force only. However, under the Chinese legal system, such responses from the Standing Committee only have a guidance status, and are not legally binding.

### ***Profile of the Chinese Flexi Staffing Industry:***

#### *Number of agencies and workers:*

- At the end of 2008, there were more than 26,000 flexi staffing agencies.
- The estimated number of flexi staff in 2008 was more than 27 million (Ministry of Human resources and Social Security figures). However, All-China Federation of Trade Unions alleged under reporting by the Ministry, and have assessed the industry size to have touched 60 million by the end of 2010 (30% of workforce)<sup>46</sup>. The size of the Chinese flexi staffing market thus is very large - even the lower official number is larger than the aggregate size of all the other nations covered by CIETT reports.

#### *Composition and distribution of flexi staff:*

- Flexi staffing workforce was mainly composed of migrant workers from the rural hinterland, laid off workers from the state and collective companies, the unemployed, early retired workers and college graduates.
- The staffing industry was more developed in the eastern and southern regions (Shanghai, Beijing, Guangdong, etc.).
- Flexi workers were concentrated mainly in aviation, construction, manufacturing, service, communications, energy, transport, and banking. Construction was the biggest employer of flexi workers among these, accounting for almost a third of the total number of flexi workers.
- Penetration of flexi workers in China was significantly higher than any other country. In Sichuan province, an inland region where the system of flexi work was introduced later than the coastal areas, the penetration rate was 12%. Penetration ratio (in Sichuan province) was the highest in aviation (40%), closely followed by communication (35% to 40%) sector. Other sectors with significant penetration were petroleum, electricity generation, construction and banking. In comparison, overall penetration rate was 1.5% in Japan, 1.6% in Europe and 1.8% in USA.
- The state owned companies also employs significant number of flexi workers.

#### *Length of assignment:*

- Average length of assignment was more than 1 year with significant variation across sectors and occupations. It was higher than the Standing Committee suggested length of 6 months.
- In Sichuan province, length of assignment in the construction sector was relatively short - normally within 2 years. On the other hand, average length of assignment was generally longer in state owned communication companies (5 years).

---

<sup>46</sup> Rights of 60 Million Labor Dispatch Workers Hard to Protect, Published in Jinan Daily, 28<sup>th</sup> Feb, 2011. (Chinese Original: <http://news.163.com/11/0228/10/6TVN8SE300014AED.html>; Translation provided by China Labor News Translations: [http://www.clntranslations.org/file\\_download/140](http://www.clntranslations.org/file_download/140))

### 3.14 Summary Observations

The international flexi staffing industry has more than doubled over the last decade and a half, and this expansion is not a phenomenon limited to the developed countries. Over recent times, developing countries like Brazil and South Africa have experienced significant expansion of the flexi staffing business (in terms of number of workers employed in the sector) alongside many developed economies like Italy, Germany, UK, Spain, Poland, and Japan. Though historical data is not available for China, the Government estimate make it the largest flexi staffing market. If the estimated flexi staffing industry size of India and China were considered in conjunction with the CIETT global statistics, 4 out of top 5 positions would be taken by China, India, South Africa and Brazil.

The penetration ratio shows an interesting trend. High penetration ratio is observed in a few countries with the most stringent protections for regular employees (China, Germany, Sweden, Italy) alongside some countries with the least protected employment market (South Africa, USA, UK). Among the BRICS group of nations, Russia has the lowest number of flexi workers and penetration ratio. The level of penetration is also low for India (0.32%).

Most of the Indian flexi workers are young in age, as has been the experience internationally. A majority of Indian flexi workers have completed some level of higher education and India is among the small group of countries (consisting of Australia, Japan, Sweden, Bulgaria and Norway) showing a similar trend. Contrary to international experience the Indian flexi workforce was male dominated despite the industry's service sector bias.

The Indian flexi workers' motives for joining the industry showed close resemblance to Brazil and USA - two different countries at very different levels of development. Even though a significant number of Indian flexi workers entered the industry due to lack of alternate choice, a majority of them viewed flexi work as a means of finding permanent jobs and gaining from work experience and training opportunity.

The motives of the Indian companies behind engaging flexi workers are quite in sync with the international experience, with ability to respond quickly to demand fluctuations, operational flexibility, lesser administration ranking among the top.

Even though the international experience showed a high absolute level of job satisfaction among flexi workers, their satisfaction levels on a comparative scale tend to be lower than regular employees. Considering that flexi workers are rarely employed in decision making levels and work on short duration assignments with different user organisations, the level of job security they enjoy is also lower along with lower job stress. A significant share of flexi workers join the industry for access to training. As such, there is a valid need for ensuring adequate training facilities to enhance their skills and employability. A few countries like France, Italy, and Austria have implemented a system provisioning for compulsory training of flexi staff. The systems in these countries can be used as a model for India.

Another important requirement is the need to develop minimal occupational health and safety standards for flexi workers and ensures strict implementation, especially in the light of the experience in Netherlands, France and Germany where a disproportionate number of work related accidents involved flexi workers.

### 3.15 Concluding Remarks

The current Indian labour laws do not recognise the flexi staffing industry as a separate entity with unique features. However, as seen in this chapter, despite this legal fuzziness this sector has grown into one of the largest (in terms of number of flexi staff) across the world in a very short span of time. Moreover, considering the low penetration ratio along with factors like demand outstripping supply in job market, current Indian demography, likely further deregulation and liberalization which shall increase the competitive pressure on companies with more volatility in their demand dynamics, the flexi staffing industry is likely to grow further in the years to come.

It is therefore imperative that the Government gives serious consideration to the industry demand for explicit recognition by law. This chapter provides a snapshot of the legal system implemented in two different sets of countries - developed economies like Italy which have recently (mid 1990s) extended legal recognition to the flexi staffing business and a developing country like China which is also going through economic restructuring. As a quick review shows, legal recognition to flexi staffing is not limited in scope to just validating a business model, but developing a complete legal ecosystem encompassing protecting the interests of workers, flexi staffing intermediaries as well as the user company. It also entails spelling out the sectors and class of employees open to be engaged, exact responsibilities of the intermediaries and the end user company, provision for protection of workers' interests in terms of wages, social benefits, skill development, and work condition.

The most pertinent point to note is that in the absence of appropriate legislation the industry is not going to vanish. Rather the unorganised segment of the industry, which already accounts for a large share, is going to expand further.

This is not only detrimental for the growth potential of the organized players, but also detrimental to the interest of the workers engaged in the flexi staffing industry considering the limited legal protection available to unorganised sector employees.

Therefore, considering the international experience, we call for a comprehensive legal ecosystem mindful of the interests of the workers, the flexi staffing agencies and the user company. In short, we suggest:

- Legal recognition to the flexi staffing business
- Specification of conditions to be fulfilled to be able to engage in such employment services. The legal provision should spell out the individual responsibilities and obligations of both the flexi staffing intermediaries and the user company
- Adequate provisions to protect the interests of the workers, along with clear delineation of the individual responsibilities of both the staffing intermediaries and the user company towards fulfilling these protective provisions.

ISF as the industry body of flexi staffing agencies in India considers itself responsible for developing an ecosystem to ensure that all member agencies adhere to their responsibilities and obligations - towards laws of the land, the flexi staff members and the clients. In keeping with this spirit, the Indian Staffing Federation (ISF)

- Mandates its member flexi staffing agencies to follow all labour laws and protect the welfare and interest of all the flexi staff on their board.
- Every ISF member is required not to charge any fees from flexi staffs for finding work.



- All flexi staff are paid wages at par with the prevalent market rates subject to the floor limits set under the Minimum Wages Act.
- All employees are extended Social Security Benefits like Provident Fund along with universal coverage under the Employees' State Insurance Act.
- Adherence to Gratuity Act, Payment of Bonus Act, Industrial Dispute Act, and Contract Labour (Regulation and Abolishment) Act as applicable is also mandated for all members.
- In addition, all members are required to issue a written appointment letter at the time of hiring a flexi staff member, run accurate payroll system and generate comprehensive payslips to all.

Over and above these, the ISF has also introduced a few best practices among its members.

- On employment, all salary payments are made strictly through banking channels - either through account payee cheques or direct bank transfer. If required, the member agencies even extend all possible assistance to a new employee in opening bank accounts.
- Considering the inadequacy of ESIC coverage, ISF member agencies are also extending Group Medclaim and Personal Accident Insurance coverage to all their employees.
- Skill development opportunities are also being provided to the flexi workers in consultation and active participation of the user companies.


The ISF thus is doing its bit to usher in international best practice in the Indian flexi staffing industry in a bid to raise the image as well as business practices of the industry to the international level. However, in the absence of any regulatory requirement, adherence to ISF suggested practices is at best voluntary. This is more so in the case of the vast universe of non-ISF agencies. It is therefore critical for the Government to take notice and start work on a holistic legal framework. It is important to note that in the absence of an unambiguous legal framework it is the flexi workers who are likely to be the biggest losers.





# *Chapter 4*

# Way forward



Temp staffing has been seeing an upward trajectory and the prime factor influencing the adoption is the business mandate to increase market share and bottom line. Companies look for flexibility and agility to grow profitably and 'Temp Staffing' offers it.

*E Balaji, MD and CEO  
Randstad India*

India is witnessing large number of first time job seekers that need the best experience of security and flexibility. Employers can use the staffing flexibility as a strategy than a hedge to make them more competitive. Positively regulated staffing is a great enabler for India to reach its 500 million skilled workers goal.

*Kamal Karanth, MD  
Kelly Services India*

Our estimate of the size of flexi staffing industry in India based on latest NSSO data is about 1.3 million in 2011. This is roughly 3% of India's total formal (organized) sector employment. If growth between 2004-05 and 2009-10 is any indication, flexi staffing will account for about 10% of India's formal sector employment by 2025. The major growth can come from tapping the large number of other type of temporary employees which in 2011 had an estimated size of 22 million - 20.1 million casual employees and 1.9 million bipartite fixed short term contract workers.

With its mantra of 'flexibility with security', the flexi staffing industry has the potential to grow further as it matures further and gets more acceptability among both workers and employers. Considering the current status of work conditions among casual workers, direct (bipartite) contract workers and changing work style on the one hand, and the increasing economic cyclicity along with gradual structural shift in the economy on the other, the attraction towards the flexi mode of work relationship is only going to gain more traction among both workers and employers in times to come.

As the international data on market size (in terms of employment numbers) shows, India is already among the largest flexi staffing markets across the world. And it is going to expand further in times to come, potentially reaching a much higher proportion not too far in future if the Chinese experience is any good indicator.

Under such circumstances, it is the right time to initiate a debate on the working of the industry. Indian Staffing Federation, the body of leading staffing agencies in India, has initiated efforts to internalise international best practices among its members. But, in the absence of a supporting legal ecosystem, such guidelines on best practices are exactly what they are on paper - just guidelines, without any teeth. Moreover, the ISF members cover only a slice of the industry (about 0.35 million out of 1.3 million) and the rest of the flexi staffing industry is free to devise their own business practices. So, considering the potential size this industry is likely to reach, it is high time that an initiative is taken to address the legal shortcomings in our labour laws.

As the template for legal reform towards explicit recognition of the flexi staffing agencies and formulation of a legal system which shall ensure balanced protection of the interests of all the three players (the flexi workers, flexi staffing agencies and the user companies) in a flexi staffing arrangement, we suggest the International Labour Organisation Convention No. 181 and associated Recommendation No. 188.

Based on suggestions in the Convention, an explicit legal definition of the industry should be introduced by enactment of new legislation or appropriate amendments to the existing laws governing employment relations. The legal system has to provision for adequate protection for flexi workers. To prevent worker abuse, the enabling provisions should delineate the regulatory obligations of the flexi staffing agencies and the user companies, along with their respective responsibilities towards their employees.

The Convention provides sufficient flexibility to the member states to design and implement suitable policies for regulating the industry in accordance with the existing provisions of national law and practices and through consultation with all concerned parties. Most of the workers' interests mentioned in Article 11 of the Convention like right to freedom of association and collective bargaining, minimum wages, and social security benefits are already being dealt with, albeit in a system designed for a bipartite environment. These laws would need to be adapted to the unique tripartite features of the flexi staffing industry. The main task will be drawing a clear demarcation of the respective responsibilities of the flexi staffing agencies and the user company.

As a first step towards initiating a debate in the policy circle, we propose the following contour of the reform agenda:

**1. A legal definition for the flexi staffing industry and due recognition as an employment service:**

An explicit legal definition of the industry should be introduced by enactment of new legislation or appropriate amendments to the existing laws governing employment relations. The C181 definition can be adopted here:

*Services consisting of employing workers with a view to making them available to a third party which assigns their tasks and supervises the execution of these tasks.*

**2. Define the operational requirements for the flexi staffing agencies and user company. Ensure strict compliance by all.**

Though barriers to entry are not desirable, some provisions to regulate the operations of the flexi staffing agencies are needed.

- All flexi staffing agencies should be registered with a designated central body. A minimal capital requirement of Rs 10 million can be considered. Similar to the Chinese system, no separate license or personal/professional qualification should be required to start a flexi staffing agency. However anyone with previous criminal background or history should be barred from starting a flexi staffing agency.
- Currently there is no sectoral restriction on employing casual and contract labour. Considering that flexi staffing is a similar type of temporary employment contract, all sectors including Government and Public sector companies, should be open to deploying flexi staff.
- Individuals/ Companies that default on timely payment of wages or statutory dues should not be given permission to set up Temporary Staffing Companies.
- Licensed Companies that default on timely payment of wages or statutory dues will have their licences revoked.
- However, restriction shall be imposed in deploying flexi staff on hazardous job, to replace striking workers, or in companies where there has been a mass layoff
- It should specify the operational conditions like technical standards, codes of ethics, dispute resolution mechanism, fees, and so on. for smooth operation of the industry.
- It should specify the nature and coverage of contractual obligations between the agencies and the workers as well as between the agencies and the user company.
- Contracts between workers and agencies should specify information such as name of the user company, job position, salary and benefits, place of work, work conditions, and length of assignment.
- Contract between agencies and user companies shall specify job position, number of vacancies, assignment period, amount and means of remuneration, social benefit, default liability, place of work, work condition, and other relevant terms.
- Neither the agency nor the user company should redeploy the worker in any other activity other than the one contracted. If required, a fresh set of contracts should be prepared.
- Considering that an overwhelming large proportion of the flexi workers are young and just out of school, there is a need to develop a skill development programme. A dedicated contributory skill development fund should be considered, with active contribution and participation from the Government.
- There should be legal provision against unfair/misleading advertisements.
- A mechanism for cooperation between private flexi staffing agencies and public employment agencies (e.g., employment exchanges) should be developed in matters of information pooling, job vacancy information, and so on.

### 3. Protect the flexi-workers' rights:

We strongly believe that the legal ecosystem for the flexi staffing industry must have adequate protection for the flexi workers' rights. The following are some of the areas which shall require particular attention:

- No fees should be charged from the flexi workers by the flexi staffing agencies.
- Flexi workers should be given a written contract specifying the terms and conditions of employment.
- Flexi workers should have access to the terms and conditions of the contract between flexi staffing agencies and the user company.
- Minimum wages, as defined by appropriate laws and notified periodically, should be paid. There should be parity in compensation between a flexi worker and a permanent worker doing the same job in the user company and having the same level of skill. The difference, if any, should be explainable by factors such as qualification and experience.
- Salary payments should be paid through the banking channels to the extent possible.
- Remuneration once paid by the user company can neither be withheld nor any deductions made by the staffing agency under any pretext.
- Work conditions should be comparable to permanent workers doing the same job in the user company.
- Access to statutory social security benefits should be ensured. The terms of benefits should be the same as permanent workers in similar job in user company.
- No discrimination should be allowed on the basis of race, caste, region of origin, sex, religion, age, disability, and political opinion.
- Right to freedom of association and collective bargaining should be ensured.
- Access to training to develop or enhance skills should be provided. Guidelines requiring provisions for minimum training as well as encouraging Private Public Partnerships for training flexi staff should be considered.
- There should be no restriction in occupational mobility - from job to job, from one agency to another, or from a flexi job to a permanent job at the user company.
- Guidelines for occupational safety and health, and compensation in case of occupational accidents or diseases, needs to be outlined.
- Maternity protection and benefits, and parental protection and benefits should be ensured.
- Provisions for protecting workers' claims in case of insolvency of the flexi staffing agency and/or the user company should be included.
- Grievance redressal systems need to be set up in consultation with all the stakeholders.
- National Ombudsman needs to be appointed to address and respond to any query, issue raised by any flexi worker. The process of redressal and how one can approach the National Ombudsman needs to be widely publicised and promoted.

It is pertinent to mention that Indian Staffing Federation has already voluntarily adopted a set of international best practices for its members in addition to the legally mandated requirements:

- Not to charge any fees from flexi workers
- Issue a written letter of appointment to the workers specifying the terms of employment, duration
- Pay salary using banking channels
- Cover flexi workers under additional group Medclaim and personal accident insurance cover over and above the coverage under ESIC requirements
- Provide skill development opportunities in consultation with the user companies

#### **4. Clear enunciation of responsibilities and obligations of flexi staffing agencies and user company:**

In a scenario of a tripartite relationship between the workers, the flexi staffing intermediary and the user company, there needs to be clear delineation of the responsibilities and obligations of both the flexi staffing agencies and the user company in matters like the process of hiring (e.g. nature of contract between the worker and the flexi staffing agency on the one hand, and the agency and the user company on the other, contract specifications, terms of employment), responsibility for wage payment, social benefits, work place safety, and grievance redressal.

The obligations of the flexi staffing agencies can be made a part of the registration process. Such codification will allow only players fulfilling a minimum criteria and weed out the others.

Moreover, there is a need to develop a mechanism to specify the responsibilities and obligations of the user company too, perhaps at the time of signing of the contract between the agency and user company. Firstly, this requirement is necessary as flexi workers will be deployed at the premises of the user company and will also work under their direct supervision. Secondly, it needs to be ensured that the search for best price by the user companies should not in any way compromise the workers' interest.

To summarise, just as we need to ensure adequate flexibility in labour market keeping pace with the current business environment, appropriate legislations also need to be put in place to regulate entry of the flexi staffing agencies and the operational standards of both the agencies and the user company.



# Appendix

## List of 44 labour laws enacted by the Central Government

### (a) Labour laws enacted and enforced by Central Government

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986
4. The Mines Act, 1952
5. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
6. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
7. The Mica Mines Labour Welfare Fund Act, 1946
8. The Beedi Workers Welfare Cess Act, 1976
9. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
10. The Cine Workers Welfare (Cess) Act, 1981
11. The Beedi Workers Welfare Fund Act, 1976
12. The Cine Workers Welfare Fund Act, 1981

### (b) Labour laws enacted by Central and enforced by both the Central as well as the State Governments

1. The Child Labour (Prohibition and Regulation) Act, 1986.
2. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.
3. The Contract Labour (Regulation and Abolition) Act, 1970.
4. The Equal Remuneration Act, 1976.
5. The Industrial Disputes Act, 1947.
6. The Industrial Employment (Standing Orders) Act, 1946.
7. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
8. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
9. The Maternity Benefit Act, 1961
10. The Minimum Wages Act, 1948
11. The Payment of Bonus Act, 1965
12. The Payment of Gratuity Act, 1972
13. The Payment of Wages Act, 1936
14. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
15. The Building and Other Construction Workers Cess Act, 1996
16. The Apprentices Act, 1961

### (c) Labour laws enacted by Central Government and enforced by the State Governments

1. The Employers' Liability Act, 1938
2. The Factories Act, 1948
3. The Motor Transport Workers Act, 1961
4. The Personal Injuries (Compensation Insurance) Act, 1963
5. The Personal Injuries (Emergency Provisions) Act, 1962
6. The Plantation Labour Act, 1951
7. The Sales Promotion Employees (Conditions of Service) Act, 1976

8. The Trade Unions Act, 1926
9. The Weekly Holidays Act, 1942
10. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
11. The Workmen's Compensation Act, 1923
12. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
13. The Children (Pledging of Labour) Act 1938
14. The Bonded Labour System (Abolition) Act, 1976
15. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
16. The Unorganized Workers' Social Security Act, 2008

# About Indicus



Indicus Analytics (<http://www.indicus.net>) is a specialised economics research firm based on New Delhi. It has been providing research inputs to Central and State ministries, institutions such as World Bank, UNICEF, Stanford university, Harvard University, Maryland University, USAID, Rajiv Gandhi Foundation, CII and many other national and international institutions. Media groups such as India Today and Outlook have carried cover stories based on their work. The India Today special issue on the 'State of the States' is released every year in the presence of Chief Ministers across the country

Constant interaction with national and international experts and their ongoing non-funded research activities are the key factors that enable Indicus to maintain a high quality of output. Their persistent endeavour to keep abreast of new developments in research methodology gives them the ability to bring out fresh insights from otherwise intractable information.

# About ISF



Established in 2011, Indian Staffing Federation, ISF has been created by leading staffing companies in the country with one common goal - Staffing India's Growth.

Staffing, an established form of outsourcing globally, is yet to be recognised and adopted as an effective means of running a businesses in India. The Staffing Industry provides a platform for recognised employment, work choice, even compensation, annual benefits and health benefits for the temporary workforce that constitutes around 40% of India's total workforce. Staffing creates jobs that would not otherwise exist, enhancing competitiveness and workers employability, thereby promoting a labour market that corresponds better to peoples - and companies - needs and aspirations.

The purpose of ISF is to enhance long-term growth of the staffing industry and to ensure its continued ability to make positive contributions to the economy and society. The principal focus of the Federation's activities is to strengthen triangular employment relationships, in which the staffing company is the employer of the temporary worker, who works under the supervision of the user company.

ISF today comprises of 30 members companies who collectively provide employment to over 3.5 lakh people throughout the country.

## Objectives

The Indian Staffing Federation's objectives include:

- Champion sustainable growth of the Staffing Industry
- Facilitate a suitable, legal and regulatory environment that is positive and supportive for the Staffing Industry
- Be the authoritative voice of the Staffing Industry
- Establish quality standards for the Staffing Industry at large & a code of conduct for the members
- Increase visibility and enhance the image of the Staffing industry & strengthen its representation
- Promote Staffing as an effective enabler of socio-economic growth
- Develop Staffing Industry as a choice of employment



## **Indian Staffing Federation**

**Office Address:**

771, 7th Floor, Aggarwal Millennium Tower II, E-4, Netaji Subhash Palace,  
District Centre Wazirpur, Pitampura, New Delhi 110 034.

**Phone:** +91-11-3099 3041

**Email:** [info@isf.org.in](mailto:info@isf.org.in)

**[www.isf.org.in](http://www.isf.org.in)**