

CHANGING NATURE OF WORK AND THE ROLLING BACK OF WORKERS PROTECTION IN POST-APARTHEID SOUTH AFRICA

Kóláwolé Emmanuel Omomowò

Department of Sociology, University of Pretoria,

Human Science Building (HSB) 19-26

Pretoria 0002, South Africa.

Tel: +27-012-4205852, fax: +27-012-4202873

Email: Kola.omomowo@up.ac.za

Abstract

The changing nature of work, it could be argued, is undermining workers protection. Standard employment relationship (SER) is increasingly being replaced by non-standard atypical employment relationships such as outsourcing/subcontracting of work, casualisation, part-time employment, temporary employment etc, within the context of the prevailing flexible regime of capital accumulation.

Workers protection to a large extent could be achieved by state intervention through legislation and workers organisation through trade unionism. These two forms of workers protection are related because they reinforce one another. While the labour legislation within a particular geopolitical system provides the frame of reference and modus operandi for labour unions organisation and activities, the labour union activities and interest (depending on the effectiveness of the union) in turn feeds into the enactments and structure of the labour legislation. The thinking here is that labour legislation is not unilaterally imposed by the state, rather, it is a product of interaction (social relation) or struggle between labour, capital and the state.

Industrialization brought about the removal of work from the domestic sphere into the factory or workplace. The movement of production from home to the factory brought about the loss of craftsmanship and the creation of workers (employees) that work for an employer at a designated workplace. The emergent capitalist mode of production was central in the writings of Marx among other theorists. He identified two classes of people in production relations, the capitalists and labourers. The specialised discipline of industrial relations is devoted to the understanding of the relationship between these different parties to industrial relations. It is imperative to note that the employers and the employees wield different levels of power, which in turn has a direct bearing on their relationship. Regulatory intervention by the state (the third party in the relationship) is an attempt to balance the power relations between capital and labour, hence, it addresses the need to protect the weaker party (workers) in the relationship. Also significant to an attempt to balance the power relation between the parties to industrial relations is the role of trade unions as a form of workers organization. The nature of work is currently undergoing changes and this can be viewed as a restructuring of the whole system of industrial relations, which calls for a realignment of its various parts. Employment is becoming more flexible and vulnerable with regard to job security and income guaranty.

This study investigates the extent of workers protection in view of the changing nature of work, and focuses in particular on the subcontracting of work as a form of non-standard atypical employment in the cleaning sector.

Working from the *régulationist's* theoretical orientation, this paper investigates how labour laws are used as a mode of regulation to perpetuate the stability of the prevailing flexible regime of capital accumulation. The extent to which the interests of workers are protected under this current flexible regime of capital accumulation was investigated. The post-apartheid labour legislation in South Africa (particularly the Labour Relations Act and the Basic Conditions of Employment Act) was critically assessed to uncover the extent of their application and effectiveness as a tool to achieve workers protection. The impact of the changing nature of work on workers protection was analysed, and the extent to which labour legislation serves the interest of workers protection, or otherwise becomes an instrument of regulation to maintain the status quo of capitalist work relation will be considered theoretically from the perspective of Marxist *régulation* theory.

Workers Protection

The concept of workers protection recognizes the power imbalance between the employer and the employee, and therefore emphasizes the need to protect workers rights through regulatory intervention. Christianson (2001:22) notes that the contract of employment is a combination of “contractual agreement, collective bargaining and statutory intervention and protections”. The labour legislation becomes an important means of workers protection. The Labour Relations Act of 1995 (LRA) and the Basic Conditions of Employment Act of 1997 (BCEA) have the basic objective of the promotion of social justice within a work environment, therefore they should take cognizance of the erosion of workers rights caused by the changing nature of work such as increasing casualisation and externalization (Theron, 2002:29). Theron (2002) identifies the fact that workers can also gain protection through organization (unionization) as it is easier to exercise their rights through collective bargaining or industrial strike.

Theron and Godfrey (2002:21-28) argue that the debate is between regulation to protect workers rights and flexibility to the benefit of employers. They suggested that the debate should be refocused, using social justice as the new focal point. Labour legislation should be able to alleviate the condition of the poor and bridge the gap between the poor and the wealthy. According to them “if social justice does not entail alleviating disparities of wealth, it must at least entail alleviating some of their consequences”. They noted however that the LRA is less sensitive to the plight of workers in atypical employment, which may further create the problem of inequality that social justice ought to address.

For the purpose of this study I will take workers protection to mean social protection as conceived by Olivier, Fourie and Nyenti (2004:4) to include the provision of “secure access to income, livelihood, employment, health and educational services, nutrition and shelter”. Secured access to income and employment is fundamental to workers protection; any attempt to undermine these will constitute a serious threat to protection. Working with the social justice paradigm, job security and living wage (capable of

providing the minimum basic necessities of life) becomes the primary hub of workers protection.

Methodology

A case study research design was used in this study. A case of a large organization in Pretoria was selected as an example and studied qualitatively. The organization had subcontracted its cleaning, security, gardening and other support services for over a decade ago. Some of the cleaners that have previously worked for the organisation in a SER are now atypically employed by one of the contractors that were contracted to perform the cleaning function within the organisation. Data was collected using one-on-one in-depth interview to 'tap' into the working experiences of relevant cleaners and union officials.

Key words: workers protection, changing nature of work, regulation theory, flexible accumulation.