
Contract Labour in India – Economic Savers or Economic Slavers?

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Abstract:

Labour management is one of the most difficult tasks of an employer. In order to surpass the strict labour regulations, the industry sector in India is largely resorting to contract labourers, who are governed by the ‘Contract Labour Regulation and Abolition Act of 1970’. But in practice, many of the stipulations made in the Act to safeguard contract labourer are not followed. The contract labour system represents an exploitative system. Employers prefer it for flexibility. The condition of contract labourers needs to be improved. The paper shows the objective with which the Act was enacted and analyses the judgment of various cases to show how courts have deviated and contradicted themselves from the earlier principles laid down by them while interpreting the provisions of law. In this study efforts have been made to find out whether purpose for which the law was enacted has been fulfilled. This paper is based upon the argument that labour marketers should adopt a ‘community of interests’ approach, to encompass contract workers in the scheme of development from the humanitarian point of view and to prevent the over-exploitation of these contract labourers who are now becoming the victims of the modern slavery system of the present civilized society. Besides, this paper makes an attempt to propose some reforms to promote the well-being of contract labourers. And finally, the paper suggests some changes which can be brought in the current system for its improvement and better functioning.

Keywords: contract labourers, socio – legal conditions, social justice

INTRODUCTION:

In today’s world of escalating globalization, economies driven by profit and annual turnover are on the rise which leads to the promotion of contract labour. The system of employing contract labour is prevalent in most industries in different occupations either in skilled or semi-skilled jobs. It is also common in agricultural sector and other sectors which require vast number of human resources.

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Contracting is an important process in any enterprise. Contracting helps in improving the bottom-line with keeping the liabilities limited. By 1990, a significant change in employment patterns resulted from a number of factors including technological advancements and the changes to work practices. Liberalization, Privatization and Globalization introduced change of business environment and increased competition among industries for survival. The rise of demand for specialized products, enhanced competition and the uncertainty about market growth are the major factors that prompt firms to adopt flexible labour practices.¹ Potential market capacity and availability of workforce attracted many foreign companies, representing the best brands of the world, to set up their offices in India, giving a tough competition to their competing companies. To compete in this customer-driven market economy, industries require flexibility in managing manpower. To meet these demands certain changes were brought by which the employers are increasingly choosing to supplement for their permanent workforce with contract labour hiring. The subsequent demand and growth of these contract labour hiring experienced by the industrialization growth has increased the workplace injuries and disease resultant workers. Efforts had been made to prevent the incidence of workplace injury and disease which alleviated the human suffering and reduce the financial costs to the labour hiring industry.

At present scenario, it is almost unavoidable for any employer not to avail services of contract labourers. The amount of work done by these contract labourers are invariably more than that done by similarly employed permanent workmen in the similar sector. If the use of contract labourers are banned and strictly enforced, almost eighty per cent of the industries, especially public sector industry jobs can be affected. This is not only because managements practices alone, but because the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 which do not comply with the industrial provisions.

Indian labour laws are based upon social justice and not on industrial justice and equity. An industry should attempt to be in conformity to the laws as much as possible as also the management principles, in order to avoid embarrassing and expensive penal action by the enforcing authority. While economic factors like cost effectiveness may justify system of contract labour, concept of social justice call for its abolition or regulation.

CONTRACT LABOUR MEANING:

Contract Labour is one of the acute forms of unorganized labour. Under the system of contract labour workers may be employed through contractor on the contract basis. Workmen shall be deemed to be employed as “contract labour” or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without

¹ Shyam Sundar K R, “Contract Workers: The Need For ‘Community Of Interest’ Perspective” , The Indian Journal Of Labour Economics, Vol. 50, No. 4, 2007

the knowledge of the principal employer. In this class of labour the contractors hire men who do the work on the premises of the employer, known as the principal employer but are not deemed to be the employees of the principal employer. The range of tasks performed by such contract workers varies from security to sweeping and catering and is steadily increasing. It has been felt, and rightly too, that the execution of a work on contract through a contractor who deployed the contract labour was to deprive the labour of its due wages and privileges of labour class.²

The idea of contract labour can easily be understood from the following example: If it is assumed that A is an industrialist who wants to build a factory for which he hires an individual, B to get the job done. B, in turn hires other people X, Y and Z to work on building the factory. It is worth noting that that X, Y and Z need not necessarily be hired by B with the consent of A. A may not even know about this contract but B acting as a mediator has entered into a contract with the aforementioned individuals to get A's work done. These people X, Y and Z who have no direct contact or relationship with A are referred to as the 'contract labourers'.

CRUCIAL POSITION OF CONTRACT LABOURERS:

The contract worker is a daily wager or the daily wages are accumulated and given at the end of the month. The industries justify contract labour on the grounds that the requirement is temporary or seasonal. Nonetheless, there are ready instances of contract labour being deployed for tasks as security, sweeping and cleaning, though it is difficult to comprehend how these tasks are temporary and do not justify full time regular employees.³ The managements try to by-pass the provisions of social legislations unless they are legally trapped or forced by circumstances, while the judiciary has always upheld the concept of social justice, dignity of human rights and worker's welfare.

The practice of employing labour through contractors and other agencies, thus, avoiding the direct nexus between the employers and their workmen, was very common. Thus, entire factories were farmed out to contractors requiring them to produce the goods in such factories through machinery owned by the employers, and thereafter, the goods were marked under the employer's brand name.

A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment. They were paid much lower wages than they would be entitled to under direct employment. This system led to whole-scale exploitation of labour. Contract labour has to be employed for work which is specific and for definite duration.

² Saharay H K, "Labour and Industrial Laws", Universal Law Publications (2014), p.563

³ Sankaran T S, "Management of Contract Labour in India", (2004), p.34

CHARACTERISTICS OF CONTRACT LABOUR:

- Inferior labour status,
- casual nature of employment,
- lack of job security and
- poor economic conditions⁴

REASONS TO PREFER CONTRACT LABOUR:

Employers prefer to use contract labour for the following reasons:⁵

- employing permanent labour in such situations impose involuntary costs on the employers. The staffing companies provide ready-made and just-in-time labour when required and withdraw them when not needed. It affords flexibility. Thus, the 'allocation' function is taken care of.
- it facilitates the 'matching' functions, i.e. the type of skills employers need is provided by contractors. It may be noted here that contract labour need not necessarily mean plain unskilled labour; it may involve a range of skills.
- the 'monitoring costs' for the principal employers are lowered significantly when they use contract labour. Monitoring imposes both money and real costs – real costs involve disciplinary action, litigation, indiscipline, union intervention, etc.
- The principal employer avoids fringe benefits like annual leave with wages, gratuity, bonus, etc. As is well known, nonwage costs and fringe benefits impose significant burden on the employers.
- it is often argued that contract labourers are more efficient than the regular workers. This is because of three factors. The staffing agencies monitor their work and will renew their contracts only if they are efficient. They work in diverse firms and contexts they acquire greater experience and learning effect is stronger in their case. Staffing agencies also in select cases impart skills The penalty for the contractor is high if work is performed shoddily and delayed as the principal employer will shift to another contractor in such cases.

HISTORICAL BACKGROUND OF CONTRACT LABOUR IN INDIA:

Contract Labour has its root from time immemorial but the size of contract labour in India has significantly expanded in the post-independence period with the expansion of construction activity following substantial investment in the various Five-Year Plans. During the early period

⁴ Verma N.M.P. and Awasthi I.C., "Contractual Employment in Indian Labour Management" (2010) p.158

⁵Shyam Sundar K R, "Contract Workers: The Need For 'Community Of Interest' Perspective", The Indian Journal Of Labour Economics, Vol. 50, No. 4, 2007

of industrialization, the industrial establishments were always faced with the problems of labour recruitment. Low status of factory workers, lack of labour mobility, caste and religious taboo, language, etc., were some of the problems with which most of the employers in general and British employers or their representatives, in particular were not familiar. They were unable to solve these problems. Therefore, they had to depend on middlemen who helped them in recruitment and control of labour. These middlemen or contractors were known by different names in various parts of the country.

Contract Labourers were considered as exploited section of the working class mainly due to lack of organisation on their part. Due to this, **The Whitley Commission (1860)** recommended the abolition of contract labour by implication. Before 1860, in addition to the many disadvantages suffered by the contract labour, the Workman's Breach of Contract Act 1859 operated in holding them criminally responsible in the event of a breach of contract service. Following this, the Government constituted various committees to study the socio-economic conditions of contract labours. As a result of various recommendations from committees such as **The Bombay Textile Labour Enquiry Committee (1938)**, **The Bihar Labour Enquiry Committee (1941)**, **The Rega Committee (1946)** the scope of the definition of "workers" in the Factories Act (1948), the Mines Act (1952) and the Plantations Labour Act (1951), was enlarged to include contract labour.⁶

In the **Second Five Year Plan**, the Planning Commission stressed the need of improvement in the working conditions of contract labour and thus, recommended for a special treatment to the contract labour so as to ensure them continuous employment where it was not possible to abolish such type of labour.⁷ It was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system of contract should be abolished wherever possible and practicable and that incase where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities. Based on these views '**The Contract Labour (Regulation and Abolition) Act, 1970**' was passed by both the Houses of Parliament and received the assent of the President on 5th September, 1970 and it came into force from 10th February, 1971.

OBJECTIVES OF THE ACT:

The main objective of the Act was to stop the exploitation of these labourers and to abolish the practice of contract labour where:

⁶ Federation, All India Organisation of Employer's "Industrial Relations and contract Labour in India", New Delhi, 2012.

⁷ Report of the 'National Commission on Labour', 1969

- The work is of perennial nature.
- The work is incidental to and necessary for the work of the factory i.e. the principal activity of the industry e.g. work related to production.
- The work is of the nature that it can employ considerable number of whole time workmen; and
- The work can be done by ordinary or regular workmen.⁸

CONSTITUTIONAL VALIDITY OF THE ACT:

The benefits conferred by the Act and the rules are in their nature, social welfare legislative measures. There is a rational relation between the impugned Act and the objects to be achieved, and the provisions are not in excess of those objects. There is no violation of Article 14 of the Constitutional Law of India. The application of the Act does not amount to an unreasonable restriction on the rights under Art 19(1)(g). Moreover, the Contract Labour (Regulation & Abolition) Act 1970 is not a complete code on contract labour. The Act serves two purposes:

- i. regulations of conditions of service of workers employed by the contractor who is engaged by a principal employer; and
- ii. the appropriate government abolishing contract labour altogether in certain Central Government or by any appropriate government, provide that upon the abolition of contract labour, the said labour would be directly absorbed by the principal employer.

SALIENT FEATURES OF THE ACT:

Application:

The Act is applicable to an establishment of a Principal employer in which twenty or more workmen are employed. To constitute the number, not only are the workers employed by one contractor to be counted, but the total number of contract labour engaged by different contractors has to be counted. It does not apply to establishments in which merely work of an intermittent or casual nature is performed. However if such work was performed for more than one hundred and twenty days in the last one year or was of a seasonal character and was performed for more than sixty days in a year, then the act is applicable.⁹

⁸ Standard Vacuum Refining Company v. Their Workman, 1960 SCR(3) 466

⁹ Section 1(4) and Section 1(5) of the Contract Labour (Regulation and Abolition) Act, 1970.

Appropriate Government:

The jurisdiction of the Central and State Government has been laid down by the definition of the 'Appropriate Government' in the Act as amended in 1986.¹⁰

Contractor:

The Act defines contractor as a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment.¹¹ In other words, contractor is the person supplying contract labour to an establishment undertaking to produce a given result for it. It is noteworthy that sub-contractors or 'piece wagers' also qualify as contractors who need to apply for the registration of the establishment and license.

Registration, Licensing and Prohibition:

For the purpose of calculating the number of workmen employed, contract labour employed for different purposes through different contractors has to be taken into consideration. This Act does not apply to the establishments where work performed is of intermittent or seasonal nature. If a principal employer or the contractor falls within the purview of this Act then, such principal employer and the contractor have to apply for Registration of the establishment and license respectively.

The Act also provides for temporary registration in case the contract labour is hired for a period not more than 15 days. Any change occurring in the particulars specified in the Registration or Licensing Certificate needs to be informed to the concerned Registering Officer within 30 days of such change. From combined reading of Section 7 and Rules 17 & 18 of the Contract Labour (Regulation and Abolition) Central Rules, 1971 (hereinafter referred to as the Rules), it appears that the Principal employer has to apply for registration in respect of each establishment. Another important point to note is that a License issued for one contract cannot be used for an entirely different contractual work even though there is no change in the Establishment. The law mandates that every establishment to which the Act applies has to register with the registering

¹⁰ Section 2(1)(a) of the Contract Labour (Regulation and Abolition) Act, 1970

¹¹ Section 2(c) of the Act

officer. The government also has the power to prohibit employment of contract labour in any process, operation or other work in any establishment.¹²

The Act further stipulates that no contractor to whom the Act applies can undertake or execute any work through contract labour without having a license issued by the licensing officer. Failure to obtain a licence amounts to a criminal offence under Sections 16 to 21 of the Act read with Rules 41 to 62 of the Rules.¹³

Welfare and Health Of Contract Labour:

Regarding facilities to be provided to contract labourers, the Act stipulates that every contractor employing contract labour to whom the Act applies, has to provide canteen, restrooms, latrines, urinals, first aid facilities etc. If any such amenity for the benefit of the contract labour employed in an establishment is not provided by the contractor, such amenity has to be provided by the principal employer and the expenses incurred by the principal employer for doing so can be recovered from the contractor.¹⁴

Payment of Wages:

Every contractor has been made responsible for payment of wages to each worker employed by him as contract labour. If the contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor but he can recover the amount so paid from the contractor. A Principal employer is liable to compensate under-paid contract labour. The contract labour that performs same or similar kind of work as regular workmen will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1970.

Penal Provisions:

If the principal employer, to whom this Act is applicable, fails to get registered under the Act, such Employer cannot employ contract labour. For contravention of the provisions of the Act or

¹² .Section 10(1) of the Act

¹³ Section 12 of the Act

¹⁴ Section 20 of the Act

any rules made thereunder, the punishment is imprisonment for a maximum term up to three months and a fine up to a maximum of Rs. 1000.¹⁵

Classification:

Contract labour, in law, is classified in two categories – *bona fide* contract labour and *mala fide* contract labour. The former indicates that there is no bogus, sham or camouflage contract between the contractor and the principal employer. The latter, on the other hand, implies a contract where there is bogus or sham. When the contract is *bona fide*, the Government can abolish the contract labour under Section 10 of the Act. When the contract is *mala fide*, Industrial Tribunals are empowered to declare the contract workmen as the workmen of the principal employer. Such a declaration is given after lifting the veil and considering the factors such as control, supervision and direction by the principal employer and ascertaining as to how absolute and pervasive they are in nature. This depends upon the facts of each case.

JUDICIAL PERSPECTIVE:

In *Lionel Edwards Ltd. v. Labour Enforcement Officer* it was held that the work site may or may not belong to the Principal Employer, but that will not stand in the way of application of the Act or in holding that a place or work site where industry, trade, business, manufacture or occupation is carried out is not an establishment¹⁶

In *BHEL Workers' Association v. Union of India* it was decided that the Act is not confined to private employers but also applies to the government¹⁷

In *Working Labourers on Salal Hydro Project v. State of J&K*, the sub-contractors or 'piece wagers' also qualify as Contractors who need to apply for the registration of the establishment and license. Failure to obtain a licence amounts to a criminal offence under Sections 16 to 21 of the Act read with Rules 41 to 62 of the Rules¹⁸

In *People's Union for Democratic Rights v. Union of India*, it was observed that the Government's failure to perform its obligation amounts to violation of Article 21 of the Indian Constitution and labourers can enforce this right by way of writ petition under Article 32 of the Constitution.¹⁹

¹⁵ Section 23 & Section 24 of the Act

¹⁶ (1977) 51 FJR 199 (Cal)

¹⁷ (1985) 1 SCC 630

¹⁸ (1983) 2 SCC 181

¹⁹ (1982) 3 SCC 235

The court in *Ram Singh v. Union Territory of Chandigarh* dealt with determining whether the contract was bona-fide or mala-fide. In this case, the contract employees, who were trained electricians, were employed on the substation to maintain supply of electricity. They claimed regularization of services under the Engineering Department of Administration. Here, the Court ruled that whether a particular contract is genuine, sham or camouflage can only be determined by the industrial forum since it involves a finding as to the inter se relationship between the administration, the Contractor and the contract employees.²⁰

In *R.K. Panda & Ors. v. Steel Authority of India Ltd.*, the Hon'ble Apex Court case held that the Act regulates contract labour but has never proposed to abolish it entirely.²¹ The primary object of the Act can be taken as to save the contract labourers from exploitation. However, the right to be absorbed by the employer directly is neither proposed nor mentioned in the Act.

In *Dena Nath v. National Fertilizers Ltd.*, the court gave the judgement that abolition of contract labour doesn't imply their absorption by the principal employer.²²

In *Air India Statutory Corporation v. United Labour Union and Ors.* celebrated verdict, the Supreme Court held that that if the Appropriate Government abolished contract labour in a particular work or occupation in any establishment, business or industry, then the workers who had been employed to do that particular work in the establishment or industry would automatically become the workers of the principal employer from the date of the notification of such abolition.²³ It amended the earlier law laid down in the case of *Gujarat State Electricity Board Case*.²⁴

Delivering this renowned verdict in *Steel Authority of India Limited and Ors v. National Union Water Front Workers and Ors*, Court ordered to answer the question raised before it, acted solely on the basis of the words of the Act, and tended to curtail the right of contract workers. It held that upon abolition of contract labour by the government in exercise of the powers under Section 10 of the Act, there cannot be automatic absorption of such contract labour into the direct employment of the Principal Employer.²⁵

By this judgment in *Steel Authority of India Limited and Ors v. National Union Water Front Workers and Ors*²⁶ the contrary view of the Supreme Court in the *Air India Case* has been specifically overruled²⁷

²⁰ (2004) 1 SCC 126

²¹ 1994 5 SCC 304

²² (1992) 1 SCC 695

²³ 1997 (9) SCC 377

²⁴ *Gujarat Electricity Board v. Hind Mazdoor Sabha*, (1995) 5 SCC 27

²⁵ (2001) 7 SCC 1

²⁶ supra note 25

These regular deviations have made the law confusing for the employers and haven't been able to grant relief to the contract labour. With the introduction of and globalization in India, the use of contract workers was made as necessity in every establishment. In order to produce cheaper products & compete effectively in the market, organizations started using contract labour even in their core activities. Employers also favoured contract workers as a means to achieve flexibility because they didn't had to commit to permanent employees and the associated higher non-wage costs. So, gradually the number of contract workers increased in every sector.

From the above case analysis it can be easily inferred that the Courts have not developed a steady attitude towards the above issue. The reason for this is the Act itself, because it lacks provisions regarding the same. The Courts therefore faced a problem and in some of the judgments gave their decision solely based on the basis of the provisions given in the Act while others gave decisions based on the object of the Act i.e. to protect these labourers from exploitation. Now if the object had to be achieved the Act should have been more expressive otherwise these labourers may keep on being exploited.

NEED FOR REFORM:

It is clear that many labour laws including the Contract Labour (Regulation and Abolition) Act, 1970 are projected by the State as symbolic pieces of inspirational legislation to portray that India is an enlightened society and cares for its working masses. But many do not know the empirical realities underlying the working of this branch of social legislation. All those who wish to ensure a system of social justice for working people would suggest that we need to look at several aspects of the non-enforcement of these laws in practice. Most contract workers do not have unions or have weak unions to protect their interests, and therefore they hardly enjoy any countervailing power against the contractors and the principal employers. And unions of the core workers are not willing to expose industrial disputes related to contract workers concerned. If some try to do so, the management often asks whether the constitution of their union provides for such an exposal. They normally do not think of amending their union constitution so as to take up the contract labourers case. That is certainly not an easy task.

Consequently, in most cases the contract labour is not even able to fight for its legal rights as they are not organized nor does the legal framework quite support them; they remain in constant fear of job insecurity. This situation justifies increasing state role in ensuring a just treatment to contract labour through legislative amendment. Even the International Labour Organization (ILO) has now adopted 'decent work' as one of its key goals. The ILO has emphasized four issues to be focused at in this regard: work content; rights at work; security of employment; and representation and dialogue.

²⁷ Air India Statutory Corporation v. United Labour Union and Ors. 1997 (9) SCC 377

Contract labour does not get even get any gratuity under the Payment of Gratuity Act, 1972 as the principal employers frequently change contractors with the labourers remaining the same for various reasons. This is happening in a large number of companies. Since most employers employ contract labour even in core operations, there is a need to block this loophole through legislative action at the Central level. These contradictions visibly show the amount of instability that persists among contract labourers as they do not have any job security and are exploited in terms of wages and working conditions. In spite of the steps taken by the Parliament to promote the wellbeing of contract labourers, some problems still persist in the industrial sector, which are yet to be overcome. This can rightfully be achieved only by means of legislative measures. Hence it is the right time to reform the laws concerning with contract labourers to protect them from these social injustice.

CONCLUSION:

Right from the adoption of the new economic policy in India, it is clearly seen that there is a tendency amongst more and more organizations to employ contract labour. The problem has assumed amazing proportions. Some of India's key industries, such as cement, iron and steel, cotton textiles and jute, rely on contract labour for as many as four out of every five workers. It is not only the economic growth that we cherish in our Constitution as a main goal. We also have to build an enlightened society based on social, economic and political justice.

A realistic implementation of this thinking in relation to contract labour is possible if a central legislation is brought prohibiting employment of contract labour in core operations And, the implementation of the Act should be reviewed with the help of the committees consisting of labour department officials and workers representatives, NGOs and the friends of labour.

The companies are looking to become more and more competitive by the day. This has led to the increased usage of contract labour by the organizations and has enormously increased the exploitation of contract workers by contractors and organizations. Organizations are indulging in unfair labour practices and in certain cases are not even performing their statutory obligations inducing discontentment among contract workers which has led to major contradictions. Though the Contract Labour (Regulation and Abolition) Act, 1970 has been enacted for regulation and abolition of contract labour, it can be observed that its objective hasn't been fully achieved.

Poor framing of certain sections has created ambiguities in the eyes of the judiciary and has resulted in multiple interpretations of law. So it is high time that the government to introduce new amendments to Act and clear the ambiguities. Introducing provisions to provide some sort of relief to contract workers in case of abolition of contract labour from the establishment and by making sure that the organizations stringently follow the law, the legislators can reduce the disparities in the wages of permanent and contract workers. If the Contract Labour (Regulation

and Abolition) Act, 1970 cannot provide any sort of benefit or relief to the less privileged “Contract Labour”, it would defeat the very purpose for which this law was enacted. The attitude of the State, Employer, Trade Union and the Judiciary has to be sympathetic to the contract workers, to enable them the enjoyment of their human and constitutional rights. An early positive action in this direction is imperative.

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