

CONTRACT LABOUR SYSTEM IN INDIA: ISSUES AND PERSPECTIVES

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Abstract:

Contract Labour is a significant and growing form of employment in various types of industries. The exploitation of contract labour is now biggest issue in the era of globalisation and liberalisation. The aim of this Paper is to focus on the overview of the contract labour system in India, Evolution, the analysis of the present law and various loopholes under the Act. This Paper also analyses the history of the contract labour Act and how the existing law evolved in India by referring various committee's recommendations. This paper also explains judicial interpretation on some important issues of contract labour Prohibition and Abolition Act, 1970.

Keywords: Contract, Contractor, Judiciary Labour, Wage, Worker,

1. Introduction:

In the present world Liberalisation and globalisation are increasing at a very high space and it presented change of business environment, profit oriented economics and increased competition among industries for survival. Many MNC'S, representing the best brand in the world, started investment in India because of Potential market capability and availability of workforce. They started setting up their offices in India, giving a tough competition to their counterparts. To compete in this customer driven market economy, industries requires flexibilities in managing manpower to address occasional upsurge or slowdown in demand. But the ancient and rigid Indian Labour Laws which were enacted 8-4 decades back, restricting right size of manpower, are creating hurdles in smooth functioning of industries. ²

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² Industrial Relations and Contract Labour in India, All India Organisation of Employees, retrieved from <http://aioe.in/htm/IndustrialRelations.pdf>

These factors are tending industries to hire more and more numbers of contract labours to have greater flexibility to adjust the number of workforce based on economic efficiency, better utilisation of resources, optimisation of profit and bringing cost effectiveness despite the risk of lower worker loyalties and lousy pay. But primarily we need to know who is contract Labour, Contract Labour can be distinguished from 'direct labour' in terms of employment relationship.³

2. Historical Background:

The historical aspect of the contract labours in India would definitely give a clear view of how the system of employing contract labour came into being. Contract labour has its root from time immemorial. During the early period of industrialisation, the industrial establishments were always faced with the problems of labour recruitment. British employers or their representatives were not accustomed with some basic problems of the employees like Low status of factory workers, lack of labour mobility, caste and religious Taboo, language etc. They were unable to solve these problems. Therefore, they had to depend on middle man who helped them in recruitment and control of labour. These middleman and 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 Whitely Commission (1860) recommended the abolition of contract labour by implication. Before 1860, in addition to the many disadvantages suffered by the contract labour, the Workmen's Breach of Contract Act 1959 operated in holding them criminally responsible in the vent of breach of a contract service.⁴

Subsequent to this, Many Committees were formed by the Government to study the socio-economic conditions of contract labour like Bombay Textile Labour Enquiry Committee, The Bihar Labour Enquiry Committee, the Rega Committee etc. As a result of these findings, 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.⁵

In the case of **Standard Vacuum Refinery Company Vs. Their Workmen**, the Supreme Court observed that the contract Labour should not be employed where:

³(Industrial Relations and Contract Labour in India, All India Organisation of Employees)

⁴Report of the 'National Commission of Labour', 1969

⁵Retrieved from <http://www.ficci.in/spdocument/20189/Industrial-Relations-and-Contract-Labour-in-India.pdf>

- a) The work is perennial and must go on from day to day
- b) The work is incidental to and necessary for the work of the Factory
- c) The work is sufficient to employ considerable number of whole time workman
- d) The work is being done in most concerns through regular workmen

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.

3. Overview of Contract Labour Regulation & Abolition Act:⁶

Before the enactment of this act there was no specific legislation which dealt in detail with the problem of contract labour. Although there were legislation like Industrial Disputes Act, 1947, Payment of Wages Act, 1936 etc. But these enactment were not specifically designed to solve the problem of contract labour. Therefore, there was a need to for a specific legislation to stop exploitation of contract laborers by Contractors and Establishments.

The main object of the Act is to provide for regulation of the employment of contract labour and its abolition under certain circumstances.

3.1Registration

This Act made it obligatory for the establishment and industries to register before the concerned authority (Asst. Commissioner of Labour or Labour Officer) in a period as fixed by the government before employment of contract labour. The Establishments which deploy or have deployed more than 20 contract labours are required to register the Establishment under the Enactment. With the concerned Authority. The application for registration by the principal employer must contain various particulars in relation to the establishment and it shall be made in triplicate in Form-I to the registering officer of the area with appropriate fees as fixed by the government. The certificate of registration shall be granted mentioning the name and type of the establishment, type of business, maximum no. workmen to be employed as contract labour and other particulars in relation with the contract labour in Form-II. If there

⁶ Mohan, NRegulatory Overview of Contract Labour In India, retrieved from <http://blog.ipleaders.in/regulatory-overview-of-contract-labour-in-india/>

is any change in the particulars of the establishment, it must be informed to the authority within reasonable time.

3.2 Licensing of contractor

To secure the status of the contract labour the legislation made it mandatory for the contractor to obtain the license for the contract work from the licensing officer of the local labour department by applying in triplicate in Form-IV enclosed with Form-V of the principle employer by depositing the prescribed refundable security amount and the licensing fees. A license issued for one contractor work cannot be used for another work which is different in nature. A contractor is not able to engage in any work through contract labour with obtaining license from the licensing authority if it happens the penal action can be taken against the contractor accordingly. The license granted is valid for the period of 12 months and can be renewed.

3.3 Rights of labour

The act determines the rights of the contract labour so as to make them secure from any exploitation. These rights ensure equal status of them as of the workmen and the violation of which is enforceable in court of law. In terms of wages, hours of work, welfare, health and social security contract laborer's interests are protected. Any Agreement entered between the Parties and if any clauses in the agreement is inconsistent with the benefits provided under the Act and are not favorable for the labourers will be treated as invalid.

- The contract labours are entitled for the wages including overtime wages and allowances as stipulated for their work at the establishment. It must be paid without delay whenever the wage period is over. It must be in accordance with the Minimum Wages Act.
- The contract labours have also the right to be provided the safety measures at the establishment and immediate health service in case of any injury to the labour. They are entitled for facilities like rest rooms, canteens, washing facility, first aid facilities and many more. The women labours are entitled for the separate washrooms, restrooms.
- They are entitled not to be employed in any work which is prohibited under any law.

3.4 Responsibilities of principal employer

Responsibility of principle employer is on priority as he is the person who is connected with the contract labour at work, therefore every facility and security at work must be provided to him by the principal employer. Although his liability for the contract labour is secondary after the contractor yet he is principal in payment of wages and providing the facilities and security at workplace.

- The employer is responsible for obtaining the certificate of registration and must comply with all the necessary provisions for registration of the establishment and furnish all the particulars as demanded by the authority at times.
- The principal employer must maintain a register of contractors in Form – XII.
- The principal employer is responsible for payment of wages including overtime wage and allowances directly paid to the labour in full in accordance with Payment of Wages Act, 1936 in case the contractor fails to make payment within the prescribed time. The principal employer may recover such amount from the contractor. A representative of the principal employer must be present while the wages are paid to the contractor.
- He is also responsible for various facilities which are to be provided at work and which are essential for the contract labour at work. The principal employer is entitled to recover from the contractor any amount spent on providing such facilities to the contract labourers.
- He is responsible that any contract labour must not engage in hazardous or such work which can cause him the injury at work.
- He is also responsible for sending Annual Report in a Form XXV to the Registering Officer within 15th February of every year.

3.5 Responsibilities of contractor

In the contract labour system, the contractor is most responsible person towards the contract labour. His liability under the act is made primary. In case of every situation related with the contract labour, the contractor is responsible.

- The contractor is responsible to obtain the license from the licensing authority and furnish to them all the particulars and documents as are necessary for the license.

- He is responsible to maintain the register of workers in Form XIII which shall contain all necessary particulars related with each contract labour.
- The contractor must issue an employment card to each of the workers.
- All facilities and amenities like stay rooms, rest rooms, washrooms, food, and health facility are to be provided by the contractor.
- He is primarily responsible for the disbursement of wages to the labours on time and maintains necessary Register of Wages, Deductions, Overtime, display an abstract of this Act in English, Hindi and in a local language, and notices related to rate of wages, period of work, address of labour inspector, etc.
- The contractor must send Half-yearly reports in Form XXIV to the local labour department in December and June.

3.6 Obligation and manner of payment of wages

The contractor is obliged to pay the wages of the contract labour at the prescribed period of time. The contractor shall fix wage periods in respect of which wages shall be payable. No wage period shall exceed one month. The wages of every person employed as contract labour in an establishment or by a contractor where less than one thousand such persons are employed shall be paid before the expiry of the seventh day and in other cases before the expiry of tenth day after the last day of the wage period in respect of which the wages are payable. Where the employment of any worker is terminated by or on behalf of the contractor the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated. All payments of wages shall be made on a working day of the work premises and during the working time and on a date notified in advance and in case the work is completed before the expiry of the wage period, final payment shall be made within 48 hours of the last working day. Wages shall be paid without any deductions or any kind except those specified by the Central Government by general or special order in this behalf or permissible under the Payment of Wages Act, 1936. A notice showing the wage-period and the place and/time of disbursement of wages shall be displayed at the place of work. The principal employer shall ensure the presence of his authorized representative at the place and time of disbursement of wages by the contractor to workmen and it shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorized representative.

3.7 Penalties

The Act penalizes the contractor, principal employer or any other person if he contravenes the provisions of the Act or any rules thereunder, prohibiting, restricting or regulating the employment of contract labour or contravenes any condition of a license granted under this Act.⁷ The punishment in most of the offences is imprisonment for a term up to 3 months or fine upto Rs 1000/- or both and in case of continuing offence, an additional Rs 100/- per day.

The act also provides for the penalty if any person obstructs or make disturbance in inspection made by the inspector or refuses to furnish any documents, approvals or register as demanded, the punishment for these kind of offences will be the imprisonment for a term upto 3 months and fine uptoRs 500/- or both.

4. Issues of Contract Labour Regulation and Abolition Act, 1970:

According to the Contract Labour Act, the organisations are supposed to adhere to the Minimum Wages norms. However it can be seen that there are workers earning less than 100 per month which does not comply with the minimum wages criteria. In general it has been found that there are three categories of firms as far as wage payment is concerned. The large private firms that pay more than market wages as efficiency wage. The efficiency wage hypothesis in economics states that if the work effort depends positively on the wage level, a profit maximising firm would find it profitable to pay above the market clearing level. The second category firms are those which strictly adhere to the prescribed minimum wage norms. The third category comprises the large number of small private firms which prefer to employ uneducated worker who can be paid less than the prescribed minimum wages.⁸

Though contract workers enjoy provident fund benefit, the provident fund is often a burden to them rather than a benefit. It is a burden in the sense that every month some fixed amount is deducted from their meagre salary for provident fund contribution. However, these workers often change their contractors they work for and the account need to be transferred. Unfortunately once a worker leaves a contractor, he/she never get any co-operation from the previous contractor in this regard. It is the duty of the principle employer also to verify the PF details, which is however, not often done. In order to recover the PF amount, a contract worker has to have bank account in which the sum due should be deposited by cheque. Contract workers often cannot maintain accounts because of minimum deposit requirements

⁷ Refer sec. 23 of The Contract Labour (Regulation and Abolition) Act, 1970

⁸Rajeev, Meenakshi, Contract Labour Act in India: A Pragmatic View, retrieved from <http://www.igidr.ac.in/pdf/publication/PP-062-33.pdf>

by banks. This makes recovering their PF dues even more difficult. In addition, there are a number of un-registered contract agencies that deduct provident fund contributions from the workers but never deposit the same in the provident fund office and after a few years change the location and start the new business in different name. There are obvious advantages of being un-registered as it enables an agency to evade taxes, in addition to avoid paying PF, ESI Benefits etc. to a worker and thereby increase one's profit margin. Therefore when a registered company tries to compete with an unregistered one, the only possibility appears to be to exploit the labour as they are in excess supply.

Due to high level of competition, profit margin measured through commission has gone down drastically. Usually small and medium contract agencies do not enjoy scale economics and if volume of business goes down, they cannot operate in a very low margin. This often leads them to collude with the principle Employer and sometimes with Labour Inspector and compete effectively in the market.

In the context of globalisation, privatisation and liberalisation in March 2000 a GOM was constituted to examine the proposal of the ministry to suitably amend the provisions of the Act with a view to facilitating outsourcing of activities to specialised firms having professional experience and expertise in the relevant area and at the same time to provide for a safety net to contract labour in such outsourced activities. Such a measure, it was felt, would generate employment growth.

5. Judicial Pronouncements on certain issues⁹

There are number of judgments in which the court delivered its opinion in relation to the status of contract labour being abolished under the notification as it is one of the disputed social issues in relation to government reforms. Therefore Judiciary is always cognizant to regulate the security and status to be provided for such type of labour and to ensure that they won't be exploited by the industrial class of the society.

In **Standard –Vacuum Refining Company of India V. Its Workmen and Others , 1960, (3) SCR, 466**, The Supreme Court declared that if the job is of perineal nature done by the contract labours and if less salary is being given to the contract labours when compared to

⁹ (Mohan, N)

regular workmen , then court can order regularization of service of the contract workmen with the Principal employer.¹⁰

In **Gammon India Ltd. vs. Union of India** 1974 SCC (L&S) 252 Judiciary interpreted many provisions and rules of the Contract Labour Act, 1970 broadly. Various facilities, wage payment manner, duty of contractor and principal employer were broadly interpreted. In this case it was also held that the contract labour statute is constitutionally valid.

In **Hussain Bhai v. Alath Factory, Tezbilali Union, 1978(2) LLJ, 397**, A workmen under CLRA Act is also a workman under Industrial Disputes Act. A contractor would be the employer of such person. The Principal Employer under the Act would be employer under I.D. Act in certain circumstances.

In **Deena Nath case AIR 1991 SC 3026**, Supreme Court held that the principal employer cannot be required to absorb the contract labour which is abolished.

In **Gujrat Electricity Board, Thermal Power Station ,Ukai, Gujrat v. Hind Mazdoor Sabha, 1995 LLR, 552** It was held that thermal power in Gujrat-1500 workers under contract-hails from Adivasi. Contractors exploited the workers more than 20 years. Supreme Court ordered absorption of most of the contract labourers by appointing a committee.

But after that there were constant complaints that the contract labours are being thrown out from the employment. So the questions arose as to the status of abolished labour under the Act. On this crucial question of the after effect of the abolition of Contract Labour, the Supreme Court in **Air India Statutory Corporation vs. United Labour union AIR 1997 SC 645**, overruled the two member bench decision in **Deena Nath Case AIR 1991 SC 3026** holding that the high court may direct the principal employer to absorb the contract labour who have been abolished under the government notification. The court also ruled that the linkage between the contractor and the labour stood snapped and the direct relationship stood restored between the principal employer and contract labour as its employees.

¹⁰ Abraham, S, The issues, Concerns, Problems and Remedies in managing the Contract Labour, retrieved from <http://www.lawbrain.in/Contract-Labour.pdf>

Later in the landmark case namely **Steel Authority of India vs. National union of Water Front workers and others, AIR 2001 SC 3527**, the Supreme Court overruled the decision delivered in the **Air India Statutory Corporation Case** holding that neither section 10 of the act nor any other provision of the act whether expressly or by necessary implications provides for the automatic absorption of the contract labour. Consequently the principal employer cannot be required to absorb the contract labour working in the establishment.

Conclusion:

Although employment of contract labour in India has attracted debates and raised conflict of interest among the social partners, it has become a significant and growing form of employment, engaged in different occupations including skilled, semiskilled and unskilled jobs. The system of employing contract labour is prevalent almost in all sectors, in agriculture, manufacturing, and high GDP yielding service sector.¹¹

Liberalisation of market economy in early nineties has necessitated greater flexibility of employment of for the industries to compete in the global perspectives and antediluvian labour laws has forced industries to hire contract labour to address the cyclical demands and creating business friendly compliance mechanism to survive and compete in the globalised economy. Concomitant changes in the Industrial Disputes Act, 1947 would be necessary to reduce reliance on contract labour system.

The contract labour (regulation and abolition) act 1970 provides protection and security to the workers employed on contract. On the one hand, it seeks to provide contract workers minimum wages through licensing of contractors and by holding principal employers accountable for enforcement of the law. On the other hand, it empowers state and central governments to prohibit the conduct of certain kinds of work through contract labour. The appropriate government can issue a notification in the official gazette to prohibit employment of contract labour in any process, operation or other work. The central government has taken steps ahead and abolished contract labour practices in a number of jobs in different industries and has issued notifications in this regard. But in the absence of any labour law reforms over the past so many years, even the courts have taken contradictory positions in the recent past. One judgement said priority must be given to absorption of contract labour whenever a new

¹¹(Industrial Relations and Contract Labour in India, All India Organisation of Employees)

position comes up, while another said no such guarantee can be given by a company because the terms of employment itself talk about a fixed contract

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