

Contract Labour

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ABSTRACT:

Contract labor means an employment in which a person is hired by a contractor to perform particular work for a particular period of time. Contract laborer is a person who works for the main employer through a contractor while the business is in operation rather than being employed directly by the principal employer. Contract workers are among the economically less fortunate in society. Contract labor has its origin in small scale industries which couldn't undertake the production process by themselves. Thus, small scale industries started to hire contract laborers. In India contract laborers are mainly indulged in sectors such as agriculture, manufacturing, construction etc. Contract laborers face more difficulties in the workplace than regular laborers as they have minimal bargaining power and social Security. Contract laborers are usually engaged in hazardous industries where they are provided with lesser facilities and securities. Though they perform skilled jobs the same as the regular workers, they do not enjoy equal wages. During the pandemic, a large number of contract workers experienced job loss, extreme poverty, and food insecurity. This article focuses on the hardships faced by these laborers and The Contract Labour (Regulation and Abolition) Act, 1970, is the legislation enacted for the regulation and welfare of contract laborers.

Keywords: contract labour, contractor, principal employer, welfare of contract workers, contract labor act, struggle of contract workers.

INTRODUCTION:

A type of work arrangement known as "contract labour" involves hiring someone to do a certain job or project for a predetermined amount of time. These contract employees encompass both temporary and long-term staffing through staffing firms. In the past, contract laborers have been obtained through deceit, kidnapping, and force. The terms of the contracts frequently reflect the laborer's precarious situation. Even now, the contract worker's freedom is restricted by the contract and the laws which allow such a contract to be enforceable.. It has been believed and rightfully so, that using a contractor to carry out the work was meant to deprive the wages and benefits of the members of the labour class. Poverty and prejudice towards certain political and religious beliefs have served as the foundation for contract work, which is frequently reflected in penal codes.

Despite all the negative aspects and poor condition of contract workers under contract labour, it is still growing worldwide. So, contract labour has been an important and rapidly expanding type of work. The practice of contract labour is a long standing practice and it's observed globally.

The history of contract labour begins with the rise of small-scale enterprises which could not sustainably handle every aspect of the manufacturing process on their own. As a result, the small-scale enterprises hired contractors to do some of the work that needed to be done. Since they frequently work in dangerous

jobs that could jeopardize their health and safety, lack bargaining power, and have limited or no social insurance, contract workers are typically classified as members of the unorganized sectors.

THE RISE OF CONTRACT WORKERS IN THE WORLD:

According to a study conducted in the year 2018, by NPC\ marist poll, one out of every five jobs in America is held by a contract worker. Many contract workers have said that labour through a contract is offering flexibility but also unpredictability and it is unsteady. MIT Sloan professor Paul Osterman has discovered that contract workers make more than one in ten American workers¹.

The first discussion about contract labour took place in the year 1997, at the 85th session of the International Labour Conference conducted by International Labour organization(ILO). As result of this discussion The International Labour Office has presented a report to member state governments outlining a proposed Convention and Recommendation regarding contract labour².

In India, contract laborers' conditions have been deemed appalling and exploitative even after independence as according to the studies by various Commissions, Committees, Ministry of Labour, labour bureau. In India, The contract labour system, despite being justified by economic factors like cost-effectiveness, concentration in core competencies, periodical nature of work, is urged to be abolished or regulated for social justice. The utilization of contract workers increased at a faster rate in states with more strict and rigid laws. According to one survey, The number of contract workers increased from 1.3 million in 2001-2002 to 4.45 million in 2017-2018, with a percentage increase from 21.8% to 36.4%. since, it is not easy to abolish contract labour completely in india ,the legislature enacted an Act to regulate contract labour and to provide welfare to contractual workers.The Indian industrial sector is primarily employing contract laborers, governed by the Contract Labour (Regulation and Abolition) Act of 1970, to enhance labour regulations³.

THE LEGISLATIVE PURPOSE BEHIND THE ENACTMENT OF THE ACT:

The Contract Labour (Regulation and Abolition) Act,1970 was enacted by the legislature to provide legislative protection for workers facing dreadful working conditions. According to the act, "An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. It was enacted by Parliament in the Twenty-first Year of the Republic of India".

THE SCOPE OF THE CONTRACT LABOUR (REGULATION AND ABOLITION)ACT,1970 :-

The main objectives of this act are,

- This act aims to prevent contract labour exploitation.
- To provide decent working conditions to the laborers.
- To give power to the central advisory board and state advisory board to constitute committees.
- This act states the rules and regulations to registration of establishments under contract labour.
- To provide license requirements of contractors.

¹ Shedding New Light on Contract Employment in the U.S;<https://mitsloan.mit.edu/centers-initiatives/institute-work-and-employment-research/shedding-new-light-contract-employment-u-s>

² Contract labour;<https://www.ilo.org/public/english/standards/relm/ilc/ilc86/rep-v2b.htm>

³ India's Industrial Sector: The Rise of the Contract Worker;<https://ceda.ashoka.edu.in/indias-industrial-sector-the-rise-of-the-contract-worker/>

- To provide health and welfare of contract laborers.
- Finally, this act aims to provide penalties for violations.

THE FUNDAMENTAL PROVISIONS OF CONTRACT LABOUR ACT, 1970:

- section 1 of this act deals with applicability of The Contract Labour Act, 1970.
- Section 1(2) states that this act applies to the whole of India.
- According to section 1(4) states that, this act applies to establishments with twenty or more workers or those employed on any day in the previous twelve months as a contract labour. To contractors who have employed or employed twenty or more workers within the past twelve months. Provided that, the appropriate government may after giving not less than two months notice by publishing in the official gazette, The government can apply the provisions of this Act to any establishment or contractor employing less than twenty workers.

ESTABLISHMENTS IN WHICH THIS ACT DOES NOT APPLY:

According to section 1(5), this act shall not apply to any establishments where intermittent nature or casual nature of work is performed. Here, intermittent nature of work includes, if it was performed for over 120 days in the previous 12 months or for over 60 days in a year as a seasonal performance.

IMPORTANT DEFINITIONS UNDER SECTION 2

1. Contract Labour

According to section 2(b), a workman shall be deemed to be employed as “contract labour” in 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 the knowledge of the principal employer.

2. Contractor

According to section 2(c), in relation to an establishment, a contractor means 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 and includes a subcontractor. So, a contractor is a person who will be employed by the principal employer and undertakes to produce a given result for the establishment.

3. Establishment

According to section 2(e), establishment refers to any government office or department of government or a local authority or any place where trade, business, industry, occupation or manufacture operates.

4. Principal Employer

According to section 2(g), principal employer means,

1. The head of office or department of government or other officers as may be prescribed by the government or local authority.
2. The owner or occupier or manager of the factory under the factories Act, 1948.
3. the owner or agent of the mine or the manager of the mine.
4. the person who is responsible for the supervision and control of any other establishment..

THE ADVISORY BOARDS AND IT'S POWER TO CONSTITUTE COMMITTEES:-

The central advisory board- section 3

As per section 3 of this Act, the Central advisory contract labour board is constituted by the central

government. It is constituted to assist the central government in administration matters and other functions assigned to it under this act.

The constitution of central advisory board:

The central advisory board is consists of,

1. A chairperson who will be appointed by the central government.
2. Chief labour commissioner, ex officio.
3. The members not exceeding seventeen and not less than eleven. These members will be nominated by the central government to represent the government, railways, the coal industry, the mining industry, the contractors and workmen and any other relevant interests of the central board.

The number of persons to be appointed in each category, the term of office, conditions of service, functions of the members, procedure for discharge of their functions, appointment for vacancy will be prescribed by the central government. It is also provided that the number of members nominated to represent the workmen must not be less than the number of members nominated to represent the principal employers and contractors.

State advisory board - section 4:

As per section 4 of this act, the state advisory contract labour court will be constituted by the state government. This committee will assist the state government with respect to administration of this act and to carry out other functions.

Constitution of state advisory board:

State advisory board is consists of,

1. A chairperson who will be appointed by the state government.
2. The labour commissioner, ex officio or in case of his absence any other person as nominated by the state government.
3. Number of members not exceeding eleven and not less than nine. The members will be nominated by the state government to represent the government, railways, the coal industry, the mining industry, the contractors and workmen and any other relevant interests which are to be represented by the state board under the interest of the state government. Provided that, The number of persons to be appointed in each category, the term of office, conditions of service, functions of the members, procedure for discharge of their functions, appointment for vacancy will be prescribed by the state government.

Also, the number of nominated persons to represent the workmen shall not be less than the number of nominated persons to represent the principal employer and the contractors.

Power to constitute committees:

According to section 5, the central board or the state board may constitute committees for any purpose or purposes as it deems appropriate. such committees shall meet at places and such time as may be prescribed and in that meeting, the committee should observe the rules and procedure with respect to transaction of business.

The members of such committees who attend such meetings shall be paid fees and allowances as may be prescribed but, a member will not be paid any allowance if he is an officer of government or officer of any corporation established under any law.

REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABORERS:-**Section 6 - appointment of registering officers.**

The appropriate government may appoint registering officers by notification in the official gazette. The government will appoint gazetted officers of government as registering officers. Their powers will be limited by the government.

Section 7- Registration of certain establishment:

Every principal employer of an establishment should make an application to the registering officer within a specific period as may be prescribed by the appropriate government. The registering officer may accept an application from the principal employer even after the expiry date if there is a sufficient cause given. After the completion of the registration process, the registering officer will issue a certificate of registration to the principal employer with the particulars as may be prescribed.

Section 8- revocation of registration :

The registering officer may revoke the revocation with the previous approval of appropriate government on grounds of misappropriation, suppression of any material facts or for any other reasons the registration has become useless and ineffective and therefore requires registration to be revoked. The registering officer should give the opportunity to be heard to the principal employer before the revocation.

Section 9- Effect of non-registration

No principal employers who come under this act should employ contract labour in their establishments. In case of an establishment which has not been registered within a specified period or the registration of establishment has been revoked either within a specific period of time or after the revocation.

Section 10- prohibition of employment of contract labour:-

The appropriate government may after consultation with the central board or state board, may prohibit the employment of contract labour in any establishments. Before issuing such notifications the government must consider the conditions of work and benefits provided for the contract labour in that establishment.

LICENSING OF CONTRACTORS:

Section 11 talks about the appointment of licensing officers. The licensing officers will be appointed by the appropriate government by notification in the official gazette. The licensing officers and registering officers possess the same qualifications.

According to section 12 of this Act, the contractors must not employ any contract labour without a license given by the licensing officer. The license of contractors consists of conditions as to hours of work, fixation of wages and other important amenities with respect to contract labour.

REVOCAION AND GRANT OF LICENSES:

According to section 13 of this Act, the application for license by the contractor must contain information such as location of the establishment, the nature of process, operation or work for which contract labour is to be employed and other particulars as may be prescribed. Such license shall be valid only for a specific period of time as may be prescribed in that license. After the expiry of the license, it should be renewed from time to time.

According to section 14, the licensing officer can revoke or suspend the license or he can forfeit the sum which has been deposited as a security on the ground of misrepresentation or suppression of material facts or the holder of a license has contravened any provisions of this act or failed to comply with the conditions in respect of contract labour without reasonable cause.

The licensing officer also has the power to amend the license under section 12 subject to rules made by the government.

Appeal to appellate officer under section 15:

Any person who is aggrieved by an order made under sections 7,8,12,14 may file an appeal to the appellate officer. The appellate officer will be appointed by an appropriate government.

The appeal must be filled before the officer within 30 days from the date of issuance of the order.

Welfare and health of contract labour:-

sections 16,17,18 and 19 of the contract labour act,1970 deals with facilities that must be provided to the contract workers by the contractor and the establishment. The appropriate government may establish rules with regard to the canteen facility to contract labour on an establishment with contract labour for a specific period of time and where contract workers employed are one hundred or more. Rest-rooms facility must be provided and it must be clean and in good condition. It is the duty of contractors to ensure the other facilities such as adequate drinking water supply, accessible urinals and latrines and washing facilities. Most importantly the contractor must have a first-aid box in the workplace. These amenities shall be provided by the principal employer to the contractor.

According to section 21, the contractor must pay wages to the contract workers before the expiry of contract. Every principal employer will appoint a representative to be present while giving payments to the workers. In case of failure to give wages to the contract workers either wholly or partly, the principal employer will be held liable.

PENALTIES AND PROCEDURE:

According to section 22, any person who obstructs an inspector from discharging his duties and whoever willfully neglects to produce any documents on the demand of an inspector and prevents any person from being examined by the inspector shall be punishable with imprisonment for a term which may extend to 3 months or fine which may extend to five hundred rupees or with both.

Section 23 of the contract labour act,1970, if any person contravenes any provisions of this act or any rules made with regard contract labour or contravenes any conditions of license given under this act will be held liable with imprisonment of a term which may extend to three months or with fine amount of one thousand rupees or with both. When the contravention is continued by any person, he will be liable for one hundred rupees for every day from the date of his first contravention.

According to section 24, if any person commits any other offense with respect to the provisions of this act will be liable for imprisonment for a term which may extend to 3 months or fine which may extend to one thousand rupees or with both.

According to section 25, if an offense is committed by the company during the course of business, then the company as well as every person who was in charge of or responsible for commission of an offense will be deemed to be guilty and the company will be punished accordingly. If such person proves that offense was committed without his knowledge or he exercised due care then he will not be liable.

According to sections 26 and 27, no court shall take cognizance of any offense committed unless a complaint is made or with the previous sanction of lower court or the inspector. The complaint must be made within 3 months from the date of alleged crime. If the complaint is about the disobedience of an order given by an inspector, it should be made within 6 months from the date on which the alleged offense was committed.

IMPORTANT MISCELLANEOUS PROVISIONS:

Section 29 of the contract labour act,1970 states that registers and records with respect to the employment of contract labor, payment of wages and nature of work performed must be maintained by the contractor and the employer.

According to section 31, the appropriate government has a Power to exempt in special cases.

section 32 of this act, No suit, prosecution or other legal proceedings shall be conducted against the registering officer, licensing officer, any other government servant or any member of central or state board for any act which has been committed in good faith.

According to sections 33 and 34, the central government has power to give directions to any state government and power to remove difficulties.

According to section 35, the appropriate government has power to make rules without prejudice to the generality of foregoing power⁴.

CONTRACT LABOR CASES:

In the case of **Laxmibai Dilip Hiwarale & ors vs. Marathwada Medical Research and Rural Development Institution Ltd**, the court stated that the central government or an industrial tribunal can only abolish the contract labour system and can not declare that the contract workers to be an employees of principal employer⁵.

In the case of **Kirloskar Brothers Ltd. v. Ramcharan, 2022**, the supreme court stated that the principal employer cannot be ordered to employ contractual workers in absence of notification which prohibits contract labour or allegation of fake contract⁶.

STRUGGLE OF CONTRACT WORKERS:

In the year of 2023, Proterial India private Ltd company had employed contractual employees. Bhupender singh who worked as a contract worker for the past three years of that company said that the dismissal of 32 contract workers last year had sparked a struggle. So, the contract workers started a sit-in strike against the management. Eventually the dismissed workers were returned to their former position after the tripartite agreement made under section 12(3) of Industrial disputes act,1947, by the management with the inference of the labour department.

He further states that, the contract laborers started a movement for seeking pay parity. Employees who are employed directly by the principal employer to work regularly are getting sixty thousand rupees to eighty thousand rupees as their salary but, the contract workers are still getting paid around ten thousand rupees even after working for ten years in that company⁷. The conclusion of the July 2012 violence at the Maruti Suzuki car manufacturing plant in Manesar, where a senior HR executive lost his life and nearly hundred other officials were severely injured, resulted in the conviction of 31 workers and the acquittal of 117 of their colleagues because of a disciplinary matter involving an employee and the various unions advocating for the immediate reinstatement of the concerned employee and putting forth various demands, including

⁴The provisions from section 1 to section 35 are referred from The contract labour (Abolition and Regulation) Act, 1970

⁵<https://indiankanoon.org/doc/194504966/>

⁶<https://indiankanoon.org/doc/18622727/>

⁷<https://www.thehindu.com/news/cities/Delhi/contract-workers-struggle-for-pay-parity-signals-key-change-in-haryanas-auto-hub/article66858056.ece>

equal salaries for contract workers as permanent employees, the management did not comply with these requests. The contract workers demand for equal pay remains unfulfilled even after years of struggle. But, contract workers in India have started to stand up for their rights and their welfare without the support of permanent employees.

CONCLUSION:

The contract labour (regulation and abolition) Act, 1970 Failed to address the issues of contract laborers in India. The contract laborers are still not backed up by trade unions in various establishments. Contract laborers are not members in trade unions since they are not permanent employees. The law does not distinguish between the permanent employees and the contractor employees when it comes to forming a trade union under Trade Union Act, 1926. The main purpose of Contract Labour Act, 1970 is to prevent exploitation of contract workers but, the provisions of this act needs improvements and changes to address the issues faced by the contract labour. Since the punishments given under the contract Labour Act, (1970) are less deterrent, the contractor and principal employer may act negligently towards contract laborers welfare. Thus, the contract labour act, 1970 did not strictly scrutinize contract workers welfare because they are still struggling.