

A Normative Reassessment of the Positive Rights of Contract Labourers in India

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Abstract

With the advent of globalisation and liberalisation, contract labour has become a trending form of employment adopted by several industries. India is not new to the contract labour system. This study analyses the difference between contract labour and general labour, issues, and problems of contract labourers in the industry, and how the judiciary has helped in promoting the rights of the contract labourers. In this research work, an attempt has been made to study and analyse the availability and corresponding implementation of the social security laws and constitutional rights in addition to the labour laws. To do so, the study firstly reflects upon the existing national and international rights and benefits enshrined in the legislation, and then it examines the judicial role in the upliftment and protection of contract labourers. Finally, after analysing the problem of contract labourers, the study suggests a way forward to better facilitate the benefits and rights provided under the law.

Keywords: Contract labour, minimum wages, human rights, workman, compensation

INTRODUCTION

In this era of industrialisation and globalisation, contract labour has become the backbone of every industry, which is significantly contributing to the growth of the economy as a whole. Over the years, the use of contract labour has raised in several industries. Industries claim that as the need for labour is temporary/seasonal, therefore the best resort is contract labours. Irrespective of that, it can be observed that industries deploy contract labour for work as security, sweeping, and cleaning, although it is difficult to understand how these works do not amount to full-time regular employee work. However, in India, the contract labour system came into existence in the latter part of the 19th century when the industries were facing problems of labour recruitment and discipline [1].

Contract labourers have been subject to so many violations and discriminations and have faced innumerable problems relating to working conditions, nature of work, minimum wages or disparity in salary against the regular or permanent workers, welfare activity and social security schemes. Even after doing similar jobs in similar industries, there exists a huge gap in the benefits provided to the regular workers and there has been no significant increase in the benefits and rights of contract labours. Thus, in this time of globalisation and liberalisation, the utilization of contract labours is one of the primary issues faced in the nation.

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Commonly, labour laws are equated to Human rights law as they are known to include fair living, health and safety, right to life with dignity and no harassment, no excessive working hours, freedom of association and right to collective bargaining, a stable employment relationship and no discrimination in employment, etc.

This research work after a critical study on the prevailing conditions of contract labourers as well

as the extant legislative regulations seeks to answer the question "*to what extent the State and the Judiciary should intervene in the independent contractual agreements under the Contract Labour Law in India to ensure observance of humane working conditions, a dignified and decent working environment?*"

LAW OF CONTRACT LABOUR

International Labour Organisation (ILO) on Contract Labour

India has been a member of the International Labour Organisation since its inception in 1919 and has been its leading member. The International convention, i.e., the Contract Labour Convention 1998, aims to ensure that the contract works are paid equivalent to the work performed by them, they receive the desired compensation in case of injury or disease caused due to performing the contract labour and ensure they receive all the benefits they deserve [2]. It seeks to warrant that the contract workers receive the same protection as guaranteed to the workers with recognised employment relationships [3]. The convention makes sure that adequate remedies are provided to contract labourers as when need be [4] and rights under social security laws are offered to them [5].

The ILO has certain core labour standards i.e., a group of conventions which are fundamental and termed to be the basic human rights like the elimination of all sorts of forced or compulsory labour, abolition of child labour, elimination of discrimination, the freedom of association, and the right to collective bargaining [6]. Moreover, to address the human rights abuses, the UN Guiding Principles on Business and Human Rights prescribe three pillars outlining the duties and responsibilities of states and businesses like the state must protect against the human rights abuses by providing appropriate regulations and policies; it is the responsibility of businesses to respect the human rights and avoid its infringement and also cater to the adverse human rights impacts in furtherance of its activities; to ensure more effective and prompt access to remedies for the human rights abuse victims [7]. Apart from this, the workers are entitled to human rights irrespective of their status under the International instruments i.e., the Universal Declaration of Human Rights, Cultural Rights and The International Covenant on Civil and Political Rights and The International Covenant on Economic Social.

Indian Legislative Framework on Contract Labour

In 1970, Government of India to protect the rights and ensure the welfare of contract labourers, promulgated the Contract Labour (Regulation and Abolition) Act (hereinafter referred to as "**Act**"). The Act describes contract labour as "*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 on or in connection with such work by or through a contractor, with or without the knowledge of the principal employer* [8]." Per this definition, it can be implied that contract labour can be any person concerned:

- a. Who is a workman;
- b. Must be employed or work in an establishment;
- c. Be employed through a contractor; and
- d. Such employment may be with or without the knowledge of the principal employer

Commonly, the work done for a principal employer by a worker through a contractor/chain of contractors is termed as the 'contract labour system'. A contractor is the one who tries to produce the desired results with the help of contract labour for an establishment [9] and on the other hand, a principle employer is a person responsible for the control of the organisation [10]. Although, in reality, the contractors tend to indulge in illicit activities and abuse of their power by paying lesser wages than agreed, forcing the workers to engage in activities/work which might not be good for their physical or mental health. The provisions for the welfare of the contract labour class include payment of minimum wages, provident fund benefits, certain health, and sanitation facilities in the work premise etc. [11].

The Constitution of India strives to maintain a balance between individual human rights and the rights of contract labour. The Human rights law caters to all the basic fundamental needs of an

individual to live a free and dignified life. Similarly, the Universal Declaration of Human rights also provides rights like the right to equality, right to freedom, right to life and personal liberty, right against exploitation, right to constitutional remedies, and the cultural and educational rights [12].

Under the Indian Labour Law, there are a vast number of legislations which are singularly aimed at providing social security to the workmen in the organised sector. There is the Workmen's Compensation Act, 1923 in place for accidents at workplace; for health benefits of the workers there is Employees' State Insurance Act, 1948; for the retirement benefits, there is the Payment of Gratuity Act, 1972, and Employees' Provident Fund Act, 1952; and the Maternity Benefit Act, 1961, for the pregnant female workers, the Occupational Health and Safety Code, 2020 to ensure good working conditions, etc. However, such benefits are also offered to the workers in the unorganised sector under Unorganized Workers' Social Security Act, 2008 whereby protection is provided to those unorganised workers. The Contract Labourers are specifically entitled to benefits under Payment Of Wages Act, 1936; Minimum Wages Act, 1948; Workmen Compensation Act, 1923 and Industrial Relations Code, 2020 (earlier called the Industrial Disputes Act, 1947).

JURISPRUDENCE OF CONTRACT LABOUR

In India, the judiciary has always aimed to strike a balance between the rights and benefits of workers and employers; contract workers, and other forms of employed workers. To understand this aspect of judicial contribution to the upliftment of the contract labourers it is important to refer to the Indian jurisprudence.

In the case of *Lionel Edward Ltd. v Labour Enforcement Officer* [13], the court held that the Act is an imperative piece of social legislation and aims to regulate the contract labour employment and abolish them in case of need. The court also remarked that being social legislation founded for the welfare of the labourers, it must be construed so [14]. Further, in the case of *National Organic Chemical Industries Ltd. v State of Maharashtra & Ors.* [15], the court held that the prohibition of contract labour is not violative of Article 14 of the Constitution as the Section 10 of the Act provides for the prohibition of employment of contract labour in an operation in any establishment [16]. The court highlighted that the object of this provision is to prevent the employer from breaching the provisions of the Act and end the exploitation of labourers in violation of their constitutional rights of standard living, wages, and health [17].

Justice S.B. Majumdar observed that if the contract labour is itself abolished then it shall result in economic ruin and death of contract labourer and his dependents for improvement of labourers under Section 10 is to be passed. He said that if the contract labour system is abolished then the erstwhile contract labourers will have to be thrown out of the establishment lock and barrel [18]. However, the Apex court in the case of *Steel Authority of India Ltd. v National Union Waterfronts Workers* [19] enumerated that by denying the right of contract labour to be absorbed on the abolition of the contract labour system, the desire of the management to have a free hand to employ contract labour without any liability to absorb them has succeeded [20]. Although, it is pertinent to note that in certain jobs/industry, it is important to engage in contract labour to facilitate the outsourcing of some activities to contract labour system [21]. Thus, the Steel Authority judgment not only removed the conflict between workers and management but also has introduced flexibility in the appointment of contract labour and ensured that it is in parlance with the present needs of industrialisation and globalisation without any future liability [22].

The Indian Judiciary has always aimed at upholding and promoting democratic values as enshrined in the Constitution of India. This can be observed by looking at yet another set of judgments wherein the judiciary has not only tried to cater to the needs of the contract labourers and but also ensure the protection of their human rights in parlance with the employed or other workers. Like in the case of

Standard Vacuum Refinery Company v Their workmen, the Supreme Court opined that the contract labour should not be employed at places where [23]:

- a. The work is perpetual and goes 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 full-time workers; and
- d. The work is being done in most concerns through the regular workers.

Moreover, the Supreme Court in the **Bandhua Mukti Morcha case** [24] introduced the procedure for the appointment of commissioners to determine the application of laws and protection of rights of the bonded labours. The court held that this shall also apply to the contract labours, which shows that they were also addressed to get their rights. In the **Shivnandan Sharma case**, the court held that the contract workers were the treasurers and opined that in some cases, the workers shall be deemed to be employees of the company irrespective of the fact as to who holds the termination and appointment rights over the workers [25]. In 2016, the Supreme Court in the **Jagjit Singh case** held that the contract workers shall be given equal/same pay as the permanent workers [26]. Additionally, the court also made a philosophical attribute that the denial of the principle of "equal pay for equal work" is a violation of human dignity [27].

Having said that, it can be observed that the judicial practices have aimed to promote the rights of the contract workers. However, the other side of the coin is that in most cases the contract labour does not even fight for their rights as the legal framework does not fully support the unorganised working sector. This results in an increased role of state legislature to ensure equal and fair treatment to the contract labour by making amendments to the law. Thus, it becomes even more difficult to implement these already existing rights and advantages in their favour since the contract workers are mostly illiterate, unorganised, and also ignorant of their rights provided by the law of the land.

ANALYSIS OF THE KEY PROBLEM

The issue with the contract labourer is not just limited to India but is spread worldwide. The Contract Labourers face various problems in the industry like they are insecure for not being treated in par with the regular labourer, they have little or no bargaining power or social security, they are mostly engaged in hazardous industrial activities with bare minimum security and facilities. As they mostly belong from the weaker sections of the society and are illiterate and unknown of their rights, and also, they are deprived of the benefits rendered to the regular employees. Generally, the contract workers believe that by forming unions, they would provoke the already ignorant management into an even greater hostility as they are known to refuse to accommodate the needs or issues concerning the contract labourers and thus, the Unionization rate among the contract labour is extremely low.

The economic conditions of the contract workers are very low in comparison to the regular workers and due to low earnings, which are not sufficient to fulfil the needs of their large families resulting in which they fall in the poor strata of the society. To add to this, the majority of these workers do not have any job security, unlike the permanent workers [28]. Further, Morgan Stanley in his article highlights that India is ranked 61st in maintaining the employer-employee relationship, which is far away from nations like Mexico, Philippines and Thailand [29]. I believe that the cause behind such a low ranking is that the increasing globalisation has led to a shift into a robust profit-oriented economy which results in shifting to contract labour all across the globe. It is a well-settled fact that the contract labourers are only offered the minimum wages that the companies are bound to pay per the statutory obligations which are just one-fourth of the wages of permanent workers doing the same work. Additionally, there are several provisions of the act that are not fully complied with neither by the contractor nor by the principal employers, resulting in the ultimate violation of the rights of the workers. Largely, the critics of the act highlight the abuses of contract labours by non-payment of minimum wages or the non-payment against the overtime and the non-recognition of the workers in

parlance with the social security schemes and benefits which they are beneficiary to [30]. Therefore, whilst the law is existing, the need of the hour is that both a state and businesses aim to ensure that it is enforced in practice.

CONCLUSION: SUGGESTING A WAY FORWARD

In order to solve the problems of contract labour and evaluate the present situation of Contract Labour, I believe that certain steps are imperative and must be taken by the relevant bodies to have a successful and effective implementation of the Contract Labour (Regulation and Abolition Act), 1970. The need of hour directs that the following steps must be taken in order to ensure protection of contract labours:

- Effective implementation of the Contract Labour (Regulation and Abolition) Act, 1970.
- The Contract labour must be provided with the desired skills and training to be able to do specific jobs.
- The practice of "*all are equal*" must be engraved in practice to provide equal opportunities to both the Contract Labour and the General Labour.
- The Contract Labour must be provided with a secure job, the social security and welfare measures for contract labourer alike the permanent workers.

Moreover, as provided by the International Labour Organisation, the "*decent work*" [31] system must be adopted as a part of organisational goal which accentuates upon the four key goals i.e., "***work content; rights at the work; security of employment; and representation and dialogue*** [32]". The mere application of this concept to the contract labour system in India would certainly lead to an immense change in the existing regulatory framework [33].

On a blatant analysis of the history of labour law, it can be observed that the root cause behind the suffering of labour class is nothing but the mere non-compliance and non-implementation of labour laws effectively. Although the government and the judiciary are keen to provide equal rights and benefits to the contract labour and are constantly prescribing policies and decisions for the upliftment of the contract labourers, they now need to focus on ensuring that these existing laws are revised from time to time. Additionally, awareness of these rights and benefits must be spread for the proper implementation of the Act. Further, the rights sought by the contract labourers against their exploitation are very basic rights that must be offered to all workers irrespective of their work type, gender, etc. like fair and equal pay, job security, humane working conditions along with desired health and safety measures.

It is extremely pertinent to notice that in the current labour law and the industrial system, there exists a differentiation matrix to distinguish between the different kinds of workers i.e., the regular workers, permanent workers or contract workers. Currently, there are separate legal frameworks which protect different kind of labourers differently due to which the rights and benefits which should be guaranteed to all the workers irrespective of their kind/work are not benefitting the contract labours. In my opinion, although the distinction is factual and real but the government should adopt a model prescribing a general labour law protections in addition to the additional benefits to be offered to the contract labours. Therefore, the need of the hour is to have one legislation for all the workers guaranteeing all sorts of protection and fundamental rights per the national and international standards. Moreover, all the establishments employing contract labours must ensure equal treatment of contract labours to the other kinds of permanent workers in the organisation on all fronts to ensure holistic protection of their rights in furtherance of the judicial announcement of their equal treatment to permanent workers.

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