

AN ANALYSIS OF CONTRACT LABOUR: A SPECIAL REFERENCE TO HEALTH AND WELFARE ISSUES OF THE WORKERS

Dr. GOPALA ANJINAPPA

LL.M., M. Phil., Ph. D.,
Asst. Prof. of Law
Government Law College
Kolar, Karnataka

Abstract- The employment of the contract labour is facing a major issue in the era of globalization. Generally, labour issues are never lasting social problem and particularly in the contract or outsourcing system, the workers are often a source of exploitation. Although the outsourcing employees work along with the regular employees and perform the similar kind of work, they are deprived with many services and benefits including the health and welfare conditions. The Constitution is the utmost significant in securing the right to life and liberty to every citizen that includes the right to live with dignity which can be assured by providing decent working conditions, fair wages and health condition of the workers. In this perspective, the paper highlights the upshot of the Constitution of India. An employer is required to take certain specific measures to prevent exploitation of contract labourers from the hands of management. Accordingly, to regulate the adequate functioning of contract labour, the Contract Labour (Regulation & Abolition) Act, 1970 has been enacted. Under this purview, the paper focus in understanding the overall complications confronted by the contract or outsourced labourers and also underlines the significance of the Contract Labour (Regulation & Abolition) Act, 1970. Nevertheless, the paper aims towards the scope of the judiciary wherein it has reiterated in most of the cases for safeguarding the health and welfare condition of the labours. The paper, as a whole, analyses the concept of welfare and health issues of contract labours.

Keywords: Contract labour, health, welfare, constitution of India, legislation, judiciary, etc.

AN ANALYSIS OF CONTRACT LABOUR: A SPECIAL REFERENCE TO HEALTH AND WELFARE ISSUES OF THE WORKERS

In all kinds of service sector, the employment of contract labour is prevalent very often and the workers are millions in number. Although, we see contract labourers in all kinds of industries, allied operations and so on, they are the category of people who are being exploited by the employer. They often face issues with their working conditions, the nature of their jobs, minimum pay rates or salary deference, welfare programmes, and social security plans. Their requirement is of temporary or seasonal. Even though these workers are being deployed for the tasks as security, sweeping and cleaning, which is needed at any time, it is difficult to comprehend how these tasks are categorized as temporary. The managements try to by-pass the provisions of social legislations to these contract labourers unless they are legally trapped or forced by circumstances. Nonetheless, the judiciary has always upheld the concept of social justice, dignity of human rights and worker's welfare.

Contract labour is an indirect worker borne neither on the payrolls nor on the muster rolls of regular workers in an establishment. The primary motive behind hiring contract labour is to have greater flexibility in adjusting the workforce in the face of occasional surges or slowdowns in demand. These workers are an alternative workforce for any employer. Establishments tend to use contract labour as a strategic advantage against regular workers who are unionized, to check the latter's wage demands (*Sen K., Saha B., & Maiti D., 2013*).

Contract labour is working in millions in sectors such as road, air and rail transport, construction, plantations, ports and docks, factories, oilfields, shipping and agricultural operations. The organized manufacturing sector in India witnessed an increase in workforce participation of contract labour of up to 13.7 million in 2015–2016, growing by nearly 78% from 7.7 million in 2000–3001, as cited by the Annual Survey of Industries (*Kapoor R., & Krishnapriya P. P., 2019*).

Under a contract labour, the responsibility stands on the contractor to hire, supervise and remunerate contract labourers. As analyzed by numerous commissions, committees, Labour Bureau Ministry of Labour, etc., the status of contract labourers are of poor conditions along with lack of job security. Working through contract basis or outsourcing results in the deprivation of security of service and other benefits, privileges, leave, etc., for the work men. The outsourced employees are poorly remunerated (with no other fringe benefits, or annual salary increments) and their jobs are very stressful and demanding. Their working conditions are poor including their standard of living. These employees work for 11 to 15 hours without being entitled to any form of leave (sick, maternity or annual) and also no hope of promotion. Moreover, they are not satisfied with the nature of their jobs. All these prove to be a serious threat to Human Resources development.

Constitution of India

Under the Constitution of India, Labour is a subject in the Concurrent List where both the Central & State Governments are competent to enact legislation subject to certain matters being reserved for the Centre.

Labour Jurisdiction : Constitutional Status

Union List		Concurrent List
Entry No. 55		Regulation of labour and safety in mines and oil fields
Entry No. 22		Trade Unions; industrial and labour disputes.
Entry No. 61		Industrial disputes concerning Union employees
Entry No. 23		Social Security and insurance, employment and unemployment.
Entry No. 65		Union agencies and institutions for "Vocational ...training..."
Entry No. 24		Welfare of labour including conditions of work, provident funds, employers "invalidity and old age pension and maternity

(Source: Government of India, Ministry of Labour and Employment)

Article 21 of the Indian Constitution guarantees the right to life and liberty to every citizen that includes the right to live with dignity provided by their good health and welfare conditions and fair wages to the workers. The Directive Principles of State Policy directs the State to ensure that the health and strength of workers are not abused or misused due to works that do not suit their age or strength. Social security is guaranteed in our Constitution under Articles 39, 41 and 43. Article 39(b) and (c) are very significant constitutional provisions as they affect the entire economic system in India. Article 42 provides the basis of the large body of labour law that obtains in India. Referring to Arts. 42 and 43, the Supreme Court has emphasized that the Constitution expresses a deep concern for the welfare of the workers. By reading Article 21 with several Directive principles including Art 42, the Supreme Court has given broad connotation to Art 21 so as to include therein "the right to live with human dignity". Article 43 of the Directive Principles of State Policy provides for the state to secure the living wages of workers and standard of life which can ensure the full enjoyment of leisure and for social and cultural opportunities.

Specific Labour Legislations

The other legislations governing various aspect of labours, of which the most relevant laws relating the contract labours are:

- The Factories Act, 1948,
- The Employees Provident Funds Act, 1952,
- Workmen's Compensation Act, 1923,
- Industrial Dispute Act, 1947,
- The Trade Union Act, 1926,
- Employees State Insurance Act, 1948,
- Inter-State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, and
- Minimum Wages Act, 1948.

Four labour codes

- Code on wages, 2019
- Code on social security, 2020
- Occupational safety, health and working conditions Code, 2020
- Industrial relations code, 2020

All these legislations did not address contract labour in particular. Hence, to stop the exploitation of contract labourers from the management, the Contract Labour (Regulation and Abolition) Act, of 1970 was passed.

The Contract Labour (Regulation and Abolition) Act, 1970

The Contract Labour (Regulation & Abolition) Act, 1970 is an essential legislature that protects the rights of the workers who are appointed on a contract basis. This act has been enacted 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 applies to all establishments employing 20 or more contract labour and to all contractors who employ 20 or more contract labours.

The Act provides for the constitution of Central and State Advisory Boards to advise the concerned governments on matters arising out of the administration of the Act. The Central Government has issued a number of notifications prohibiting employment of Contract Labour in different categories of works, job and process as in mines, Food Corporation of India's

godowns, port trusts and many other industries/ establishments for which it is the Appropriate Government. The Central Advisory Contract Labour Board has also constituted a number of committees to enquire into the question of prohibition of contract labour system in different establishments. Central Government is the Appropriate Government in respect of industries and establishments for which it is Appropriate Government under the industrial Disputes Act, 1947. (*Chief Labour Commissioner*)

Objective and scope of the Act

The objective and scope of the Act are:

- To prevent exploitation of contract labour.
- To provide proper and habitable working conditions.
- To regulate the functioning of the advisory boards.
- To lay down the rules and regulations regarding the registration procedure of the establishments employing contract labour.
- To state the necessary requirements and the procedure of licensing of contracts.
- To provide the penal provisions in case of violation of offences under the Act.

(*Abanti Bose, February 14, 2022*)

Constitutional validity of the Contract Labour (Regulation & Abolition) Act, 1970

The Constitutional validity of the Act and the Central Rules was challenged before the Supreme Court in *Gammon India Limited v. Union of India* (1974 SCC (L&S) 252). The Supreme Court upheld the constitutional validity of the Act & Rules and held that there is no unreasonableness in the measure. In the instant case, it was stated that Section 28 of the Act conferred arbitrary and unguided power thus violating Articles 14 and 15 of the Indian Constitution. It was also contended before the Court that Section 34 of the Act which empowers the Central Government to make any provision for removal of difficulty is unconstitutional on the grounds of excessive delegation. The Supreme Court held that Section 34 of the Act is an application for the internal functioning of the administrative machinery and gives effect to the provisions of the Act, therefore does not amount to excessive delegation. The Court dismissed the petitions and held that the Act does not violate the Constitution and it is constitutionally valid. Accordingly, the application of this Act does not violate any Articles of the Indian Constitution.

Health and Welfare of the Contract Labourers

Under Chapter 5 of the Act, it is the duty of the principal employer to ensure that the contractor provides the following facilities adhering to the rules laid down by the appropriate government.

Canteens (Sec. 16): If the contractor is employing more than one hundred workmen by contract labour then one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

The Act provides as follows:

(1) The appropriate Government may make rules requiring that in every establishment--

- (a) to which this Act applies,
- (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
- (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor, one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the date by which the canteens shall be provided;
- (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- (c) the foodstuffs which may be served therein and the charges which may be made thereof.

Rest-rooms (Sec. 17): Concerning the work of an establishment where contract labour is required to halt at night, the contractor must provide and maintain restrooms or other suitable facilities which shall be sufficiently lighted, ventilated, clean and comfortable.

The Act provides that,

(1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment—

- (a) to which this Act applies, and
- (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest rooms or the alternative accommodation to be provided under subsection (1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

Other facilities (Sec. 18): The contractor is liable to provide other facilities such as drinking water, latrines and urinals (separate for men and women), washing facilities, first-aid, etc. (Human Resource Info, 2023)

The Act specifies that-

It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain--

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places; (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

First-aid facilities (Sec. 19): There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

Liability of principal employer in certain cases (Sec. 20): The Act indicates that-

- (1) If any amenity required to be provided under section 16, section 17, section 18 or section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed thereof, such amenity shall be provided by the principal employer within such time as may be prescribed.
- (2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Responsibility for payment of wages (Sec. 21): The Act provides that-

- (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
- (2) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
- (3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
- (4) In case 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 and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Judicial Safeguards

Article 21 being the heart of Fundamental Rights assures every person right to life and personal liberty. The Supreme Court has implied a number of Fundamental Rights from Art. 21 while delivering the judgment related to the labour force such as right to livelihood, right to live with human dignity, right to medical care, health of labour, sexual harassment at work place, right to health and economic rights. Some of the important pronouncements on this issue may be witnessed from the following judgments.

Randhir Singh v. Union of India (1982 SCR (3) 298)

The Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage (contract) basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work.

D.S. Nakara v. Union of India (1983 AIR 130)

The Supreme Court discussed the principle of "equal pay for equal work" and made it clear that, Art.39 (d) enjoins a duty of the State to see that there is equal pay for equal work for both men and women. It further held that, "Article 38(1) enjoins the State to strive to promote the welfare of the people by securing and protecting as effective as it may a social order in which justice social, economic and political shall inform all institutions of the national life. In particular, the State shall strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities. Art.39 (d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgement of this court in *Randhir Singh v. Union of India (1982)*."

B.H.E.L Workers Association, Hardwar v. UOI ((1985) 1 SCC 630)

The Supreme Court held that "No invidious distinction can be made against Contract labour. Contract labour is entitled to the same wages, holidays, hours of work, and conditions of service as are applicable to workmen directly employed by the principal employer of the establishment on the same or similar kind of work. They are entitled to recover their wages and their conditions of service in the same manner as workers employed by the principal employer under the appropriate Industrial and Labour Laws. If there is any dispute with regard to the type of work, the dispute has to be decided by the Chief Labour Commissioner (Central)."

Cominco Benani Zinc Ltd. v. Pappachan (1989 LLR 123 (Ker))

It has been held that if the contractor fails to pay wages to his employees engaged by him, the principal employer will be liable to pay the same. (*Dr. H.K. Saharay, 2011*)

Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC 180)

The Supreme Court has taken recourse to Art. 39(a) to interpret Art. 21 to include therein the “right to livelihood” and observed that, “If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

Catering Cleaners of Southern Railway v. Union of India & Ors. (AIR 1987 SC 777)

The Supreme Court expressed was in apprehension with reference to contract labour engagement as follows: “Of late there has been a noticeable tendency on the part of big companies including public sector companies to get the work done through contractors rather than through their own departments”. “It is a matter of surprise that employment of contract labour is steadily on the increase in many organized sectors including the public sector, which one expects to function as a model employer.”

Gujarat Electricity Board v. Hind Mazdoor Sabha ([1995] INSC 266)

The Supreme Court expressed that the economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development. The attitude adopted by the undertakings is inconsistent with the need to reduce unemployment and the Government policy declared from time to time, to give jobs to the unemployed. This is apart from the mandate of the directive principles contained in Articles 38, 39, 41, 42, 43 and 47 of our Constitution.”

Consumer Education & Research Centre v. Union of India (AIR 1995 SC 923)

The Supreme Court has rightly concluded that, the “right to health, medical aid to protect the health and vigour of a worker while in service or post retirement is a Fundamental Right...to make the life of the workman meaningful and purposeful with dignity of person.” Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights of the workmen.

CERC v. Union of India (AIR 1995 SC 922)

The Supreme Court held that the right to life in Art. 21 includes “right to human dignity”, the Court now held that: “right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a Fundamental Right under Article 21, read with the Directive Principles in Articles 39(1), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person.”

Indian Oil Corporation Ltd. v/s Karnataka Petroleum & Gas Workers (Writ Petition Nos. 1829/2012 & Writ Petition Nos. 1837-1840 of 2012 (GM-RES)

The Karnataka High Court dealt Chapter-V of the Contract Labour Act that provides with welfare and health of contract labour. Under Section-16 of the Contract Labour Act, the canteen/canteens need to be provided and such canteen/canteens should be maintained by the contractor for the use of such contract labour, so also the contractor is liable to provide rest rooms as contemplated under Section-17 of the Contract Labour Act and other facilities such as wholesome drinking water, latrine etc., are to be provided by the Contractor as per Section-18 of the Contract Labour Act. The first aid facilities also are to be provided by the Contractor to the contract labour as per Section-19 of the Contract Labour Act. In case if the contractor fails to provide the amenity/amenities required to be provided under Section- 16, Section-17, Section-18 or Section-19 of the Contract Labour Act for the benefit of the contract labour employed in an establishment, such amenity/amenities shall be provided by the principal employer within such time as may be prescribed as contemplated under Section-20 of the Contract Labour Act. May be, all expenses incurred by the principal employer in providing the amenity can be recovered by the principal employer from the contractor, subsequently.

Conclusion

The Contract or outsourced employment is a serious threat to Human Resources development. The Contract Labour (Regulation and Abolition) Act, 1970 was very much needed to stop exploitation of contract labourer by Contractors and Establishments and for the regulation of the employment of contract labour. Human Resources in the outsourced employments are excluded from training; hence, they could not become professionals, receive stipend in form of salary, and could not live well. They work more than normal work-hour, yet receive no overtime allowance and are denied leave. They therefore could neither rest nor receive leave bonus. Contract/Outsourced workers have no hope of promotion. They are not entitled to yearly increment. If an outsourced staff suffers injury or accidents in the course of performing his or her duty, which at times could lead to permanent disability and force him/her out of job permanently; they also receive no help or support from the employers.

This unfriendly practice against the contract labourers must be summoned and called upon. As many establishments must avoid engaging contract labour in their core and perennial activities. If so engaged they must generate employment without compromising on the rights of workers.

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