



CONTRACT LABOUR EMPLOYMENT: OLD & NEW

By Malika Bhasin
From Amity Law School, Delhi (GGSIPU)

ABSTRACT

Contract Labourers aren't regular employees but are the one employed by a firm that has a contract to do only specific work for the organization. Contract labour mostly aren't not borne on pay roll or is paid directly. In order to regulate these contract labourers, the government enacted the Contract Labour (Regulation & Prohibition) Act, 1970 to secure their status and to abolish them from certain establishment and effort was made to protect them from exploitation. However, there were certain issues arising with the same and thus, this led to Occupational Safety, Health and Working Conditions Code ,2020 coming in picture. This paper discusses both the Contract Labour Act and Code in depth and also the changes brought in by the code for better regulation of Contract Labourers.

INTRODUCTION

In the present world where liberalisation and globalisation are at its peak and thus there has been a change in the business environment which is now intensely profit oriented. This has led to industries competing with each other for survival.

Multi National Corporation across the globe started investing in India primarily because of potential market capability and availability of workforce. Mushrooming of these industries took place in order to compete with

their counterparts. In order to compete efficiently in this customer driven market economy, industries require flexibilities in managing manpower. That is to address occasional upsurge or slowdown whenever required as per demand.

However, the ancient Indian Labour Laws which were enacted decades back, restricting right size of manpower are creating hurdles in smooth functioning of these industries.¹ This is just leading to these industries hiring more and more numbers of contract labours to have greater flexibility to successfully adjust the number of workforce based on economic efficiency, better utilisation of resources, optimisation of profit and bringing cost effectiveness while the workers lousy pay and lesser labour liabilities and they're doing it by principally resorting to contract labourers and they're governed by the Contract Labour (Regulation and Abolition) Act of 1970. For various skilled and semi-skilled jobs, contract employment is very popular.

Employees who do not work directly employed by the organization but are actually employed by a firm that has a contract to do specific work for the organization are known as contract labourers. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a Contractor or any mediator.

Contract workmen are indirect employees and not direct, they're persons who are hired, supervised and remunerated by a Contractor who, in turn, is compensated by the organisation. Contract labour is employed for

¹ Industrial Relations and Contract Labour in India, All India Organisation of Employees, retrieved from

<http://aioe.in/htm/IndustrialRelations.pdf>.



work which is specific and is time bound. They're not usually on pay roll or paid directly. Thus, not regular employees.

BACKGROUND OF THE ACT

The appalling condition of contract labour in India was studied by various Commissions, Committees, the Labour Bureau and the Ministry of Labour both before and after independence. All these organizations found the condition of contract labourers and their employment exploitative in nature.

The need for providing legislative protection to this category of workers, whose conditions have been found to be dreadful, resulted in the enactment of the Contract Labour (Regulation and Abolition) in 1970.

The main aim of the Act was and still is to prevent exploitation of contract labour and also to ensure better conditions of work. Contract labourers primarily suffer from lower labour status, casual nature of employment, lack of job security and poor economic and as well as conditions. It was also observed that in some cases the contract labourers did the same work as the workers directly employed by the industrialist but weren't given the same wages or allowed the same working conditions. This practice has led to exploitation of contact labourers and led to the mistreatment of these labourers as they are not employed directly by the employer.

Furthermore, the Act was also passed to contest the problem which did not allow these contract labourers to avail the rights and benefits which were availed by the permanent workers under different labour and industrial provisions. The main aim of

the Act was to prevent the oppression of these contract labourers.

Protection of Rights of Labourers

In order to protect labourers from any sort of exploitation this act determines the rights of the contract labour. These rights ensure that they should get equal status as of the workmen and the violation of which is enforceable in court of law and suitable for subsequent damages. Thus, in respect of wages, hours of work, welfare, health and social security contract labourers' 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, then the agreement shall be treated as void ab initio.

In accordance with the Minimum Wages Act², 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 any delay.

Also, in case of any injury to the labour the contract labours have the right to be provided the safety measures at the establishment and immediate health service in case of any injury. They are entitled for basic facilities like rest rooms, canteens, washing facility, first aid facilities just like any other workmen. They are also entitled to not be employed in any work which is prohibited under law.

Responsibilities of principal employer

Responsibility of principle employer is important as he is the person who is connected with the contract labour at work, therefore facilities have to be provided to him

² Minimum wages act,1948



by the principal employer. Though 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 to even produce all the particulars as demanded by the authority at times. The principal employer also has to maintain a register of contractors in Form – XII. And to send the annual reports to registrar office.

In case the contractor fails to make payment within the prescribed time the liability to make the payment of wages including overtime wage and allowances directly paid to the labour in accordance with Payment of Wages Act, 1936. However, he can then recover such amount from the contractor later. He has to also overlook that any contract labour must not engage in hazardous or such work which can cause him the injury at work.

Responsibilities of contractor

In the contract labour system, the contractor's liability under the act is made primary. In case of every situation or mishappening related with the contract labour, the contractor is responsible. The contractor is supposed 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 also accountable to maintain the register of workers in Form XIII which shall contain all necessary information related with each

contract labour and must issue an employment card to each and every worker.

All basic facilities and amenities like stay rooms, rest rooms, washrooms, food, and health facility are to be provided by the contractor. He is principally 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 or even Hindi and in a local language, and notices related to rate of wages, period of work, address of labour inspector, etc. The contractor has to send Half-yearly reports in Form XXIV to the local labour department.

Drawbacks of Contract Labour Act³

According to the Contract Labour Act, the organisations are supposed to adhere to the Minimum wages act and its norms. However, it be seen that there are workers earning less than 100 rupees per month which do not comply with the minimum wages criteria.

It has generally been found that there are three categories of firms as far as payment of wages is concerned. There are large private firms that pay more than market wages as efficiency wage. The efficiency wage directly depends upon the efficiency of the workers. Hypothesis in economics states that if the effort in work depends positively on the wage level, a profit maximising firm would find it not only possible but profitable to pay above the market clearing level. The second category firms are those which comply with minimum wage norms. The third category comprises the large number of small private firms which prefer to employ uneducated worker so that they can be paid less than the

³ Contract Labour Regulation and Abolition Act, 1970



prescribed minimum wages.⁴ Thus, this just leads to workers getting exploited.

Though contract workers do get benefit of provident fund benefit, however provident fund is more of a burden to them rather than a benefit. It's also an added burden as every month a fixed amount of money is deducted from their salary for provident fund contribution. However, these workers often change their contractors when project is over and the account needs to be transferred. Unfortunately, once a worker leaves a contractor, he/she rarely get any co-operation from the previous contractor in this regard. In order to recover the PF amount, a contract worker needs to have bank account in which the sum due should be deposited by cheque. Contract workers aren't able to maintain their bank accounts because of the minimum deposit requirements as imposed by banks. This makes recovering their PF dues next to impossible. Additionally, there are various of un-registered contract agencies that subtract 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 a brand-new business in different name. Therefore, an unregistered company's profit margin is increased as they evade taxes and provident fund requirements. This way a registered company tries to compete with one that is not, the only possibility appears to be to exploit the labour as they are already in excess supply. Thus, these problems further add to exploitation of workers.

Single license required

Contractors who have at least 50 or more contract labour will need to apply

electronically to obtain a licence under this Code. If, later, the contractor wishes to increase the number of contract labour covered under the existing licence, then he will have the option of getting the licence amended.

Under CLRA, A contractor needs to obtain multiple licences in respect of each establishment where contract labour is delegated by them. The Code introduces the new concept of a single licence which will be valid for five years for contractors who satisfy the prescribed qualifications/criteria. A contractor who however does not satisfy such qualifications/criteria will be eligible only for a 'work-specific licence'.

However, to supply contract labour to a private sector establishment, a contractor will need to obtain a licence from the designated authority appointed by the State Government. However, if a contractor intends to supply contract labour to multiple private sector establishments in more than one State or across India. Then there will be a need to obtain a pan-India licence from the designated authority appointed by the Central Government, which will issue the licence post-consultation with the designated authorities of the respective States.

CLRA states that for obtaining a licence, a principal employer is duly needed to certify that he is employing the particular applicant as a "contractor" in relation to his establishment and is also undertaking to be bound by all the provisions of the CLRA as applicable to him as principal employer of the applicant's contract labour.

⁴ Rajeev, Meenakshi, Contract Labour Act in India: A Pragmatic View, retrieved from

<http://www.igidr.ac.in/pdf/publication/PP-062-33.pdf>



However, under this Code there is no such certification needed by principal employer. However, the Code imposes an obligation on a contractor to intimate the concerned designated authority about any work order received from a principal employer, failing which his licence could be suspended or cancelled.

Contractor's responsibility extended

Under the Code, it is the very sole responsibility of the principal employer to provide welfare facilities, such as canteen, restrooms, drinking water, and first aid to contract labour engaged in his establishment and maintain safe & healthy environment for them.

However, under the CLRA its actually the primary responsibility of contractor and needs to be provided by a principal employer only if the contractor fails to provide them. Also, the principal employer who under the CLRA can recover the expenses incurred by him in provision of such amenities from the contractor does not have such right under the Code.

Appointment Letter & Experience Certificate

The Code states that it's now compulsory for every contractor to issue a letter of appointment to every contract labour on his appointment in an establishment and to also provide, however on demand, an experience certificate describing the work performed by him in the establishment. These are thus the new provisions under the Code, which have the intention to formalize employment of contract labour, bring transparency in their appointment terms and safeguard their job prospects in future.

Recovery of wages provision

Like the CLRA, the Code also makes it the responsibility of the contractor to pay wages to contract labour, failing which it actually becomes the responsibility of the principal employer, who can recover such amount from the contractor later. However, the Code is more progressive and is one step ahead of the CLRA by empowering the appropriate Government to pass an order for payment of wages due to the contract labour from the security deposit which was formed by the contractor while obtaining a licence.

Prohibition on engaging Contract Labour in Core Activities

The Code has clearly defined "core activities of establishments" and prohibits principal employers from engaging contract labour in the very same. However, it carves out certain circumstances and exceptions where such engagement can be allowed. These circumstances include those situations where the core activities do not require full-time workers or unexpected increase in volume of work in the core activity needs to be accomplished in a specific period of time.

Free Annual Health Check-up

Under the Code, the contractors shall provide free annual health check-up and tests for contract labour falling under the prescribed age group and/or class of employees.

Penalty

The Code states that non-compliance with the provisions for contract labour will not attract any penalty of imprisonment as it is in the case under the CLRA, but only a fine ranging from INR 200,000 to INR 300,000 and an additional penalty of INR 2000 per day for any continued contravention.



This is a withdrawal from the CLRA where the maximum penalty is imprisonment up to three months and/or a fine up to INR 1000 with an additional penalty of INR 100 per day for any continued contravention.

Overriding Powers of Central Government

The Code does give the Central Government overriding powers to regulate general safety and health of persons residing in whole or part of India, in the event of declaration of an epidemic, pandemic or disaster.

Benefits by the implementation of the code

Principal employers will now not need a separate registration to engage contract labour in any of its establishments. Contractors now don't require a work order or certification from the principal employer in order to obtain a licence. Such licence can be obtained electronically and independently. They will have a five-year validity for the same.

Further, instead of multiple licences are no longer needed. In multiple establishments, contractors only require a single licence to supply contract labour. These reforms will promote ease of doing business by improving speediness and efficiency. There shall thus be a decline in corruption, paperwork and compliance requirements. It will also help in saving costs and time taken for obtaining establishment-specific registrations and licences.

The new framework will also give operative independence to principal employers and contractors to commence execution of work by contract labour as per their specific business needs without really depending on statutory authorities and with no interference.

Key Challenges

There might be an increased and unforeseen financial burden on the principal employers, mainly those running medium, small, and micro businesses and not well established which are already struggling to meet their operating costs as well as big businesses that engage a sizeable number of contract labour as under the Code, principal employers will be solely responsible for the provision of welfare facilities at their establishments for contract labour and the maintenance and they cant even recover the same.

One can't engage unlicensed contractors as this will constitute a contravention by principal employers and may subject them to huge penalties. They will be held guilty of contravention under the Code.

Conclusion

As compared to the CLRA the Code adopts a more realistic and business-friendly approach to strike a fair balance by giving basic rights to contract labour while also maintaining appropriate supervision on respective obligations of principal employers and contractors. Hereby balancing the both sides. Thus, it caters to accommodate the specific needs of all the parties involved in the contract labour arrangement. Further, it also replaces redundant and vague provisions, which were enacted about 50 years ago and thus makes the contract labour system more workable, less bulky, and tailored to the new work regime. This will also put an end to exploitation of labourers and corruption in the country.

References

1. Abraham, S, The issues, Concerns, Problems and Remedies in managing the Contract Labour, retrieved from



<http://www.lawbrain.in/Contract-Labour.pdf>.

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

3. The Contract Labour Act 1970 issues & concerns, retrieved from <http://www.freepatentsonline.com/article/Indian-Journal-IndustrialRelations/235631659.html>.

4. Basu, K., S. Bhattacharya and A. Mishra (1992): Notes on bribery and the control of corruption, *Journal of Public Economics*, 48, 349-359.

5. Kumar, Arun, 2002, Labour Law Reforms in India: Some Issues for Consideration, *Manpower Journal*, Vol. XXXVII, 4, 39-47.

6. Marjit, S., M. Rajeev and D. Mukherjee (2000): Incomplete information as a deterrent to crime, *European Journal of Political Economy*, 16, 763-773.

7. Labour Bureau, Ministry of Labour and Employment; 'Report on the Working Condition of Contract Labour in Cement Manufacturing Industry, Cement Related Mines, Food Corporation of India and National Thermal Power Corporation'; Government of India, Chandigarh/Shimla, 2000-01.
