



A CRITICAL APPRAISAL OF CONTRACT LABOUR AND ITS LEGAL COMPLIANCE WITH SPECIAL REFERENCE TO CONSTRUCTION WORKERS

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Introduction

One among the booming industry in recent times in our country is the construction industry. Construction labour forms an important component of construction industry. The construction labour is generally composed of the young, married, illiterate and unskilled males belonging to scheduled castes, scheduled tribes, backward classes and the muslim community having high family dependency load.

Whenever, a question is asked to a labour law expert about the types of workmen i.e., what are the different types of workmen? The answer to the question jurisprudentially speaking is highly difficult for the obvious reason that broadly we come across to types of workers namely, the permanent workers and the contract workers. However, the workers may belong to different categories

namely skilled, unskilled, manual, supervisory, managerial, daily workers, casual workers, temporary workers, seasonal workers, contract workers and lastly organized and unorganized workers in broad manner. The definition of the term workmen is not uniform in major labour legislation, as a result the term 'workmen' especially used in I.D. Act, 1947 has been a subject matter of judicial interpretation.

Bulk of the construction labour is composed of contract labour who are normally migrant labour moving from place to place of construction sites. The construction labour is also composed of unskilled manual labour as a result of varied composition of construction labour there has been a need for varied legal compliance mechanism for addressing the welfare, social security and industrial relations issues.

One of the obstacle for the non-implementation of laws for contract labour in construction industry is that most of the construction firms are concerned with their costs of construction rather than the adhering to legal compliance for protecting the rights of contract labour, as a result there is more scope for research into the area of contact labour in construction industry.

Through this article the author wish to survey the general and special labour laws along with judicial response for protecting the contract labour involved in construction works.

Concept of Contract Labour in Construction Industry

Construction industry is the second largest economic activity in India and plays an important role in the nation's economy. It is a vanguard activity of several other key sectors of economy whose performance is dependant on the satisfactory performance of this construction industry. A change in the level of construction activity affects GDP and manufacturing and the general employment and incomes of people.

Sec.2 (1) (d) define the term 'building' or 'other construction work' according to 'the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.' Sec.2 (1) (d) of the aforesaid act give a list of building and other construction works. While, Sec.2 (1) (e) define the term 'building worker' which means and includes a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or for reward, whether the terms of employment be expressed or implied, in connection with any building or other construction works. However, the building worker does not include managerial, supervisory, administrative capacity drawing wages exceeding 1600 per month. Sec. 2 (1) (b) of the Contract Labour (Regulation and Abolition) Act, 1970 define the term contract labour. 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 principal employer.

Salient features of the Contract Labour (Regulations & Abolition) Act, 1970

The Act applies to "every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor."¹

The Act provides for licensing of both the contractor and the principal employer, thus entrusting power upon the enforcement agencies and correlated liability on the part of the license seekers.

Section 20 provides power to the principal employer to recover from the contractor by deductions or as a debt payable, "if the contractor does not provide amenities under Sections 16 to 19 within the time prescribed". However no specific liability has been created upon the contractor thus creating a disjoint to deal with such a situation. Another structural problem is the lack of joint entitlement or liability of other stakeholder i.e., the enforcement agencies which is essential to deal with such a scenario. The resultant is the lack of facilities like canteens, latrines, urinals, rest rooms, crèches, washing facilities, and first aid for the workers though expressly provided in the Act.

Section 21 outlines duties of the contractor with respect to payment of wages to the workers. It bounds the contractor to pay wages timely and before representatives of principal employer, but no consequential right has been created in the Act per se to the workers in the event of breach of these provisions. Though power has been delegated to the principal employer to recover from the contractor by deductions

¹ Section 1

when the contractor fails to pay wages or other entitlements to the workers² and jural power to enforcement agencies is implied, but a direct jural relationship (co-relative) between the contractor and the workers is missing, moreover like in section 20 there is a lack of joint entitlement between stakeholders like the principal employer and enforcement agencies, thus creating an unavoidable disability and consequential immunity to contractors. It may be due to this structural problem ingrained in the Act that most contract workers face delayed or short payment.

Under chapter III, rule 25 (2) (v) (a) of the contract labor (Regulations & Abolition)^(II) central rules, 1971, it has been provided that “in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer, the wage rate, holidays, hour of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer” (Kumar, 2012: 288). However while providing these rights to the workers no simultaneous duties have been created on the other parties by the Act itself. In fact, while making this provision in the law, it seems no serious attempt was made to make suitable provisions or co-relatives to ensure implementation.

Major Labour laws applicable to Contract Labours:

² Section 21(4)

³ section 2(n))

⁴ Section 2 (e) & (f)

(I) The Employee’s Compensation Act, 1923

Includes all workmen (except casual workers)³ and specifically creates provision for the contract workers as the contractor or “managing agent”⁴ has been included in the definition of an employer. No major exclusion has been made in the Act except that no liability lies upon the employer when the disablement to the worker is less than three days⁵. While imposing duty upon the employer for compensation in the case of job related disablement it creates rights to the workers for their legal entitlement.

(II) The Employees’ State Insurance Act, 1948

Just like the Employee’s Compensation Act, the ESIC Act specifically makes provision for the contract workers as the contractor or “immediate employer”⁶ has been included. The Act makes a clear distinction between the principal employer who is the owner or ‘occupier’ of the establishment and the contractor who is the intermediary. The Act imposes duty upon the employer for compensation in the case of job related disablement and creates co-related rights to the workers for their legal entitlement. The Act states that the principal employer at the first instance shall pay the contribution of both the employer and the employee⁷ and later shall recover the same from the ‘immediate employer (contractor), and at other places uses the term ‘employer’ or ‘principal employer’ to impose jural relations.

⁵ Section 3(a)

⁶ section 2(13)

⁷ Section 40

(III) The Maternity Benefit Act, 1961

As per section 3(o) of the Act, “woman means a woman employed, directly or through any agency” thus covering contract women workers. While creating rights for the workers, correlative duties have been created upon the employer who is the principal employer or an official who is in control of the establishment. Thus, the Act creates no joint jural relation upon the contractor who is the real employer of these workers. Moreover the Act provides for exclusion of those women workers who were employed for less than one hundred and sixty days in the twelve months period immediately preceding the date of their expected delivery⁸. The Act thus creates entitlements for the workers based on the duties enforced upon the principal employer who is neither their direct employer and nor can ensure their tenural conditions. The secondary liabilities on breach also fall upon the employer and not on the contractor. Thus, though the Maternity Benefit Act was enacted for providing better coverage to the working women, the Act could bring little relief to the contract women workers seemingly due to these structural issues.

(IV) The Employees Provident Funds Act, 1952

The Act lays down provisions for the Employees’ Provident Fund Scheme, Employees’ Pension Scheme and Employees’ Deposit Linked Insurance Scheme and delineates the composition and functions of different bodies to run these

schemes. The EPF Act covers contract workers, as per the Act “employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment”⁹. Similarly employers cover contractors also, as “employer means in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier”¹⁰. The Act like the ESI Act provides for contribution from the principal employer which shall be deducted from the contractor’s bill. The Act makes elaborate provisions for recovery of money¹¹ and for penalties¹² for the employers and the contractors in the case of default. The Act at the same time provides for certain exclusions which are uniformly applicable to both regular and contract workers, the Act is not applicable to those establishments where less than 20 workmen are employed, also employees getting wages more than Rs. 6500 per month may be exempted.

(V) The Factories Act, 1948

The Factories Act interpret “worker” as a person employed, directly or by or through any agency (including a contractor¹³) with or without the knowledge of the principal

⁸ section 5(2)

⁹ Section 2(f) (i)

¹⁰ section 2(e) (i)

¹¹ section 8

¹² section 14

¹³ Added by the Factories (Amendment) Act, 1976.

employer¹⁴. The employer is termed as the “occupier” on whom the ultimate control over the affairs of the factory lies. Section 119¹⁵ of the Act gives an overriding effect to the provisions of the Factories Act against the Contract Labor (R&A) Act wherever the provisions of the latter is inconsistent with the former. This section thus does not pronounce that the Contract Labor (R&A) Act would not apply but only provides for the precedence of the Factories Act. Unlike the other legislations the Factories Act is a predominantly a welfare legislation aimed at the health, safety, proper working hours and other entitlements of the workers. But from the contract workers point of view the Act suffers from serious structural anomalies. By adding ‘including a contractor’ in section 2(L), the amendment attempted to provide all benefits available in the Act to the contract workers as available to regular workers, however while creating the right structure to this category of workers, the duty structure was not amended. More so unlike the other Acts, the employer has been clearly identified and termed as “occupier”¹⁶ in the Act and no joint jural relation has been established with the contractor who is the real employer of the contract workers. More so the liability on all cases of breach falls upon the “occupier” and not the contractor. Section-92 clearly states that, “if there is any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of the factory shall each be guilty of an offence and punishable with

imprisonment”, similarly section- 88 provides for penalty upon the “occupier” in the case of accidents or work place injury to the workers and section 87 & section 102 relates to penalty provisions in the case of breach of welfare measures providing for the ‘occupier’ or manager as the sole party liable for proceedings. Section 111A which elaborates upon the right of workers imposes duties upon the ‘occupier’ and ‘the enforcement agencies’ and not upon the ‘contractors’. Thus, though the Factories Act by its landmark Amendment Act of 1976 provides for uniform entitlements to regular and contractual workers, but fails structurally in creating joint duties upon contractors.

Protective Legislation covering construction workers employed through contractors

The construction sites are covered under the Contract Labour (Regulation and Abolition) Act. Workshops attached to the sites are covered under the Factories Act, 1948 and quarries under the Mines Act, 1952. Vehicles and other motorized fleet (except construction equipment) are regulated by the Motor Transport Workers Act, 1951. Contractors' offices are covered under the Shops and Commercial Establishments Act. All these laws are intended to afford protection to workers at their workplaces, sites and related operations in regard to working hours, working conditions, health, safety, welfare and special measures for women and young persons, holidays and annual leave with wages. The aforesaid laws lay down various

¹⁴ Section 2 (L)

¹⁵ Included by the Factories (Amendment) Act, 1976.

¹⁶ Section 119

obligations on the contractors, owners, principal employers, occupiers etc., as the case may be, and impose penalties for disregard of their obligations.

All these Acts require that the number of working hours of an adult should not exceed forty-eight hours a week or nine hours a day except with the previous approval of government. There are provisions for holidays and rest during long hours of work and for extra wages for overtime work. A female cannot be made to work for more than nine hours a day or except between 6 a.m. and 7 p.m. without the prior permission of government but in no case will she work between 10 p.m. and 5 a.m. A child below fourteen years cannot be required or allowed to work at any construction site. Every worker who has worked for 240 days or more during a calendar year is entitled to leave with wages in the following year at the rate of one day of leave with wages for every 20 days of work. In the interest of workers' welfare, the Acts require the provision for storing clothes, drinking water, rest, first-aid, canteen, shelters, lunch and restrooms, separate toilets and rest rooms for females and crèche for their children.

The Contract Labour (R & A) Act, requires contractors to provide living accommodation to workers at the specified scale and standard. The provisions of the Acts for securing safety of workers prescribe various precautions in regard to dangerous machinery, avoidance of lifting excessive weights, transport and handling of explosives, provision of fencing of moving parts, securing firm floors, steps, stairs, passage and gangways, avoidance of danger from flying objects, fall from

heights, injury by moving parts, proper parking of machinery and heavy equipment and prevention of occupational diseases caused due to working with chemicals and other harmful materials. These and other provisions are made effective through periodic inspections and filing of returns and by providing for penalties for default in compliance. While the immediate employer i.e. contractor is responsible for compliance, the ultimate responsibility is that of the principal employer -the owner or the client of the facility under construction. If a contractor fails to comply with any of the measures -say denying leave with wages to worker or nonpayment of wages, the workers will have to be paid their dues by the client or owner of the project.

The Building and the Other Construction Workers (regulation of Employment and Conditions of Service) Act, 1996 is yet another central legislation exclusively enacted for protection of the rights of construction workers at and outside their workplace. As per recent estimates there are around 11 million construction workers in our country. As a result the parliament felt it would be appropriate for having a comprehensive legislation for construction workers, and hence enacted the aforesaid Act. The said Act as following broad features:

1. Provision to cover to every establishment which employs are had employed on any day of the preceding 12 months, 50 or more workers in any building or other construction work.
2. Constitution of Central and State Advisory Committee to advise the

- appropriate government on matters arising out of administration of the Act.
3. Registration of the establishment employing construction workers and appointment of registering officers.
 4. Registration of building workers as beneficiaries under the Act and provisions for their identity cards etc.,
 5. Empowering the central government to frame model rules for safety measures headed by Director General of Inspection at the central level and Inspector General at the State level.
 6. Provision for appointment of inspecting staff including Director General of Inspection at the Central Level and Inspector General at the State Level.
 7. Provision for penalties for contravention, obstruction, violation and offence taking cognizance by court of offence punishable under this Act and protection of action taken in good faith.
 8. Application of the Workmen's Compensation Act 1923 to building and other construction workers.
1. The Supreme Court in the case of *Steel Authority of India Ltd. V. Union of India*¹⁷ held that Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate Government;
 2. The Supreme Court in the case of *Rajesh Kumar v. Union of India*¹⁸ held that On issuance of prohibition under section 10(1) of the Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conduct of service Industrial Adjudicator will have to be interpose on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage legislations so as to deprive the workers of the benefits thereunder;
 3. The Supreme Court in the case of *Gujarat Electricity Board v. Hind*

The Role of Judiciary in empowering Contract Labour and Construction Labour

¹⁷ AIR 2006 SC 3229

¹⁸ 2003 (2) KKH 102 Del

- Mazdoor Sabha*¹⁹ held that it is only the appropriate Government which has the authority to abolish contract labour system the not the court including the Industrial adjudicator;
4. The Supreme Court in the case of *R.K. Panda v. Steel Authority of India*²⁰ held that the primary object of the act is to stop exploitation of contract labourers by contractor or establishment. The Act does not purport to abolish contract labour in its entirety;
 5. The Supreme Court in the case of *FCI Class IV Employees' Union v. F.C.I.*²¹ held that Provisional of section 10(2) of this Act are mandatory. Amendment Act No. 14 of 1988 cannot have retrospective effect;
 6. The Supreme Court in the case of *Tata Refractories Ltd. V. union of India*²², held that Consultation with the Central Advisory Board is mandatory;
 7. The Supreme Court in the case of *Deen Nath v. National Fertilizers Ltd.*²³ held that The Act does not provide for a total abolition of contract labour but it provides for abolition of contract labour in appropriate cases;
 8. The Supreme Court in the case of *Government of Andhra Pradesh v. Bhadarachalam Paper Board Ltd.*²⁴ held that The power of the appropriate Government under section 10 is not affected or curtailed in any manner by section 119 of the Factories Act, 1948;
 9. The Supreme Court in the case of *National Organic Chemical Industry Ltd. V. State of Maharashtra*²⁵ held that it is the scrutiny of individual establishment which is contemplated by section 10 of the Act. There is no hostile discrimination;
 10. The Supreme Court in the case of *Hussain Bhai Vs. Alath Factory, Tezbilali Union*²⁶ held that while interpreting the term 'Workmen' that the meaning of the term workmen i.e., provided in form of definition as per sec.2 (s) of I.D. Act, 1947 will be the same in respect of the workmen employed by the contractor as per the Contract Labour (Regulation & Abolition) Act, 1970. Further, the court also held that the principal employer under CLRA Act, 1970 would be employer under I.D. act in certain circumstances.

¹⁹ 1995 LLR 552 SC

²⁰ (1994) 69 FLR 256 SC

²¹ 1994 II LLJ 102 P & H

²² 1992 II LLJ 810 Ori

²³ 1992 LLR 46 SC

²⁴ 1990 76 FIR 58 AP

²⁵ 1989 II LLN 817 Bom

²⁶ 1978 AIR 1410, 1978 SCR (3)1073

11. The Supreme Court in the case of *Air India Statutory Corporation Vs. United Labour Union*²⁷, while interpreting sec.10(1) of CLRA Act, 1970 holding that the CLRA Act 1970 nowhere contain provision including under sec.10(1) for automatic absorption of contract labour after the contract labour system is prohibited by the notification issued by appropriate government. However, the principal employer may require to treat the contract workers as permanent workers in special situations.

12. The Supreme Court held in the case of *Balwant Rai Saluja and another Vs. Air India Limited and other*²⁸ observed categorically the autonomous institution in our country have not yet made up their minds in the matter of regulation of the contract labour by way of providing required facilities and benefits has mandated by law. The court gave direction to the Air India Limited that it is high time for proper regulation of contract labour in Air India Limited.

13. The Supreme Court held in the case of *National Campaign Committee for Central Legislation on Construction Labour Vs. Union of India*²⁹ in regard

to construction workers while briefing the objectives of the 'The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 observed that that aforesaid Act has following objectives:

To confer various benefits to the construction workers like fixing hours for normal working days, weekly paid rest day, wages for overtime basic welfare amenities at site, temporary living accommodation near site, safety and health measures etc.,

Further the Supreme Court went on to hold that the Central Government has been given the power in appropriate cases to issue direction to the government of any state or to a board as to the carrying into execution in that state of any of the provisions of the Act.

The Contemporary Scenario of Construction Workers

The current trends and contemporary scenario of Construction Workers is as follows:

- a. The construction workers are not aware of legal provisions and legislation enacted for their benefits;
- b. The wages are paid on weekly basis;

²⁷ 2001 7 SCC 1

²⁸ SC: (2013) INSC 1017

²⁹ 2010 9 SCALE 442

- c. The contract for work is until the completion of the construction project at the construction sites;
- d. No identity cards are issued to the construction workers as a result the said workers are not entitled for any legal benefits as per the legislation meant for construction workers;
- e. There are no toilets for female workers, as a result the female workers go to toilet in the late dark night and early morning in open areas. However, since the area is forest area and no movement of public, therefore a sense of safety is ensured to the female workers. The male construction workers also go to toilet in open nearby area;
- f. There are no crèches' for children of female workers.
- g. Overtime wages were paid for the workers but the rate of overtime wage was less when compare to bigger construction project in Bangalore City.
- h. Rest interval of 8 hours was given in event of workers working from 8 p.m. to 6 a.m.

are exploited by the contractors. As a result the researcher concludes by suggesting that:

1. The construction workers employed and contract basis should be regularly inspected by the inspecting staff appointed by the government;
2. The inspectors should personally take steps to issue identity cards and register the construction workers without insisting for unwanted documents except for producing voter identity card or AADHAR card;
3. The inspecting staff should vigilant in ascertaining the safety welfare and other facilities extended to the construction workers and should immediately instruct the contractors for extending the facilities, failing which the contractors/principal employer should be mercilessly penalized;
4. The non-governmental organizations and the law colleges should conduct legal awareness programs in university campus for providing legal awareness to construction workers employed as contract labours by assembling them at a common place in the university campus. Further, awareness should be created for prohibiting employment of child labour and more stress should be given for insisting the basic facility of separate bathrooms and toilets for male and female workers. Children

Conclusion and Suggestions

Though the construction is a booming industry providing employment for more number of unorganized construction labour employed as contract labour yet the conditions of construction labour is not so satisfactory and in most of the cases they

of female workers should also be provided with crèches’;

5. The states in our country should take immediate step for establishing construction workers welfare board by framing appropriate rules for imposing Cess on construction works and ensure that the money is utilized for framing practically working welfare and social security schemes for construction workers.



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