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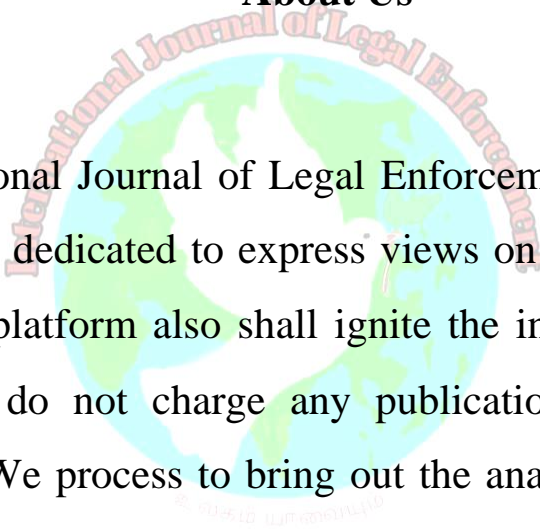
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**“Dharma is to protect the Needy”**

**Article on**

**AN ANALYSIS OF CONTRACT LABOUR (REGULATION AND  
ABOLITION) ACT, 1970**

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## **INTRODUCTION –**

To promote the welfare of the labourers in our country the union government has passed several legislations. One such act is the CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970. The main intention or purpose behind this act is to prevent the contract workers from being exploited from unlawful interference during work. Due to many uncertainties in work, inadequate pay, lack of proper tenure, frequent changes in contracts and contracting parties, they feel extremely difficult to get themselves adjusted within the working environment. So to provide them proper social assistance and legal protection, a strong presence of a law is felt and therefore the law relating to contract labourers was enacted. This paper basically aims to analyze all the significant provisions of the act in a detailed manner. It also aims to throw light on some of the important judicial pronouncements delivered related to this act.

## **HISTORY OF THE LEGISLATION:**

Contract Labour has its roots from ancient times. However the scale of contract labour in the Republic of India has considerably expanded within the post-independence period with the growth of construction activity following substantial investment within the plans. Throughout the first amount of industrial establishment, the commercial institutions were invariably faced with the issues of unavailability of labourers. Position of plant staff, lack of labour quality, caste and religious taboo, language, etc., were a number of the issues with that most of the employers normally and British employers or their representatives, above all weren't acquainted. They were unable to unravel these problems. Therefore, that they had to rely on middlemen. The United Nation agency helped them in enlisting and management of labour. These middlemen or contractors were famous by totally different names in numerous components of the country. Contract Labourers were thought-about as an exploited section of the class principally because of lack of organization on their part. Because of this, the Whitley Commission (1860) counseled the contract labour's abolishment by implication. Before 1860, additionally to the various disadvantages straitened by the contract labour, the Workmen's Breach of Contract Act 1859 operated in holding them apprehensively accountable within the event of a breach of contract service.

Following this, the government deep-seated numerous committees to check the socio-economic conditions of contract labours e.g. The Bombay Center Textile Labour Enquiry Committee (1938), The Bihar Labour Enquiry Committee (1941), The Rega Committee (1946). As a results of recommendations of those committees, the scope of the definition of “workers” within the Factories Act (1948), the Mines Act (1952) and also the Plantations Labour Act (1951), was enlarged to incorporate contract labour.

### **CONSTITUTIONAL VALIDITY OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970:**

The Hon’ble Supreme Court of India in **Gammon India Ltd. v. Union of India** while dealing with the Contract Labour Act, 1970 held that “The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment. The Act in section 10 empowers the Government to prohibit employment of contract labour in any establishment and it was further held that the Act does not violate Articles 14 and 15 of the Constitution of India.”<sup>1</sup>

### **OBJECTIVES OF THE ACT:**

The main objective of the Contract Labour (Regulation and Abolition) Act is to prevent the exploitation of contract labourers<sup>2</sup> and to abolish the system of contract worker in cases where:

(!) The work is perennial in nature.

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<sup>1</sup> Gammon India Ltd. v. Union of India, (1974) AIR 960, 1974 SCR (3) 665 (India).

<sup>2</sup> Ajay Thakur, Critical Analysis of Contract Labour (Regulation and Abolition) Act, 1970, Mar. 16, 2017 <https://blog.ipleaders.in/critical-analysis-contract-labour-regulation-abolishment-act-1970/>

- (2) The work is casual or is needful for the functioning of the establishment.
- (3) The work is of such a nature that it can employ a substantial number of workmen full time.
- (4) The work need not be done by contract labourers and can be done by prevalent workmen.

The Preamble of the Act states that it is 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. The Contract Labour (Regulation and Abolition) Act, 1970 tries to grant basic facilities to the labourers and assure they do enjoy certain rights that are equal to the advantages given directly to labourers. Another objective is to regulate the employment of contract labour and to bring them at par with directly employed labour with regard to the working conditions and other benefits and also to provide for abolition of contract labour in certain circumstances.<sup>3</sup>

Application of the Act to ongoing construction works does not amount to unreasonable governance on the rights under Article 19(1)(g). The entire statute is constitutional and valid and the Contract Labour (Regulation and Abolition) Act, 1970 does not violate Article 14 and 15 (**Gammon India Ltd. v. Union of India**).<sup>4</sup>

### **PRINCIPAL FEATURES OF THE ACT**

A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer through a contractor and while a contractor is the supplier of contract labour for the organization, a principal employer is a person responsible for the control of the establishment.<sup>5</sup>

### **APPLICABILITY:**

The Contract Labour (Regulation and Abolition) Act, 1970, extends to the whole of India. According to Section 1 of the Contract Labour (Regulation and Abolition) Act, 1970, it applies:

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<sup>3</sup> Swati Shalini, The Contract Labour (Regulation and Abolition) Act, Jun. 1 2019  
<https://www.myadvo.in/blog/contract-labour-act/>

<sup>4</sup> Gammon India Ltd. v. Union of India, (1974) AIR 960, 1974 SCR (3) 665 (India).

<sup>5</sup> Samriddhi Pandey, Contract Labour (Regulation and Abolition) Act, 1970 – A Critical Analysis, may 18 2018  
<https://www.legalbites.in/contract-labour-regulation-and-abolition-act-1970-critical-analysis/>

(a) to every establishment in which twenty or more workmen, are employed or were employed on any day of the preceding twelve months as contract labour; (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. According to section 1(5), the Act is not applicable to establishments in which work only of an intermittent or casual nature is performed.<sup>6</sup>

## **DEFINITIONS:**

### **APPROPRIATE GOVERNMENT:**

According to Section 2(1)(a) of the Act defines the term 'Appropriate Government' that means: (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 is the Central Government, the Central Government; (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.<sup>7</sup>

### **CONTRACT LABOUR:**

According to Section 2(1)(b) of the Act defines the term 'Contract Labour' that means: 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.<sup>8</sup>

"Contract labour" can be distinguished from employees in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or contract for service of an establishment by or through a contractor. They are indirect employees. Contract labour is neither borne on pay roll or muster roll or wages paid directly to the employer. "Contract labour" can be distinguished from "direct labour" in terms of employment relationship with the principal establishment and the method of wage payment and they are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the

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<sup>6</sup> The Contract Labour (Regulation and Abolition) Act, 1970.

<sup>7</sup> The Contract Labour (Regulation and Abolition) Act, 1970

<sup>8</sup> The Contract Labour (Regulation and Abolition) Act, 1970



establishment. In either form, contract labour is neither borne on pay roll or muster roll or wages paid directly to the labour.<sup>9</sup>

The Contract Labour (Regulation & Abolition) Act, 1970 (Act) permits companies and establishments in the manufacturing and services sectors to engage contract labour through contractors and such an engagement can be only for work that do not form part of the core operations, which is guided by the memorandum of association of the company.<sup>10</sup>

### **CONTRACTOR:**

Generally, if there is an establishment i.e., Company; there will be an owner i.e., the Principal Employer. He does not get the labourers directly. So he will appoint a person called Contractor. The Contractor is a person who in between and he will get the labourers for a contract.

According to Section 2(1)(c) of the Act defines the term 'Contractor' that means: "contractor", in relation to an establishment, 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 sub-contractor.<sup>11</sup>

'Contractor' is one who supplies contract labour to an establishment undertaking to produce a given result for it and he hires labour in connection with the work of an establishment ( **State of Gujarat v. Vogue Garments**).<sup>12</sup>

### **CONTROLLED INDUSTRY:**

According to Section 2(1)(d) of the Act defines the term 'Controlled Industry' that means: any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest.<sup>13</sup>

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<sup>9</sup> Report of the National Commission on Labour, 1969

<sup>10</sup> Neeraj Dubey, Engaging Contract Labour: The Prerequisites and the pitfalls

<sup>11</sup> The Contract Labour (Regulation and Abolition) Act, 1970

<sup>12</sup> State of Gujarat v. Vogue Garments (1982), 2 GLR 449, (1983) ILLJ 255 (India).

<sup>13</sup> The Contract Labour (Regulation and Abolition) Act, 1970



### **ESTABLISHMENT:**

According to Section 2(1)(e) of the Act defines the term 'Establishment' that means: (i) any office or department of the Government or a local authority, or (ii) any place where any industry, trade, business, manufacture or occupation is carried on.<sup>14</sup>

### **PRINCIPAL EMPLOYER:**

According to Section 2(1)(g) of the Act defines the term 'Principal Employer' that means: (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf, (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named. (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named, (iv) in any other establishment, any person responsible for the supervision and control of the establishment.<sup>15</sup>

### **ADVISORY BOARDS:**

In this Act, the advisory boards are classified into two namely: (i) The Central Advisory Board and (ii) The State Advisory Board.

### **CENTRAL ADVISORY BOARD:**

According to Section 3 of this Act, the Central Government shall constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board). The Central Board shall execute the function of guiding the Central Government on such affairs arising out of the management of this act as may be mentioned to it and to carry out other functions allocated to it under this Act. The Central Advisory Board comprises a chairman appointed by the Central Government and the Chief Labour commissioner, ex-officio. The number of members in a Central Advisory Board not exceeding 17 but not less than 11. The range is 11 – 17.

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<sup>14</sup> The Contract Labour (Regulation and Abolition) Act, 1970

<sup>15</sup> The Contract Labour (Regulation and Abolition) Act, 1970

### **STATE ADVISORY BOARD:**

According to Section 4 of this Act, empowers the State Government to constitute a board to be called the State Advisory Contract-Labour Board (hereinafter referred to as the State Board). The State Board is developed to guide the State Government on such affairs arising out of the management of this Act as may be mentioned to it and to carry out other functions allocated to it under this Act. The State Advisory Board comprises a chairman appointed by the State Government and the Labour Commissioner, ex- officio. The number of members in a State Advisory Board not exceeding 11 but not less than 9. The range is 9 - 11.

### **REGISTRATION OF ESTABLISHMENT:**

In order to register the establishment, there has to be some person called the “Registering Officer”. According to Section 6 of this Act, the appropriate government (Central government or the State government) appoints the Registering Officer, within which a registering officer shall exercise the powers bestowed on him by or under this Act.

Section 7 of this Act clearly stated that every principal employer of an establishment shall make an application to the registering officer for registration. Registering officer shall register the establishment and issue the certificate of registration to the principal employer if everything is in a proper way. If not, there is a misrepresentation or if there is a false representation that has taken place means, the registering officer has all the rights to revoke the application made by the principal employer under Section 8 of this Act.

### **LICENSING OF CONTRACTORS:**

Apart from registration of establishments employing contract labour, the Act contains provisions for licensing of contractors. According to Section 11 of this Act, the appropriate government (Central government or the State government) appoints the “Licensing Officer”, within which a licensing officer shall exercise the powers bestowed on licensing officers by or under this Act. In pursuance to the provisions of section 12 under this Act, no contractor shall assume any work through contract labour except under and in accordance with a license issued in that behalf by the licensing officer. According to Section 13 of this Act, such a license may contain the location of establishment, nature of process, fixation of wages, operation or work for which contract labour is

to be employed. The Licensing officer makes an investigation in respect of the application received under Section 14 of this Act. The license granted shall be valid only for a specific period therein and may be renewed from time to time. How the licensing officer has all the rights to investigate the application, he also has the power to revoke the license as well.

According to Section 15 of this Act, any person aggrieved by an order by registering or licensing officer may prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government, within 30 days from the date on which the order is communicated to him.

### **WELFARE AND HEALTH OF CONTRACT LABOUR:**

Generally, if someone is contracting the labour, it is his duty to provide some kind of facilities to the workers. It shall be the duty of every contractor employing the contract.

According to Section 16 of this Act, if there are hundred or more contract labourers employed in a contract, one or more canteens shall be provided and it must be maintained by the contractor for the use of such contract labour. And it is mandatory for the contractor to provide adequate rest-room facilities and it should be maintained for the use of the contract labour under Section 17 of this Act. Under Section 18, every contractor shall provide the sufficient supply of drinking water at the convenient places, sufficient number of latrines and urinals and washing facilities to the Contract labour. According to Section 19, the contract labourers shall be provided with the first aid box at every place where contract labour is employed with prescribed contents and it should be maintained by the contractor.

### **RESPONSIBILITY FOR PAYMENT OF WAGES:**

Under section 21, every contractor shall be responsible for the payment of wages to the contract labourers within the time. In case the contractor fails to pay the wages within the time to the contract labourers or if there is some shortfall in the payment, then the principal employer shall be liable to make the payment.

### **PENALTIES:**

According to Section 22 of this Act, whoever obstructs or refuses an inspector in the discharge of his duties, shall be punishable with imprisonment for a term that may extend to three months, or with fine that may extend to five hundred rupees, or with both. Under section 23 of this Act, if there is the contravention of provisions regarding the employment of contract labour, shall be punishable with imprisonment for a term that may extend to three months, or with fine that may extend to thousand rupees, or with both. For continued contravention, there will be an additional fine and that may extend to one hundred rupees for every day. Any other offences under this Act shall be punishable with imprisonment for a term that may extend to three months, or with fine that may extend to one thousand rupees, or with both under section 24 of this Act.

#### **LIMITATION OR PROSECUTION: (Section 27)**

No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector.

It is granted that where the offence consists of disobeying a written order made by an inspector, a complaint thereof may be made within 6 months of the date on which the offence is alleged to have been committed.

#### **REGISTERS AND OTHER RECORDS:**

According to Section 29 of this Act, every principal employer and every contractor shall maintain the registers and records. The things there in the records are: (i) the nature of the work performed by the contract labour and (ii) the rate of wages paid to the contract labour.

#### **JUDICIAL INTERPRETATION:**

In the case of **L&T. McNeil Ltd. v. Government of Tamil Nadu**, “The High Court rejected the challenge given to the Notification of Government of Tamil Nadu, prohibiting contract labour, in the process of sweeping and scavenging in the establishments or factories employing 50 or more workmen. The Supreme Court, while quashing the impugned notification, observed that no definite view was expressed by Labour Advisory Board and in the absence of the same and in the absence of any other material, it is not very clear as to how the Government could have reached the

conclusion one way or the other. Thus the decision of the Government in issuing the impugned notification under section 10(1) of the Act, is vitiated because of non-consideration of relevant materials.”<sup>16</sup>

In the case of **Steel Authority of India Ltd. v. National Union Water Front Workers**, in a challenge to the Central Government Notification dated 9-12-1976, prohibiting employment of contract labour for sweeping, etc. in the buildings owned and occupied by establishments in respect of which Central Government is appropriate Government, the Supreme Court held that the said notification apart from being an omnibus notification, does not reveal the compliance of section 10(1) of the Act. Besides the Notification also exhibits non-application of mind by the Central Government and hence impugned notification cannot be sustained.<sup>17</sup>

In the case of **B.H.E.L Workers Association, Haridwar v. Union of India**, the court observed that “The Contract Labour (Regulation and Abolition) Act, 1970 does not provide for the total abolition of contract labour, but only for its abolition in certain circumstances, and for the regulation of the employment of contract labour in certain establishments. The court further held that “Parliament has not abolished contract labour but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required.”<sup>18</sup>

In the case of **Catering Cleaners of Southern Railway v. Union of India**, the court held that writ of mandamus directing the Central Government to abolish the contract labour system cannot be issued because section 10 had vested the power in the appropriate government. In the circumstances, the appropriate order to make, according to the Court, was to direct the Central Government to take suitable action under section 10 of the Act within six months from the date of order. It was also observed that without waiting for the decision of the Central Government, the

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<sup>16</sup> L. &T. McNeil Ltd. v. Government of Tamil Nadu (2001) I CLR 804 (S.C.) (India).

<sup>17</sup> Steel Authority of India Ltd. v. National Union Water Front Workers (2001) III CLR 349 (S.C.) (India).

<sup>18</sup> B.H.E.L Workers Association, Haridwar v. Union of India (1985) AIR 409, 1985 SCR (2) 611 (India).

Southern Railway was free on its own motion to abolish the system and regularize the services of the employees.<sup>19</sup>

In the case of **Gujarat Electricity Board v. Hind Mazdoor Sabha** where it was held that only the appropriate government can abolish contract labour in accordance with section 10 and no court or industrial adjudicator has jurisdiction on the matter of absorption.<sup>20</sup>

In the case of **Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir and Others**, the Hon'ble Supreme Court held that "if sub-contractors undertake or execute any work through contract labour without obtaining a license under section 12 sub-section (1), they would be guilty of a criminal offence punishable under section 23 and 24."<sup>21</sup>

### **Conclusion –**

The after-effects of globalization has greatly changed the working pattern in the industrial sector. Nowadays the workers are employed on contract basis instead of hiring them by usual method. This method became more flexible for the employers to get the required amount of labour at the required time in an efficient way. The Contract labour system is seen as one of the most prominent methods of employing workers today. The most significant step to be followed is that the workers should be completely aware of their existing rights and responsibilities, so that they might be able to know where exactly their rights are getting violated. One should realize that profit making can't be obtained just by industrialization and exploiting man power, there must be proper welfare to the labour communities. The Contract labour (regulation and abolition) Act is definitely the need of the hour and it must rectify the drawbacks and amend properly so that it serves the actual purpose more efficiently.

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<sup>19</sup> Catering Cleaners of Southern Railway v. Union of India (1987) AIR 777, 1987 SCR (2) 164 (India).

<sup>20</sup> Gujarat Electricity Board v. Hind Mazdoor Sabha (1995) AIR 1893, 1995 SCC (5) 27 (India).

<sup>21</sup> Labourers Working on Salal Hydro-Project v. State of Jammu & Kashmir and Others (1984) (1) SCALE 680, (1984) 3 SCC 538 (India).