CHAPTER - 6

6.1 WHETHER CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970 HAS ACHIEVED ITS OBJECTIVE?

The Contract Labour Act 1970 was enacted with the sole intention to prevent exploitation of the contract labour. The rights provided in our constitution like human dignity of labour, right to livelihood, equal pay for equal work etc. are recognized and protected under the act.

The act placed on the statute book with all benevolent intentions and elaborate provisions are made to prevent abuse of the contract labour is evident from the statement of the object and reasons. The Preamble of the act emphasise on the two fold objects, which the legislature had in mind. “An act to regulate the employment of the contract labour in certain establishment and to provide its abolition in certain circumstances and the matter connected therewith.”

Unfortunately, in the last 30 years, the contract labour has multiplied many times more than what little has been abolished. The act has miserably failed to achieve the objects for which it was enacted.

If the existing contract labour system in our country is examined, almost all the contract would satisfy atleast one of the requirements laid down in section 10 (2) and needs to be abolished. But government cannot be compelled do so and workers do not
have any other remedy under the act for abolition of existing contract labour system.

Once the contract labour is prohibited by notification by the appropriate government the relief to which contract labour become entitled comes into prominence. Unfortunately the act does not provide any guideline in this regards. In the absence of provision in the act, the judicial activism played an important role.

The act does not provide any guideline if there is a dispute between contract labour and the contractor or the principal employer regarding matter other than the abolition of contract labour system like wage increase, bonus etc.

Thus in the near future contract labour act will have to be drastically modified. The act should be a productive one, creating only what is just and essential. This will also prevent exploitation of the contract labour and tremendous volume of litigation. Employer being overburdened with contractor employees could be avoided.

6.2 WHY CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970 NOT ABLE TO GIVE RELIEF TO THE CONTRACT LABOUR

Contract labour system is increasing in the wake of Structural Adjustment Programme (SAP) and globalisation and there is a mounting pressure from outside to make the Indian labour market flexible. On one side the contract labour system became integral part of present business, on other side, contract labour are subjected to exploitation by their employers, paid low wages, inadequate safety provision, negligible welfare and social
security measure, long hours of work, exposure to dangerous and risky operations etc., in comparison to their counter parts in regular cadre. The general experience that act has brought very little relief to the contract workers. The main reasons are as follows: \(^1\)

1) Rampat violation of the provisions of the act

2) Total laxity in the enforcement of the act

3) Indifference and dilatoriness in the working of the central and state advisory committee set up under the act.

4) The Abolition of Contract labour under section 10 of the act has become a trial force. Employment of contract labour for permanent and perennial nature of work has become order of the day.

5) The provision of the act providing various protections of the contract labour and extending welfare facilities are openly violated by the employers.

6) The provision under Rule 25 (v) (a) has not been implemented in even a single case.

7) While granting licence to the contractor as per provision of the act and rule, compliance of conditions under the law are not strictly observed.

8) In many cases the principal employers obtain fake licence to treat their own workers as contract workers and exploit them in all respect.

9) Absence of contract worker’s unions to fight for enforcement of their rights under the act.

\(^1\) Report Paper – ILO National Seminar on Contract Labour 26\(^{th}\) March '97 Mumbai
10) Non-coverage of small contractors employing less than 20 workers under the act.

11) Lengthy litigation through High Court and Supreme Court even after government issues notification under the act prohibiting employment of contract labour in specific organisation on specific kind of work.

12) Any finding of the Board or decision of the government, which is very rare is always dragged to the court by the employers to avoid or atleast to delay implementation thus entangling the workers in the lengthy process or litigation.

13) In case of the permanent and perennial nature job being given on contract in violation or section 10 of the act, when new contractor is given the same job, the old workers who would have been working for years together are thrown out of the job.

6.3 LACUNA IN CONTRACT LABOUR (REGULATION & ABOLITION) ACT 1970.

There are many shortcomings in the law. Some of the shortcoming are listed hereunder :\(^1\)

1) The stipulation that the act shall be applicable in the establishment where 20 or more workmen are employed is to much on higher side. As a consequence of such stipulation many establishments have remained out of purview of the act.

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2) There is no specific mention about the frequency of the meeting of the advisory board. The result is that the frequency of meeting is very poor.

3) All the recognised trade unions should have representatives in the board.

4) There is nothing limit for taking decision on the matters referred to the boards. This results in abnormal delays.

5) The decision of the board is recommendatory. It should have been mandatory. Now the decision of the board are left to the bureaucracy for final decision.

6) The act has taken away the right of the workers to approach the industrial tribunals under Industrial Disputes Act.

In Gujarat Electricity Board Thermal Power Station, Ukai v/s Hind Mazdoor Sabha, the Supreme Court observed that

"If contract is genuine, he may refer the workmen to the appropriate govt for abolition of the contract labour under sec 10 of the act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine has to reject the reference, the dispute being not an industrial dispute within the meaning of sec 2(k) of the Industrial Disputes Act. He will not be competent to give any relief to the workmen of erstwhile contractor even if the labour contract is abolished by the appropriate Govt under sec 10 of the act."
In *Ashok Leyland v/s Govt of Tamil Nadu*, the Madras High court agreed with the petitioner company that in a dispute between the contract labour and the contractor on wages, the reference under the ID Act against the company was without jurisdiction.

7) Abolition of Contract Labour in any job under the act should have been accompanied with absorption of the existing contract labour.

8) There is no provision for effective machinery to ensure proper implementation of the act and to deal with the cases of violation strictly with severe punishment.

9) Act gives the power to appropriate government and not judiciary to decide the issue of abolition. But neither appropriate government nor the judiciary has been given power to regularise the contract labour on the jobs on which they have been working. After abolition the contract labour virtually comes to the road. This is a vital lacuna in the act and possibly deliberate one because legislature did not want to impose employment of their workers on the employer. Nevertheless this remained the area of concern for contract labour. The judiciary has been making tryst with it even now and then.

In *Gujarat Electricity Board Thermal Power Station, Ukai v/s Hind Mazdoor Sabha*, the Supreme Court observed that

"It is no doubt true that neither sec 10 of the act nor any other provision thereof provides for determination of the status of the workmen of the erstwhile contractor once the appropriate Govt abolishes the contract labour. In fact, on the abolition of the
contract, the workmen are in a worse condition since they can neither be employed by the contractor nor is there any obligation cast on the principal employer to engage them in his establishment. We find that this is a vital lacuna in the act. Although the act has been placed on the statute book with all benevolent intentions and elaborate provisions are made to prevent the abuse of the contract labour system as is evident from the statement of object and reasons. The legislature has not provided any relief for the concerned workmen after the contract is abolished. Whatever, the case, the logic in not employing the workmen of the erstwhile contractor or those of them who may be necessary in the principal establishment after the contract is abolished, does not appear to be sound.”

10) Legislature has not provided in the act itself for a reference of a dispute with regard to the absorption of workmen of the erstwhile contract to the industrial adjudicator after the appropriate government has abolished the contract labour.

*Burmah Shell Oil Storage and Distributing Company of India Ltd. Vs. Industrial Tribunal*\(^1\), per Ekbote, C.J. On consideration of the scheme of the act and examination of its provisions, the Court held, in Para.34, at page 952, that:

“... the jurisdiction to decide about the abolition of contract labour, or to put it differently, to prohibit the employment of contract labour, is now to be done in accordance with S. 10...” of that act and the question whether the contract labour should

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\(^1\) 1975 (2) LLN 376
be abolished or not, is left to the "appropriate Government" under the act, if it becomes necessary. A fortiori, the jurisdiction of the industrial Tribunals to adjudicate upon the disputes relating to abolition of contract labour or its absorption by the employer has been taken away. In other words, industrial adjudication cannot interfere with the matters relating to contract labour after the enactment of this act. The abolition of contract labour having been taken away from the field of Industrial adjudication by the Legislature."