CHAPTER – 7

CONTRACT LABOUR & OTHER STATUTES

7.1 THE EMPLOYEES STATE INSURANCE ACT 1948

Object of the Act

The object of the act is to secure sickness, maternity, disablement and medical benefits to employees of factories and establishments and dependent of such employees.

By enacting the Employees State Insurance Act, 1948 the government introduced a scheme of social insurance for the industrial workers. Under the scheme the workers also are required to contribute to a social insurance fund which is to be utilized for conferring benefit on them. The Employees State Insurance Act 1948 provides to the workers not only accident benefit but also other benefits such as sickness benefit, maternity benefit and medical benefit.

“Employee” under Employees State Insurance Act 1948 – Sec. 2(9)

Employees means any persons employed for wages in or in connection with the work of a factory or establishment to which this act applies and

i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

iii) whose service are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.

[and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment; [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentice Act, 1961, (52 of 1961) or under the standing orders of the establishment; but does not include-]]

a) any member of [the Indian] naval, military or air forces; or

b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]
Whether employees engaged by a contractor will be covered by Employees State Insurance Act?

The employees as engaged by a contractor in an establishment covered under ESI will have to be enrolled as members of ESI. The definition of an ‘employee’ under the ESI Act expressly provides that an employee will mean any person employed for wages in or in connection with the work of a factory or an establishment to which this act applies and who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer of his agent. Therefore, the persons employed in supervision work in the godowns would be employees. If the labourers are employed by or through an immediate employer on the premises of the factory against payment of wages in or in connection with the work of the factory and as such answer the description of ’employee’ as defined under the ESI Act.

Under what circumstances the E.S.I. Act will be applicable to the employees engaged by a contractor?

The employees engaged by a contractor are surely to be covered under E.S.I. Act and the scheme. A Division Bench of the Bombay High Court dealing with such a proposition has held that the employees of the contractors engaged for repairs, site clearing, construction of building etc. are engaged in an activity which is essentially required for the running of the factory and is ancillary or incidental to and has relevance to or line with the object of the

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1 P D Vidavtak and other v/s ESIC 1971 Lab. IC 874
2 Kirloskar Pneumatic Co. Ltd v/s ESIC 1987 I LLN 906
factory. However, the Supreme Court has held that in order to
determine the relationship of employer and employee between the
principal employer and the employees engaged by the contractor
(immediate employer) the supervision by the principal employer or
his agent is essential.

Are the casual employees employed through the contractor
covered under the Employees State Insurance Act?

For E.S.I., purposes an employee need not be directly employed by
the employer in connection with some work which is incidental or
preliminary to the work of the factory or establishment or
connected with its works, so workers even engaged by a contractor
will be ‘employee’ of the factory or establishment and will be
covered by the act. In one case the factory was engaged in the
purchase of raw coir mats and mattings. The process of shearing,
trimming, pressing and packing them was also carried on in the
same premises of the establishment of the trading company. The
trading company was getting the work done on occasions in some
other establishment or that the shearing factory was also taking up
the work for other employers. It has been held that these facts will
not make any difference in liability of the entire establishment to
be covered by the act. The persons employed by the shearing
company would be the ‘employees’ of the trading company
because they were engaged in the connection with the work of the
trading company.
Liabilities of Employer under Employees State Insurance Act

The term "employee" includes employees who are directly employed by the principal employer and also includes persons who are employed by or through an immediate employer (Section 2(9) of the act).

The term immediate employer is defined in Section 2(13) and "Principal employer" is defined in Section 2(17) of the said act. The contribution which are payable under the said act are essentially and primarily the responsibility of the principal employer by virtue of the provisions contained in Section 40. The principal employer is liable to make the contribution of every employee whether directly employed by him or through an immediate employer. The contribution in respect of a contract employee can thereafter be recovered from the immediate employer by the principal employer as per the provisions contained in Section 41. The method of making payment of contributions is specified in Section 42 and 43. The parliament has recently amended this act by Act no. 29 of 1989. One such amendment is the addition of Section 45C to Section 45 I in Chapter IV of the act. Section 45 deals with determination of contribution in certain cases. Section 45 B stipulates that the recovery of contributions under the Act is to be made as a arrear of land revenue. The ambit of Section 45 C to 45 I is very wide and sweeping powers have been conferred on the authorized officer to recover contribution which are due and payable by the principal employer or the immediate employer. The provisions contained in Section 45 C to D is in a way analogous to the procedure prescribed even under the
Maharashtra Co-operative Societies Act for recovery of the dues of the member of the society. Under the said new provisions, the authorized officer can issue a certificate to the recovery officer for the amounts due under the act and the recovery officer thereafter can recover the dues from the immediate employer as well the principal employer by following the modes specified in the said provisions. The provisions contained in Section 45 G is an extra ordinary one which permits the Director General or any officer authorized by the corporation to direct a third party to make payments to the Corporation in respect of the amount due by the said third party to the defaulting principal employer and/or immediate employer. The provisions contained in sub sections (1) to (5) of Section 45 G confer very wide, arbitrary and uncanalised power to the Director General or any other authorized officer for the purpose of recovery of the dues under the act. However, if the third party raised certain disputes it is doubtful whether the same can be gone into by the Employees State Insurance Court under Section 75 of the said act. When Act no. 29 of 189 was introduced, certain amendments were made in several existing sections. However, no amendments has been made under Section 75 of the Act which deals with the jurisdiction of the Employees Insurance Court, Section 75(3) bars the jurisdiction of all Civil Courts to decide or deal with any question or dispute or as to adjudicate on any liability which by or under this act is to be decided by the medical board, Medical appeal & Tribunal or by the Employees Insurance Court. Disputes with regard to section 45C to H are not to be dealt with by the Insurance court. It would, therefore, mean that if such disputes are raised, the Civil Court would there upon
have to adjudicate the dispute. The liabilities and obligations of the principal employer is contained in Chapter IV read with regulations framed under the said act provided that the ultimate liability is that of the principal employer. In default thereof, the principal employer is liable to be proceed against criminally under the act. There is minimum punishment prescribed under Chapter VII of the act. In case of a previous conviction, the punishment is enhanced as per Section 85A of the said act.¹

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1 Reference

1) Commentaries on Employees State Insurance Act 1948
   By M Y Khan P 40-43
2) Commentaries on Employees State Insurance Act 1948
   By K D Srivastav P 236 – 254
3) Employees State Insurance Act 1948 and Short Notes
   By Labour Law Agency
4) Labour Problems and remedies
   By H L Kumar P 65,67
5) Liabilities and obligation of Principal Employer Vis-à-vis
   Contract Labour and Contractor (Article)
   By Advocate M H Joshi
6) Industrial Law Vol. 1
   By P L Malik P 858
7.2 FACTORY ACT 1948

Objective of the Act

The object of the act is to secure to the workers employed in the factories health, safety, welfare, proper working hours, leave and other benefits. The act aims to protecting workers employed in factories from unfair exploitation by the employer.

"Workers" under Factory Act

"Workers" means a person employed directly or by or through any agency including a contractor with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the union Sec. 2(1).

Expression "through agency indicates that persons may be employed either directly by the management, or through some firm, corporation etc., established for the purpose of supply of workers. It will also include workers procured on contract with a contractor for that purpose. Therefore, the source through which person may come to be employed is not relevant but the nature of the work they have to do or are doing. If they are engaged in the work of the nature enumerated in the definition, they are within the scope of this definition.
"Workers" - meaning of - it is clear that only such person can be classified as workmen of the factory who are either directly or indirectly or through some agency, employed for doing the work of any manufacturing process or cleaning etc. with which the factory is concerned. It does not contemplates the case of a person who comes and that too without knowledge of the factory owner or without his intervention either directly or indirectly and does some work on the premises of the factory (State v. Shri Krishna Prasad Dar (1953 All LJ 491), where a contractor enter into contract with factory or undertakes to do on independent act of manufacture and employee persons to complete the work such persons cannot come within the definition of "workers" given in section 2(1) of the Factory Act.

**Contract Labour and Factory Act 1948**

The words 'including a contractor were added by the Factories (Amendment) Act 1994 meaning there by that even a worker engaged through a contractor and working in a factory is a 'worker' for the purpose of the Factories Act. All the beneficial provisions in the act apply with equal force to such workers employed through contractor.

Thus a workmen employed as contract labour is a worker of the factory under Factories Act. That being so, he would be entitled to the benefit and privileges available to a worker under the Factories Act. Thus principal employer stands deprived of various advantages of employing labour through contractor which were earlier available to him.
The Factories Act offer all the protection to the workers employed through a contractor. The provision of Act apply also to workers who are engaged directly or by through any agency including contractor with or without the knowledge of the principal employers and whether for remuneration or not. Further an employer is required to extent all the benefits which are available to his regular employees such as canteen, drinking water, washing facilities, urinals, latrines etc. The employer is also required to ensure the compliance of Chapter III Health, IV Safety, IV-A Provision Relating to Hazardous Process, V welfare, VI working hours of adults and Chapter VII employment of young persons, irrespective of the fact as to whether the employees is a direct employee or an employee through contractor.

Therefore whether the employee is a direct employee or an employees through a contractor, employer is required to ensure the compliance of all the provisions of Factory Act 1948.¹

**Who is a worker under Factories Act?**

The definition of a ‘worker’ is wide under Factories Act. However, a person in order to be a worker must be a person employed in the premises of precincts of the factory. Piece-rated worker can also be worker but they must be regular. And not like those who come and work according to their sweet will. The word ‘worker’ include a person employed even through the agency of a contractor with or without the knowledge of the principal employer.

¹ (Govt of Andhra Pradesh and others v. Bhadrachalam Paper Board Ltd. 1989 1 LLN 338 (A.P.H.C.)
Position of Canteen Employees under Factory Act 1948

Many factories have canteens for the workers and such canteens are generally run by a contractor. Whether the employees employed in the canteens will be treated as the employees of the company?

Under the Factories Act, there is a stipulation that if the employer is employing over 250 employees, the management has to run a canteen. The employees of the canteen even if employed by the contractor will be deemed to be the employees of the Company.\(^1\) However, in another case, the Kerala High Court has held that the mere fact that an employer is under a statutory obligation to provide and maintain a canteen, it cannot make the management ultimate employer of workers engaged in the canteen for all purposes. Canteen may be run by an independent contractor or by a cooperative society of workers or by the company itself.\(^2\)

Will a security guard engaged by an employer through security agency will be deemed as a worker as defined by Factories Act?

A security guard even when he is engaged through a security agency will be a worker as defined by section 2(1) of the Factories Act. In one case, a security guard provided through a security agency was assaulted by a workman who was on strike, it has been held that he is a member of watch and ward staff whether he is a permanent employee or has been engaged on a contract through an

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1 Indian Explosive V. State of U.P. and others [1981 I LLN 360 (All HC)]
2 Cominco Binani Ltd. v Pappachan [1989 I LLJ 452 (Kerala High Court)]
agency. He will be a worker of the factory so long as he has been performing services for the factory.¹

Operation of Section 10 of Contract Labour (Regulation & Abolition) Act 1970: Whether excluded by the Factories Act

Section 119 of the Factories Act runs as follows:

“119. Act to have effect notwithstanding anything contained in act 37 of 1970 – the provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in the Contract Labour (Regulation and Abolition) Act, 1970”

In Government of A.P. V. Bhadrachalam Paper Boards Ltd., reversing the decision of a Single Judge, a Division Bench of the A.P. High Court² observed:

“.... Both the enactment contains provisions in the interest of health, safety and well being of workers. Only to the extent of inconsistency therein does the Factories Act prevail and operate, and to that extent the Contract Labour Act would not apply. Now what is significant to notice is that there is no provision in the Factories Act providing for abolition of contract labour in any factory or other establishment to which the Factories Act applies. The Factories Act does not deal with, and does not refer to the abolition of contract labour at all. The said aspect deals with only by Section 10 of the contract labour. In such a situation it cannot be said that the Factories Act contains any provision inconsistent with Section 10 of the Contract Labour Act. If so, the power of the

¹ South India Sugar Ltd. Mundiambakkam vs. First Additional Labour Court 1989 (2) LLN 1044
² 1989 Lab IC 1467; 1989 LLN 338
appropriate government under Section 10 is not affected or curtailed in any manner by Section 119 of the Factories Act or any other provision in the said act.

..... In the absence of any inconsistency, both the Acts will apply, and continue to apply to a factory or establishment to which they apply. ¹

¹ Reference
1) Commentaries on Factories Act 1948 with Allied law
   By V.K. Kharbanda  P. 34, 69
2) Factories Act 1948 with commentaries
   By Mathrubatham & Srinivasan R
3) Industrial Law volume II
   By P L Mallik P 1270
4) Labour problems and remedies
   By H L Kumar  P. 102, 107
5) Comprehensive booklet on contract labour  By Handa, Pathak & Gupta  P. 41
7.3 MINIMUM WAGES ACT 1948

Object of the Act

The object of the act is to provide for fixing and revising minimum wages in certain employment in order to stop sweated labour and prevent the exploitation of unorganized labour.

The reason given by the government for passing the act was that workers organization in the country were poorly developed and consequently their bargaining power also was very poor. This act is a boon to a large number of poorly paid persons in this country.

‘Employee’ under minimum wages Act 1948 – Sec. 2 (J)

‘Employee’ means any person who is employed or hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rate of wages has been fixed; and include an out-worker to whom any article or material are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government but does not include any member of the armed forces of the (union).
Contract Labour and Minimum Wage Act 1948

The contract labour are covered since the employer is defined “any person who employed whether directly or through any person or whether on behalf of himself or any other person, any employee in the scheduled employment in respect of Minimum wages”. An out worker is also covered like a tailor who accept work from a tailoring shop and takes it home for stitching on his own machine Section 2 (c) 2 (J)

Does Minimum Wages Act apply to the employees engaged through contractor more particularly when the said Act does not apply to the employee employed directly by principal employer?

The applicability of Minimum Wages Act to the contract employees does not depend upon the fact that the principal employer must come within the ‘scheduled employment’ under the Minimum Wages Act. Once contractor’s establishment is covered under the Minimum Wages Act, the employees engaged through the contractor shall be entitled to the wages as fixed under the Minimum Wages Act.

Rate of Wages Payable to Contract Worker

Clauses (iv) and (v) of Rule 25(2) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 deal with the rates of wages payable to contract labour. They are reproduced below:

“(iv) the rate of wages payable to the workmen by the contractor shall not be less than the rates prescribed under the Minimum wages Act, 1948 (11 of 1948), for such employment where
applicable, and where the rates have been fixed by agreement, settlement or award, not less than the rates so fixed;

(v) (a) 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 of the establishment, the wage rates, holidays, hours 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 of the establishment on the same or similar kind of work:

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Chief Labour Commissioner (Central);\(^1\)

(b) in other cases the wage rates, holidays, hours of work and condition of service of the workmen of the contractor shall be such as may be specified in this behalf by the Chief Labour Commissioner (Central);

Explanation: - While determining the wage rates, holidays, hours of work and other conditions of service under (b) above, the Chief Labour Commissioner shall have due regard to the wage rates, holidays, hours of work and other conditions of service obtaining in similar employments,\(^\)"

Rules framed by the States also contain similar provisions.

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\(^1\) Militant Security Bureau Pvt Ltd. and another vs. Mr. B R Hehar and another 1991 II CLR 245 (Bom. H.C.)

\(^2\) BHEL W A Hardwar Vs U.O.I. 1985 (50) FLR 205 S.C.
Liability of principal employer under Minimum wages Act

1. Responsibility for payment of wages and the procedure for disbursement - Section 21 makes the contractor responsible for timely payment of wages in the presence of the authorized representative of the principal employer, and if the contractor fails to do so, the principal employer is liable to make the payment and recover the amount so paid from the contractor.

The procedure for payment of wages to contract labour is prescribed by the Central as well as the States’ Rules framed under the Act. The relevant rules in the Central Rules are contained in Chapter VI from Rule 63 to Rule 73.

2) In National Organic Chemical India Limited Case Respondent No. 1 Inspector under the Act, filed a criminal complain under Minimum Wages Act 1948, S 2(e), S 18 and S.19, Maharashtra Minimum wages Rule 1963 – Rule 27, 22 and 28 against the petitioner in the court of judicial magistrate alleging that violation of the rule by not maintaining registered in respect of employees engaged through constrictor. Petitioner challenged the order of magistrate to proceed against him on the ground that it is the responsibility of the contractor under the act to maintain record and register and not the company.

Court held that Conjoint reading the definition of employer and employee under the act makes it clear that every employer including contractor who engage workers for other
who owns establishment/factory etc. is bound by the provision of the act to comply with the requirement of maintaining register etc. Person who employ workers through another like a contractor would also be employer for the purpose of the definition under the Minimum Wages Act.\(^1\)

**Payment of Cost of Living allowance under the Minimum Wage Act**

In Krishna Flour Mill & Other v. The Commissioner of Labour, Karnataka High Court held that even if a company pay wages higher than the total minimum wages under the Minimum wages Act it will still be required to pay the cost of living allowance. This is not only apply to direct labour of every company but even to contract labour.\(^2\)

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\(^1\) National Organic Chemical India Ltd. & other V Surendra Ramakrishna Tendulkar 1997 II CLR 332 (Bom. H.C.)

\(^2\) Reference:

1) The Payment of Wages Act and Minimum Wages Act
   By Harbanslor Sarin P 362

2) The commentaries on Payment of Wages Act 1936
   By K D Srivastav P 138 – 144

3) The Minimum Wages Act 1948 and Short Notes
   By Labour Law Agency

4) Industrial Law Vol II
   By P L Mallik p 1803

5) Comprehensive booklet on Contract Labour
   By Handa, Pathak and Gupta P 41
7.4 THE MATERNITY BENEFIT ACT 1961

Object of the Act

i) to provide for maternity benefit to women worker in certain establishment

ii) To regulate the employment of women worker in such establishment for certain period before and after childbirth.

It is true that its objective was not achieved by the enactment of the employees state Insurance Act 1948 which superseded the provision of several maternity benefit Act. But the Employees State Insurance Act did not cover all women worker in the country. The Maternity Benefit Act of 1961 was therefore passed to provide uniform Maternity benefit for women workmen in certain industries not covered by Employees State Insurance Act.

Definition of ‘women’ under Maternity Benefit Act 1961

"Sec. 3(o) ‘Woman’ means a woman employed whether directly or through any agency for wages in any establishment"
Contract Labour and Maternity Benefit Act 1961

Whether Contract Labour (women) is covered under the Maternity benefit Act 1961.

‘Women’ employed through a contractor fulfilling the conditions of eligibility under the act shall liable to benefits available to the regular employees and when the contractor fails to pay, it is the responsibility of the principal employer.¹

¹ Reference:
1) Maternity Benefit Act 1961 & Short Notes
   By Labour Law Agency
2) Employer’s guide to Labour Laws
   By S R Samant P 231
3) Comprehensive Booklet on Contract Labour
   By Handa, Pathak & Gupta P 41
4) Industrial Law Vol. II
   BY P L Malik P 1732
7.5 THE EMPLOYEES PROVIDENT FUND AND
MISCELLANEOUS PROVISION ACT 1952

Object of the Act

The Employees Provident Fund and miscellaneous Provision Act 1952 is enacted to provide a kind of social security to Industrial workers. Act mainly provide retirement or old age benefits.

The Security however differ from the security provided to them under the workmen’s compensation Act or Employees State Insurance Act.

The Employees Provident Funds and Miscellaneous Provision Act is intended to provide wider terminal benefits to the industrial workmen for example Provident Fund, Superannuation, Pension, invalidation Pension, Family Pension and deposits linked insurance etc.

‘Employee’ under Employee Provident Fund Act 1952 Sec. 2(f)

‘Employee’ means any person is employed for wages in any kind of work, manual or otherwise in or the connection with the work of an establishment and who gets his wages directly or indirectly from the employer (and includes any person)

i) Employed by or through a contractor in or the connection with the work of the establishment
ii) Engaged as an apprentice, not being an apprentice engaged under the Apprentice Act 1961 (52 of 1961) or under the Standing Order of the establishment.

Section 1(3) cannot be interpreted in isolation and independent of definition of ‘employee’ in sec. 2(f). The definition of employee brings in contract labour within the scope of sec. 1 (3) AIR 1965 AP 200. However, casual labour engaged by or through a contractor fall outside the scope of sec. 1(3). **Nazeena Traders (P) Ltd. v. R.P.F.C.**¹ The reason was more explicitly mentioned in **Laxmi Restaurant New Delhi v R.P.F.C.**² in these words “the employee in order to earn the benefit of the scheme and he must be employed by the establishment in the course of its regular business. The regular employment would not rest on the nature of the term of employment but on the nature of the business carried on by the establishment and its commercial nexus. In the view of the matter, the Act would be applicable to the regular employees and not to the employees for the casual work.

The rationale was well defined in **Metal Power Co. Ltd v State of Tamil Nadu**³ “The term of the definition of ‘employee’ in clause (F) of Section 2 are wide. They include not only person employed directly by the employer but also person employed through contractor. Moreover they include not only person employed in the factory but also person employed in connection with the work of the factory (P.M.Patel and Sons v. Union of India⁴

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¹ 1966 I L L J 334.
² 1975 L1C 1186
³ 1985 II LLJ 376 (Mad)
⁴ 1986 – I LLJ 293
Contract Labour And Employee Provident Fund Act

Are the employees engaged/employed through the contractor coverable under the Employees Provident Fund and Miscellaneous Provisions Act?

By amendments to the scheme in 1958 and 1960, the persons employed by or through contractor or in connection with an establishment to which the act applied were brought within the purview of the scheme and principal employer was made responsible for compliance with the provisions of the act and the scheme in respect of such employees. However, the amendments to the scheme were struck down as unconstitutional by the Supreme Court. The Supreme Court held in so far as no provision had been made in the scheme for the recovery by the employer of the contribution to be made by him on behalf of contractor’s employees, the amendments operated harshly and unfairly on the persons who employed contract labour, and it resulted in discrimination against those who were employed as direct labour. The defect pointed out by the Supreme Court has now been removed by the Amending Act 28 of 1963. Accordingly, contractor’s employees have become eligible for the provident fund benefits w.e.f. 30th November, 1963.¹

2) Liabilities of Employer under Provident Fund Act

So far as Employees Provident Fund and Misc. Provisions Act, 1952, is concerned, there is no separate definition of a principal employer or an immediate employer. However, the term

¹ Orissa Cement Ltd V. Union of India AIR 1962 S.C. 1902
“employee” also includes a person who is engaged in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer. However the term ‘employee also includes a person who is engaged in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and also includes persons employed by or through a contractor. Under Section 6 of the act the contributions are required to be paid at a specified rate by the employer in respect of each of the employees including employees engaged directly or through a contractor. Provisions similar to sections 45 C to 45 I of Employees State Insurance Act are also incorporated as Section 8 B to 8 G by Act no. 33 of 1988 in Employees Provident Fund Act.

These provisions have been brought into force from July, 1990 onwards. The Act no.33 of 1988 also has introduced certain new provisions under which the appellate tribunal is to be constituted. Section 14, 14A, 14AA, 14AB, AC provide for penalties and punishment. Whereas 14B provides the power to recover damages from the defaulting employer’s the provision under the Act prescribed minimum punishment in case of defaulting employers. Where the magistrate has no discretion in the matter.
The minimum prescribed punishment has to be awarded once a finding has been given by the magistrate that the offence, as defined under the act has been committed by the defaulting employer. The obligations and the liabilities, therefore, of the principal employer is very wide and any default in following the procedure laid down in the act makes the principal employer vulnerable to prosecution and claim for damages.¹

¹ Reference
1) Employees Provident Fund and Family Pension Fund Act 1952
   By Gupta S D
2) Employee Provident Fund and Miscellaneous Provisions
   By K D Srivastava
3) Employees Provident, Pension and Insurance Fund
   By K Krishnamurthy P 46
4) Labour problems and remedies
   By H L Kumar P 40
5) Industrial Law Vol. I
   By P L Malik P 598
7.6 TRADE UNIONS ACT 1926

Object of the Act

The object of the act is to provide for the registration of trade unions and to confer on registered trade union certain protection and privileges.

The Constitution of India confer on all the citizen a fundamental right to form associations or unions. The right to form unions is thus recognized by the union Act 1926.

“Trade Union” Under Trade Unions Act

Trade Union means any combination whether temporary or permanent formed primarily for the purpose of regulating the relation between workmen and employers or between workmen and workmen or between employers and employers Section 2 (h).

“Trade Dispute” Under Trade Unions Act

Trade dispute means any dispute between employer and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non-employment or the terms of the employment or the conditions of labour, of any person and workmen means all persons employed in trade or industry whether or no in the employment of the employer with whom the trade dispute arises Section 2 (g).

Definition is comprehensive and the definition cover disputes

i) between employer and workmen or

ii) between workmen and workmen or
iii) between employers and employers, provided that the dispute is connected with
a) employment or
b) no employment
c) the terms of employment or
d) the conditions of labour of any person

**Contract Labour and Trade Unions Act 1926**

The word ‘workmen’ is defined under the act in relation to trade dispute. The definition is very wide in its scope. “All persons employed in trade or industry are described as workmen”.

Contractors worker have the right to form trade union. As the name of the Trade Union Act indicate the person engaged in trade or business can form a trade unions, **Rangaswami and others v Registrar of Trade union and other**¹

But it is doubtful if they would be able to raise a dispute against the principal employer since they are not covered under the Industrial Disputes Act 1947. Industrial Disputes Act 1947 is a general enactment which applies to all the industries and all workmen coming within the fold and to every industrial disputes within the meaning of the Act. The Contract Labour (Regulation and Abolition) Act 1970 is a special enactment applicable only to the subject of the contract labour. Every dispute therefore relating to the contract labour must have to be tackle only under the provision of contract labour (Regulation and Abolition) Act and not under the general law. Supreme Court in **Vegoils Pvt. Ltd. v**

¹ AIR 1962 Mad 231, 20 FLR 52
workmen\textsuperscript{1} case decided that Industrial Tribunal will have no jurisdiction to given direction about abolition of contract labour and no reference related to any dispute can be made to Industrial Tribunal even if the dispute does not relate to the abolition of contract labour.\textsuperscript{2}

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  By Ramnarayan Lal Beniprasad
\item Trade Unions Act 1926 with short notes
  By Labour Law Agency
\item Comprehensive booklet on Contract Labour
  By Handa, Phatak & Gupta P 41
\item Supreme Court on Contract Labour (Abolition & Absorption)
  By D V S R Prabhakar Rao P 33
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7.7 THE WORKMEN’S COMPENSATION ACT 1923

Object of the Act

The object of the act is to provide for the payment of compensation by certain employers to their workmen for injury caused to them by accident while in employment. If a workman contracts an occupational disease while in employment it is also treated under the act as injury caused by accident. It is social security scheme enable a workman and in case of death of a workman his dependents, to get compensation for employment injury form the employer. The act also provides workmen who are partially incapacitated resulting in a loss in the earning capacity. The compensation become payable under act not because of a tort or wrong doing by the employer. A liability under the act has no connection with any wrong doing on the part of the employer.

Workmen under Workmen Compensation Act Section 2(1)

“Workman” means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer’s trade or business) who is –

i) a railway servant as defined in 14a [clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989)], not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as it specified in Schedule II or 14b[(i – a) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,

c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

ii) employed 15[****] 16[****] in any such capacity as is specified in Schedule II,

Whether the contract of employment was made before or after the passing of this act and whether such contract is expressed or implied, oral or in writing but does not include any person working in the capacity of a member of 17 the Armed Forces of the Union] 18[***] and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

**Whether Contract Labours are covered under workmen’s compensation Act 1923**

Contract labours are covered under the Workmen Compensation Act and get compensation by the employer for the injury caused to them by accident while in employment and in case of death his dependents will get compensation for the employment injury from the principal employer.
‘Employment’ ‘employed’ – master – and – servant relationship

The use of the words ‘employment’ and ‘employed’ in the definition is the main clause (n) as well as in the sub clause (i) and (ii) suggest that existence of a master and servant relationship so as to bring person within the category of a ‘workmen’ under the act. In the English case short v J.W.Henderian Ltd\(^1\) Lord thankerton recapitulated the four indicia of contract of service

They are

1) Master’s power of selection of his servant
2) the payment of wages or other remuneration
3) the Master’s right to control the method of doing the work and
4) the Master’s right of suspension or dismissal

In S.B.Gurbaksh Singh v. Dhani Devi\(^2\) the deceased was appointed to do whitewashing work by a building contractor on piece-rates. The cost of the material supplied to him for doing the work was to be adjusted against the payment. The material supplied was to be utilized under the supervision of the contractor. It was held that the deceased was not an independent contractor but a workman paid on job basis. He was doing whitewashing as part and parcel of the contract undertaken by the contractor.

In Arumugham v. Nagammal\(^3\), a contractor had a contract to unload wagons. He employed a mistri who worked under him and engaged coolies whom he paid a fixed sum for unloading each

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\(^1\) 1946 AC 24 HL  
\(^2\) 1981 2 LLN 88 (Del.)  
\(^3\) AIR 1949 Mad. 462
wagon keeping a portion for himself for each wagon. One of the coolies so employed met with an accident while engaged in unloading a wagon and died. On the question as to whether the coolie was a workman and the contractor was liable to pay compensation to the widow, it was held that the coolie was an employee for the purpose of unloading the wagon at the time of the accident which was the business of the contractor and it could not be said that the employment of the coolie by the mistri was not a contract of service as he was cleared engaged for a specific remuneration to help in unloading a wagon of goods and there was no ground on which he could be excluded from the definition of workman under the act. As such the contractor was liable to pay compensation.

Contracting — (1) where any person in the course of or for the purposes of his trade or business contracts with any other persons for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this act shall apply as if references to the principal were substituted for references to the employer to the wages of the workman under the employer by whom he immediately employed.

(2) Where the principal is liable to pay compensation, under this section, he shall be entitled to be indemnified by the contractor, [or
any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from who the workman could have recovered compensation,) and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

The scheme of section 12 clearly indicates that the liability for compensation is ultimately of contractor. So far as the workman is concerned, he is entitled to recover the same from the principal and the principal has a statutory right to indemnify himself by recovering the amount paid by him from the contractor.\(^1\)

If the principal employers wants to be indemnified by the contractor, he will have to name the contractor concerned and also

\(^{1}\) Trustee of Port of Madras V Bombay Company Pvt. Ltd 1966 2 LLJ 686
to prove that the injured workman was working under him and could have got compensation from him also.\footnote{Bansidhar v/s Ramchandra AIR 1960 MP 313}

Section 12 contemplates that for a person to be liable for compensation it is necessary that the execution of the work in the course of which the workman is injured should be an ordinary part of that person’s trade or business. The general notion of Section 12 is that if it is ordinarily part of the business of a person to execute certain work, then ordinarily he will do that work by his own servants; he is not to escape liability for any accident that takes place merely by interposing a contractor, the contractor undertaking to do what ordinarily the principal would do for himself.\footnote{Karnani Industrial Bank v/s Ranjan AIR 1933 Cal 63}

The main object of enacting Section 12 is to secure compensation to the employees who have been engaged through the contractor by the principal employer for its ordinary part of the business, which in the ordinary course, the principal is supposed to carry out by its own servants.\footnote{Bhutabhai Angabhai v/s Gujarat Electricity Board 1987 1 LLN 156 (Guj) DB}

The amount of compensation payable by the principal has to be calculated with reference to the wages of the workman under the employer by whom he is immediately employed. The provisions of Section 12 would not come into play where the accident occurs elsewhere than on, in or about the premises on
which the principal has undertaken, or usually undertakes to execute the work or which are otherwise under his control or management.

In *Vijayaraghavan v. Velu*, the appellant had undertaken to supply certain quantity of metal (granite stones) to Southern Railway at particular places along the railway lines. The required quantity of metal was, under a different contract, to be procured by the appellant from the owner of a quarry the metal. It was while working there that N met with the accident and died. The Commissioner found that the owner of the quarry was the sub-contractor of the appellant who was the principal employer, and relying on Section 12, the Commission directed the appellant to pay 3600 as compensation to N and declared the appellant to be entitled to be indemnified by the quarry owner for the entire amount.²

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¹ 1973 Lab. IC 1520
² Reference:
1) Workmen’s Compensation Act 1923
   By K D Srivastav  P 69,122, 125
2) Industrial Law Vol. II
   By P L Malik  P 2395
3) Labour problem and remedies
   By H L Kumar P 221
4) Employer’s Guide to Labour Laws
   By S R Samant  P 320
5) Workmen Compensation Act 1923 and Notes
   By Labour Law Agency
7.8 PAYMENT OF BONUS ACT 1965

Object of the Act

The object of the act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profit earned by the contribution made by capital, management and labour.¹

Payment of Bonus Act 1965 gives to the employee a statutory right to share in the profit of his employer. Act enable the employees to get minimum bonus equivalent to one month’s salary or wage (8.33% of annual earning) whether the employers makes any profit or not.

‘Employee’ under payment of Bonus Act 1965

“Employee” means any person (other than apprentice) employed on a salary or wage not exceeding (three thousand five hundred rupees) per mensum in the industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work of hire or reward whether the term of employment be express or implied”.

Sec. 2 (13)

The definition of employees in Section 2(13) brings in the concept of the contract of employment between the employer and the employee. Unless there is a contract of employment or in other words there is no relationship of employer and employee between them, the definition of employee will not come into play.

¹ Jalan Tradico v Mill Mazdoor Sabha 1966 ILLJ546 S.C.
Contract Labour and Payment of Bonus Act 1965

In the words of Hon’ble Bhagwati (J) "the essential condition of a person being an employee within the terms, he should be employed to do work in that industry and there should be employer-employee relationship "the relationship of an employer and employee is constituted by contract express or implied between them contract labour are not employee of the company and hence cannot claim bonus.

In Cominco Binani Zinc Ltd. v. Pappashah\(^1\) case the Petitioner or company having more than 250 workers on its rolls. As per Section 46 of the Factories Act and rule framed there under the company has to provide and maintain canteen for its employee. The right to run the canteen was being given on contract to others from time to time. The contractor who took up the responsibility of running the canteen were engaging their own workmen and they were being paid by the contractor. While so, some dispute arose between the respondent and workers engaged in the canteen regarding the payment of Bonus.

**Question is in given situation can management be made liable for the claim of workers engaged in the canteen?**

Court came to the conclusion that the workers were employed by the contractor who were running the canteen and that all the settlement regarding their service condition were with the concerned contractor. The union has no case that they entered into any agreement with the petitioner company regarding the condition of service of worker engaged in the canteen. So in the normal

\(^1\) 1989(58) FLR 528 at P 530 (Ker)
course, the management cannot be made liable to satisfy the claim of the employees of the canteen.

The mere fact that the petitioner had the responsibility to provide and to maintain a canteen under section 46 of the Factories Act cannot make them the ultimate employer of the worker engaged in the canteen for all purpose. Workers in the canteen cannot be considered to be the employees of the management. Hence cannot claim bonus form the company.

**Will the principal employer be liable to pay bonus to the employees employed by the contractor ?**

No doubt a principal employer is liable to pay wages to the employees of the contractor if the latter fails to make payment of wages to his employees. However, it has been held in one case that the gratuity and bonus will not be payable by the principal employer since these do not come within the definition of ‘wages’

**Under the payment of Bonus Act the question whether a claim for bonus could be raised by employees not covered under the Act ?**

Answered against the workmen, It was held :

It is true that the preamble state that the act is to provide for payment of bonus to person employed in certain establishment and section 1(3) provides that the act is to apply, save or otherwise provided there is, to factories and every other establishment in which twenty or more workers are employed. Sub-section (4) Section 1 also provides that the act is to have effect in relation to
such factories and establishments from the accounting year commencing on any day in 1964 and every subsequent accounting year. But these provisions do not, for that reason, necessarily mean that the act was intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus and the persons to whom it should apply. Even where an act deals comprehensively with a particular subject-matter, the legislature can surely provide that it shall apply to particular persons for group of persons or to specified institutions only. Therefore, the fact that the preamble states that the act shall apply to a certain establishments does not necessarily mean that it was not intended to be comprehensive provision dealing with the subject-matter of bonus. While dealing with the subject-matter of bonus the legislature can lay down as a matter of policy that it will exclude from its application certain types of establishments and also provide for exemption of certain other types from the scope of the act. The exclusion of establishments where less than twenty persons are employed in Section 1(3), therefore, is not a criterion suggesting that parliament has not dealt with the subject-matter of bonus comprehensively in the act.

... There was, until the enactment of this act, no statute under which payment of bonus was a statutory obligation on the part of an employer or a statutory right, therefore, of an employee. Under the Industrial Disputes Act and other corresponding acts, workmen of industrial establishments as defined therein could raise an industrial dispute and demand by way of bonus a proportionate share in profits and industrial tribunals could under those acts adjudicate such disputes and oblige the employers to
pay bonus on the principle that both capital and labour had contributed to the making of the profits and, therefore, both were entitled to a share therein. The right to the payment of bonus and the obligation to pay it arose on principles of equity and fairness in setting such disputes under the machinery provided by the industrial Acts and not as a statutory right and liability, as provided for the first time by the present act. In providing such statutory liability Parliament has laid down a statutory formula on which bonus would be calculated irrespective of whether the establishment in question has during a particular accounting year made profit or not. It can further lay down that the formula it has evolved and the statutory liability it provides in the act shall apply only to certain establishments and not to all. Since there was no such statutory obligation under any previous act, there would not be any question of parliament having to delete either such obligation or right.
In such circumstances, since parliament is providing for such a right or obligation for the first time there would be no question also of its having to insert in the act an express provision of exclusion. In other words, it has not to provide by express words that henceforth no bonus shall be payable under the Industrial Disputes Act or other corresponding act as these acts did not confer any statutory right to bonus.¹

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¹ Sanghvi Jeevraj Ghewerchand v. Secretary Madras Chillies, Grain and Kirana Merchant worker’s union AIR 1969 SC 530, 1969 Lab IC 854

Reference

1) Commentaries on Payment of Bonus Act 1965
   By M.Y. Khan P 94, 97
2) Commentaries on Payment of Bonus Act 1965
   By P N Ghosh
3) Commentaries on Payment of Bonus Act 1965
   By Chopra P S
4) Employees guide to Labour Law
   By S R Samant P 252
5) Industrial Law vol II
   By P S Mallik P 1931
6) Contract Labour (Regulation & Abolition) Act 1970
   By V K Kharbanda P 67, 69
7.9 PAYMENT OF GRATUITY ACT 1972

Object of the Act

The payment of Gratuity Act 1972 has been passed with the object of providing a uniform scheme for payment of gratuity to industrial workers throughout the country.

An employee expects and deserve as a matter of right some reward when the retire after long meritorious service. Under the Act an employee becomes entitle to earn gratuity after putting in service of minimum five years. The rate of gratuity is 15 days salary for every year of service but the total amount of gratuity cannot exceed three lakhs and fifty thousand rupees.

‘Employee’ under payment of Gratuity Act 1972

‘Employee’ means any person (other than an apprentice) employed on wage in any establishment, factory, mines, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled or unskilled, a manual supervisory, technical or clerical work, whether the terms of such employment are expressed or implied and whether or not such person is employed in a managerial or administrative capacity but does not include any such person who holds a civil post under the Central Government or State Government and is governed by any other Act or by any rules providing for payment of gratuity. Sec. 2(e)
Contract Labour and Payment of Gratuity Act 1972

Payment of Gratuity Act 1972 does not include specifically the contract employee. The liability thereof, therefore of the principal employer is not there in respect of employees to pay Gratuity to the employees who are engaged on contract basis.

Contract Labour cannot claim Gratuity from Company

In case *Comino Binani Zinc Ltd. v. Pappashah*\(^1\) Canteen is maintained by the Company. The right of running canteen was given on contract. First respondent was contract or was running the canteen upto 18.04.78. From 19.04.78 to 28.06.78 the workers of the company themselves were running the canteen. From 29.06.78 a new contractor took up the responsibility of running the same. At no point of time had the company run the canteen by itself. The contractor who took up the responsibility of running the canteen were engaging their own workmen and they were being paid by the contractor while so some dispute arose between the first respondent and worker engaged in the canteen regarding Bonus, arrears of payment, Gratuity etc.

Tribunal came to conclusion that the workmen were employed by the contractor who were running the canteen and that all the settlement regarding their service conditions were with the concerned contractor. So management cannot be made liable to satisfy the claim of the employees of the canteen. When the management entrust the responsibility of running the canteen with

\(^1\) 1989(58) FLR 528 at P 530 (Ker).
a contractor, the workmen employed and paid by such contractor
cannot be treated as workmen of the management. There is no
employee-employer relationship between the management and
such workmen.

**Will the principal employer be liable to pay Gratuity to the
employees employed by the contractor?**

No doubt a principal employer is liable to pay wages to the
employees of the contractor if the latter fails to make payment of
wages to his employees. However, it has been held in one case that
the gratuity and bonus will not be payable by the principal
employer since these do not come within the definition of ‘wages’.

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1 Reference:

1) Commentaries on Payment of Gratuity Act 1962
   By K D Srivastava  P 153
2) Payment of Gratuity Act 1962 and Rules
   By M Y Khan
3) Payment of Gratuity Act 1962 and Rules
   By Ramnarayan Beniprasad
4) Industrial Law Vol II
   By P L Mallik  P 1976
5) Employers Guide to Labour Law
   By S R Samant  P 263
6) Payment of Gratuity Act 1962 and notes
   By Labour Law Agency
7.10 INDUSTRIAL EMPLOYMENT (STANDING ORDER) ACT 1946

Object of the Act

The purpose of the Industrial Employment (Standing Order) Act 1946 is to standardise the service conditions of workmen employed in the industrial establishment.

Prior to the enactment of the act the employer was free to fixed the service conditions of his workmen according to his own will. As a result of this there existed different set of service conditions in different industrial establishment. The act has taken away the freedom of the employer to unilaterally fix the service conditions of his workmen. It has replaced contractual terms of service by statutory terms of service.

As observed by the Supreme Court in Glaxo – Laboratories case\(^1\) the act is enacted “to compel by statute the employer to prescribe minimum conditions of service subject to which employment is given” It is to be noted that the act requires the employers not only to prescribe the conditions of employment under them but also to make the said conditions known to workmen employed by them.

Contract Labour and Industrial Employment (Standing Order) Act 1946

Model standing order under Industrial Employment (standing order) Act 1946 Section 3 (I) specify that classes of employees like permanent workmen, probationers, badlis or

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\(^1\) 1984 I LLJ 16
substitutes, temporary workmen, casual workmen, apprentice but
no where standing order provide for a class of employees called
contract labour i.e. the labour engaged through contractor.
Obviously the standing order operates on the basis of employer-
employee relationship. Whether permanent, trainee, temporary or
contract labour important factor which would give credibility to the
term is master-servant relationship. Supreme Court\(^1\) has stipulated
guideline to determine the master-servant relationship which are as
follows

1) The person has to be a workmen within the ambit of
definition of 'workmen' to do the work in the industry.

2) The master must have right to supervise work and control
the work done by the worker not only by directing what to
do but the manner in which he shall do the work.

3) The nature of extent of control necessarily vary from
business to business

Whereas in the case of contract labour the contractor is the
employer and contract labours are his employees. Hence concept
of employer-employee relationship is absent between the principal
employer and employees (contract labour). Principal employer has
no right to proceed against the contract worker under the standing
order act.\(^2\)

\(^1\) Dhranghra Chemical Works Ltd v. State of Maharashtra AIR 1957 SC P 264
\(^2\) Mangalore Ganesh Bidi Works vs. Union of India 1974 (1) LLJ Pg.329
Hence contract labour is not workmen under Industrial Employment (standing order) Act 1946.¹

¹ Reference

1) Commentaries on Industrial Employme (Standing Order) Act
   By K D Srivastav
2) Employer Guide to Labour Law
   By S R Samant P 179
3) Industrial Law Vol. II
   By P L Mallik P 1552, 1573
4) Comprehensive booklet on Contract labour Act
   By Handa, Pathak & Gupta P 42
5) Industrial Employment (Standing Order) Act 1946
   And notes by Labour Law Agency
6) Compendium of resource paper, Workshop on Labour Law
   Organised by Bombay Chamber of Commerce & Industry 1993 P 86, 88
7.11 INDUSTRIAL DISPUTES ACT 1947

Object of the Act

The object of the act is two fold 1) to improve the service conditions of industrial workers and 2) by means of that to bring about industrial peace which would in its turn accelerate productivity of the country resulting in its prosperity. (Observation in *Hindustan Antibiotics v. workmen*)¹ The humble aim of the act is to reduce or resolve difference between employers and the workmen.

Difference between - Workmen as defined under Industrial Disputes Act and Workmen under Section 2(b) of the Contract Labour Act

Section 2(s) in Industrial Disputes Act – “Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for the hire or reward, whether the terms of employment express or implied, and for the purpose of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

i) who is subject to the Air Force Act, 1950 or to Army Act, 1950 or the Navy Act, 1957; or

¹ 1967, I LLJ 114
ii) who is employed in the police service or as an officer or other employee of a prison; or

iii) who is employed mainly in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature

Section 2(2) (b) in Act 37 of 1970

“Workmen” mean any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person –

(a) who is employed mainly in managerial or administrative capacity; or

(b) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercise either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

(c) who is an out-worker that it to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purpose of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other
premises, not being premises under the control and management of the principal employer.

It is enough to emphasize the common factor found in both the definitions i.e., the terms of the employment may be expressed or implied. Also, the significance of section 2 (2) (b) of the act is as follows:

"A workmen 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."

In Best and Crompton case Apex Court held that—

"This definition in our view implies that if the workman in not hired through a contractor holding a valid licence under the act, he would be a workman employed by the management itself. Further, the management must be aware that the contractor had no valid licence and that, therefore, the workman could not be contract labour within the meaning of Section 2(2)(b) of the act. The management yet engaged the services of these 75 workmen and paid their wages through the contractor, Kesavan. The intermediary because of want of licence in his favour will have no existence in the eye of law. It would thus lead to the position that there is but direct relationship between the management and these 75 workmen. Would it not immediately lead to the result that there is an implied contract between the management and these 75 workmen to the effect that as long as they did the work allotted to them, they would be paid respective wages. We thus come to the
conclusion that in the above admitted circumstances, these 75 workmen were employed by the establishment."

2) **Industrial Disputes Act as it stands today does not include a contract employee at all.** However, on a reference being made under section 10 of the Industrial Disputes Act, the Industrial Tribunal/Labour Court may give finding that the employees are, in fact, the employees of the principal employer and that the contract is only a sham. The Industrial Tribunal / Labour court would there upon be entitled to grant the relief of reinstatement to such contract employees and further direct the principal employer to grant them all the benefits which a regular employee is entitled to. It is relevant here to state that only one State Act i.e. the U.P. Industrial Disputes Act has a definition which is very similar to the definition of the term “employee” as contained in Section 3(13) of the Bombay Industrial Relations Act, 1946. That is the only State which has in effect covered the contract employees expressly by defining the term “workmen” in such a way so as to include and bring a contract workman within its purview.

3) **Workmen - Definition in Industrial Disputes Act and Contract Labour Act – Relationship.**

In Food Corporation of India workers union v. Food Corporation of India the Supreme Court held that admittedly the workmen of the corporation had been employed earlier as contract labour by the labour contractor engaged by the corporation. This system was abolished and the workers of the contractor became the
workers of the corporation but the corporation reintroduced the contract system by engaging Sardars/Mondels as its agents and thereby terminated the services of the workmen. A dispute was raised by the workmen on the ground that the provisions of Section 25-F of the Industrial Disputes Act were attracted and therefore, the termination of their services in violation of Section 25-F of the Industrial Disputes Act was bad in law. The Supreme Court ruled that the workmen were the workmen of the Corporation and in that context observed as follows at p.9 of (1985 II LLJ 4)

It was ultimately held that even assuming that Respondent – 2 had a valid licence and the Corporation had a valid registration certificate at the time of appointment of Respondent – 2 as its contractor for the supply of contract labour, does the act permit the engagement of large number of workmen who are workmen within the meaning of Industrial Disputes Act, as contract labour by denying them the protection of the Industrial Disputes Act. One of the important conditions of service of the workmen is the security of the tenure of employment. Section 30 of the act gives indication as to the obligation of the principal employer in regards to the security of the tenure of employment of the workmen employed by the contractor. If the Industrial Disputes Act is applicable to their conditions of service, they can raise a dispute and claim the benefit of Section 25 (N) and (F) of the Act if their services are terminated. Rule 25 of Karnataka Rules also gives an indication that the rights
of the workmen under the act are not exhaustive of their rights relating to their service conditions.¹

¹ FCI Loading and unloading worker’s union v. FCI 1987 I LLN 407 P 419-422 (Karn.)

Reference
1) Law of Industrial Disputes
   By S B Rao  P 82
2) Industrial Disputes Act 1985
   By Malhotra O P
3) Industrial Disputes Act 1947
   By Mukherjee and Bagchik
4) Industrial Disputes Act 1980
   By K D Srivastav
5) Employer’s Guide to Labour Law
   By S R Samant  P 131
7.12 BOMBAY INDUSTRIAL RELATIONS ACT 1946

Object of the Act

The object of the act is to regulate the entire range of relations of employers and employees with particular insistence on promotion of collective bargaining and preventive of strikes and lockout.

Bombay Industrial Relations Act is preventive, the Industrial Disputes Act is curative. While the former makes elaborate provision for regulating industrial relations, greater emphasis laid on dispute resolution under the scheme of the Industrial Disputes Act.\(^1\)

Bombay Industrial Relations Act 1946 is applicable only to those industries which were covered by the Bombay Industrial Disputes Act 1938 in the Bombay area of the state and by the Central Province and Berar Industrial disputes settlement Act 1947 in the Vidarbha area of the State. In the Bombay State the B.I.R. Act 1938 was applicable to certain organized industries such as cotton textile, silk textile, sugar etc.

`Employee’ under Bombay Industrial Relation Act 1946 Section 3(13)

`Employee’ means any person employed to do any skilled or unskilled work for hire or reward in any industry and includes –

\(^1\) Co-operative Bank Employees Union V Yeshwant Sahakari Bank Ltd. & other 1992 II CLR 840
a) Person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clauses (e) of clause (14)

b) A person who has been (dismissed, discharged or retrenched or whose services have been terminated) from employment on account of any dispute relating to change in respect of which a notice is given or an application made under section 42 before or after his (dismissal, discharge, retrenchment or as the case may be, termination from employment)

But does not include

i) A person employed primarily in a managerial, administrative, supervisory or technical capacity drawing basic pay (excluding allowances) exceeding one thousand rupees per month.

ii) Any other person or class of persons employed in the same capacity as those specified in clause (i) above irrespective of the amount of the pay drawn by such person which the state government may by notification in the officer gazette specified in this behalf.

The Bombay Industrial Relations Act applies only to industries which are defined under Sec. 3(19) read with the notification issued under the act making the provision of the act applicable to certain kind of industries.
Contract labour and Bombay Industrial Relations Act 1946

The act is applicable to every skilled or unskilled person employed in any industry to which the act is applicable including a person employed by a contractor but excluding a person employed primarily in a managerial, administrative, supervisory or technical capacity drawing basic pay exceeding Rs.1000 per month Sec. 3 (13). Hence contract labour are covered under BIR Act.

Under the act contractor workmen are automatically considered as employees of the Principal employer for all purpose Sec. 3(13) (a), 3(14) (c).

Labour employed through contractor - Whether employee?

Supreme Court in *Maharashtra Sugar Mill Ltd Vs. State of Bom*¹ held that if the contractor who are engaged by the company to employ such labourers who may carry on operation of the undertaking and those employees engaged by the approval of the factory owner. Thus even though the labourers were paid wages by the contractor, the labourers employed by the contractors will be deemed to be ‘employee’ within the meaning of the act.

¹ AIR 1951 SC 313
Canteen Workers employed through contractor – Whether employee?

A contractor brought some canteen workers who were regularly working in the canteen of the mill. After a good deal or time, the contract of the contractor was terminated and workers were excluded from the working in the canteen. They raised an Industrial Dispute in regards to their termination from the canteen of the mills and it was held that those canteen workers were included in the terms ‘employee’ as defined. Under section 3 (13) of the act and they were entitled to raise an Industrial Dispute.¹

¹Patel Mill Ltd V. Ratilal Diabhai 1957 LLJ 75 LAT
Reference:
1) Bombay Industrial Act and Rule
   By K L Sethi  P 15,24
2) Bombay Industrial Relations Act 1946
   By Gupte A K & Dighe S D  P
3) Bombay Industrial Relations Act 1946 with short notes
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4) Comprehensive Booklet on Contract Labour Act
   By Handa, Pathak & Gupta  P 42
5) Employees Guide Labour Law
   By S R Samant  P 10
7.13 THE MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICE ACT 1971

Object of the Act

The main object of the act are

a) to recognize certain trade unions for promoting collective bargaining

b) to prevent certain unfair labour practice on the part of the employers employees and trade unions and

c) to prohibit certain strikes and lock out (preamble)

The state of Maharashtra is the first state to enact special legislation for the prevention of victimization and other unfair labour practice on the part of employers’ workmen and trade union. The important feature of the M.R.T.U. and P.U.L.P. Act 1971 is that like the Bombay Industrial Relation Act it provides to a person aggrieved by the commission of any unfair labour practice a quick and direct approach of law.

‘Employee’ under M.R.T.U. and P.U.L.P. Act 1971 Sec. 3 (5)

‘Employee’ in relation to industry to which the Bombay Act for the time being applies; means an employee as defined in clause (13) of Section 3 of the Bombay Act and his any other case means a workmen as defined in clause (5) of section 2 of the Central Act.

This act does not define the term ‘employer’ or ‘employee’. However in section 3(5) of the act it is provided that the term ‘employer’ will have the same definition as is applicable under Section 3(14) of the Bombay Industrial Relations Act or 2(g) of the Industrial Disputes Act. Similarly, the term ‘employee’ also adopts the respective definition given to the said term under the Bombay Industrial Relations Act as well as under the Industrial Disputes Act. The said act does not as such require any obligations or liabilities of the principal employer. However, the act defines certain acts on the part of the employer as unfair labour practice in Schedule IV of the act viz. item no. 2. Therefore, if an employer engages employees on contract basis as a measure of breaking the strike which is illegal after abolition work of a regular nature the said would amount to an unfair labour practice act and an employer would be punishable under the said act upon a declaration being given by the competent Court under the act.

Under Bombay Industrial Relation Act Sec. 3(13) which defines the term ‘employee’ includes contract employees and hence gets the protection under the said statute. But Industrial Dispute Act as it stands today does not include a contract labour at all.

Complain of Unfair Labour Practice

In Maharashtra general kamgar union v/s Cipla case - Respondent no. 1 is a Pharmaceutical Company Respondent No. 2 is contractor holding licence under contract labour (Regulation and Abolition) Act – Petitioner is union of about 35 workmen working
on the premises of respondent no. 1 in cleaning and sweeping work – petitioner filed complaint of unfair labour practice alleging that 35 workmen are employed by the respondent no. 1 and that so-called contract labour employed through respondent no. 2 is sham.

Respondent no. 1 contends that as relationship of employer and employee denied, the court under the act has no jurisdiction. Held that the court under the act has jurisdiction to determine the issue of relationship of the employer and employee and that if it is pleaded that the workmen are the workmen of an independent contractor under contract between the contractor and the employer, the court will have jurisdiction to adjudicate upon the issue whether the contract is genuine or sham and bogus.¹

Termination of Contract Labour

In Krantikari suraksha rakshak sangatana case - Respondent no. 2 company employed 29 security guards as contract labour of respondent no. 3 who has no licence under contract labour (Regulation and Abolition) Act 1971. Service conditions of 29 security guards and other directly appointed security guards were different. Later service of 29 security guards was terminated. The point is whether Respondent no. 2 is guilty of unfair labour practice.

Held that the court under the act has no jurisdiction to proceed on presumption of employee – employer relationship between respondent no. 2 company and 29 security guard and come to conclusion respondent no. 2 was guilty of unfair labour

¹ Maharashtra General Kamgar Union V Cipla Ltd. & Other 1996 II CLR 770 (Bom. H.C.)
practice. Industrial court has no jurisdiction to abolish the contract system and treat security guard as direct employees of respondent no. 2. In the absence of adjudication it is not open to Industrial Court under the ULP Act to abolish contract system and treat 29 security guards as direct employees of respondent no. 2 company.¹

¹ Krantikari Suraksha Rakshak Sangatana v S.V. Naik 1993 I CLR 1003 Bombay D.B.

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