CHAPTER – 2

HISTORICAL GROWTH OF GOVERNMENT POLICY ON CONTRACT LABOUR

Several enquiry committee found that working and living conditions of labour employed through contractors were worse than those of their counterparts engaged directly by employers. The acute insecurity of employment of such labour and their exploitation in various forms was invariably attributed to jobbers who recruited them and supervised their work.

The origin of government\(^1\) concern towards the plight of contract labour can be traced back to the decade beginning 1860 when limited legislative action was initiated with reference to the contract labour engaged in plantations. From their onwards up to the setting up of the Royal Commission on Labour, in 1929 most protective and ameliorative measures can be characterised as sporadic, limited and half hearted. The Royal Commission on labour recommended the abolition of jobbers role in recruitment all over the country. The plight of the contract labour, and the need for action, was highlighted by all inquiry committees set up during the fifteen years that followed the Royal Commission Report. The strong concern generated by such recommendations forced the government into action, and several measures to regulate their working conditions have been taken since 1947, the latest being the Contract Labour (Regulation and Abolition) Act 1970.

\(^1\) Contract Labour in manufacturing industry a report and Analysis by K.N. Vaid PP. 74-78
A rapid review of government policy on contract labour during the last one hundred years brings our three phases that permit a meaningful discussion, namely –

i) Antipathy (1859-1930)
ii) Awakening of Public Conscience (1931-1947)
iii) Concerted Action (1947 onwards)

i) Antipathy

The remote location of plantations necessitated recruitment of labour from distant areas, which resulted in the emergence of an “indentured” labour system. The “sirdars” recruited labour in Chhota Nagpur and the surrounding areas and transported the recruits and their families to the tea districts in Assam. The contractual obligations of workers were such that they could seldom hope to return home or to make a human living on plantations.

The Government of Bengal was the first to set up commission in 1861 to inquire into the problems of plantation labour. The recommendations of this commission led to the passage of the Transport of Native Labourers Act, 1863. This act sought to regulate i) the passage and transport of native labourers from and through the provinces under the jurisdiction of the Bengal Government, and ii) the manner of engaging and contracting with the native inhabitants. An amendment to the act in 1865 limited the maximum period of contract of service to three years.
Another enquiry committee set up by the Bengal Government in 1869, stressed the inadequacy of the existing provisions, and commented on the added evil of the penal contracts. A subsequent legislation in 1873\(^1\) sought to remedy some of these defects. The enactment covered plantations in the districts of Assam, Cachar, and Sylhet, and was extended to Chittagong and Chattisgarh districts in 1879.

Two more enquiry commissions were set up in 1881 and 1885 respectively and their recommendations resulted in further legislation\(^2\). Similar legislative action was taken in the Madras Presidency where the Madras Plantation Labour Act was passed in 1903.

In addition to the many disadvantages suffered by the contract labour, the Workmen’s Breach of Contract Act, 1859 operated in holding them criminally responsible in the event of a breach of contract of services. Moreover, section 490 and 492 of the Indian Penal Code were also being utilised by the employers to the disadvantage of the workers. The Assam Labour Enquiry Committee (1921-22) recommended, among other things, the abolition of the Workmen’s Breach of Contract Act 1859 and section 490 and 492 of the Indian Penal Code. The said act and the two sections of the Indian Penal Code were repealed in 1925.

\(^1\) Tea Dist (Emigration of Labour) Act 1873
\(^2\) Inland Emigration Act 1882 (Amended in 1893) and Assam Labour & Emigration Act 1901
Other industries in which engagement of contract labour was substantial included mining, Central Public Works Department, ports and docks, cement and engineering. No pointed attention, however, was directed towards the problem of contract labour in these industries. "In 1926, the Bombay Textile Labour Union told the Indian Tariff Board that the system (contract labour) prevailed in almost all mills, even those under exceptionally good managements." The Board recommended that "all labour should be engaged directly by the officer of the mill or in-charge of the department which requires it or by a responsible assistant and not by the jobber."

In 1926, the Federal Government addressed a communication to all the provincial governments asking their opinion about the modification of the existing statutes insofar as the recruitment of contract labour was concerned. On the basis of the replies received, the "Assam Labour Bill" was drafted in 1929 and sent to the provincial governments for comments. The setting up of the Royal Commission on Labour in the same year made this document almost redundant.

Thus, we find that during the period 1861-1929, governmental action regard to contract labour was confined to the plantations only, concerned itself with employment conditions, and was of interest to the provincial governments only.

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ii) **Awakening of Public Conscience**

The Royal Commission on Labour made the following observation about the role of the jobber. "He is primarily a chargeman promoted from the ranks after full experience of the factory, he is responsible for the supervision of labour while at work...... He is not, however, merely responsible for the worker once he has obtained work; the worker has generally to approach him to secure a job and is nearly always dependent on him for the security of that job as well as for the transfer to a better one. Many jobbers follow the worker even further than the factory gate; they may finance him when he is in debt and he may even be dependent on them for his housing."

Having condemned the institution of jobbers, the commission suggested an alternative method of labour recruitment.

"The present power of the jobber is given by the employer, who permits him to select or engage labour and to influence or procure its dismissal. We advocate for all factories the exclusion of the jobber from the engagement and dismissal of labour. This can best be achieved by the employment of a labour officer .... He should be subordinate to no one except the general manager of the factory, and should be carefully selected....... No employee should be engaged except by the labour officer personally, in consultation with the

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1 Report of the Royal Commission on Labour Chapter III P.23
departmental heads, and none should be dismissed without his consent, except by the manager himself, after hearing what the labour officer has to say. It should be the business of the labour officer to ensure that no employee is discharged without adequate cause ....”

The commission made specific reference to the women workers employed by contractors and observed:

“We recommend that, where women are engaged in substantial numbers, there should invariably be employed at least one educated woman in charge of their welfare and supervision throughout the factory, Should be responsible to the labour officer, where there is one, and the manager where there is not, for the engagement and dismissal of all the female staff, whether permanent or temporary”.

The findings of the Royal Commission on labour were, for the first time, on the basis of an extensive study of the conditions prevalent in different industries. Its recommendations resulted in the employment of labour officers by many industrial establishments. A more specific consequence of these recommendations was the creation of the post of labour officer under the Bombay Trade Disputes Act, 1934. This officer was expected to investigate the cases of bribery and corruption arising out of malpractices regarding recruitment.
The Bihar Labour Enquiry Committee also condemned the practice of engagement of labour through contractors. It observed:

"The contractors ordinarily lack a sense of moral obligation towards labour which the employers or the managers are expected to have, and therefore do not often hesitate to exploit the helpless position of labour in their charge."¹

Agreeing generally with the findings and recommendations of the Royal Commission on Labour, the Bombay Textile Labour Enquiry Committee felt that:

"If the managements of the mills do not assume responsibility for such labour, there is very likelihood of its being sweated and exploited by the contractor."²

It, therefore, recommended that "Contract system of engaging labour should be abolished as soon as possible and that workers for every department in a mill should be recruited and paid directly by the management."

These developments were instrumental in bringing to therefore the drawbacks of the practices of engagement of labour through contractors. Very little tangible action—legislative or executive — followed these findings and recommendations.

¹ Bihar Labour Enquiry Committee Report, Patna Govt Press 1940
² Bombay Textile Labour Enquiry Committee, Report Bombay Govt 1937 P.37
The Labour Investigation Committee in its report in 1946 examined in detail the nature of workforce and the needs of industry. It made the following observations:

"In spite of the undoubted abuses of the system, however, it is not certain that Indian labour has yet reached that stage of development and mobility where the intermediary for recruitment can be easily dispensed with; and under the existing circumstances, in the absence of the alternate agencies, the jobber or his various name-sakes have to be accepted as an inevitable fact.... To admit the inevitability of the jobber does not mean, however, that steps should not be taken on an increasing scale to regularise the system of recruitment for industries or put some method into it."¹

The committee recommended the "abolishing" of contract labour system, wherever possible, and "regulating" it in all other cases.

iii) **Concerted Action**

Armed with facts pointing to the sad plight of the contract labour and supported by strong public concern on the issue, the government of India moved in the matter. The strategy adopted by it was to include contract labour, wherever possible, in the definition of "worker" in the new Factories Act 1948, the Mines Act, 1951 and the Plantation Labour Act, 1952. Many categories of contract labour became entitled to the working conditions and hours of

¹ Labour Investigation Committee main report P.80
work as admissible to the directly employed persons. The coverage of "immediate employer" under the Employees State Insurance Act 1948, extended all health insurance benefits to the contract labour. The Dock Workers (Regulation of Employment) Act, 1948 (and the schemes introduced in Calcutta, Bombay and Madras Docks under it) protected the employment, wages and welfare conditions of specified categories of contract labour employed at their major docks. The Tea Districts (Immigration of Labour) Act was also amended in favour of contract labour. Following the recommendation of the Industrial committee on Coal Mines. Contract labour was abolished in railways, Collieries in 1948. The C.P.W.D. Rules for contractors were made operative in 1948 where in effect job contracts were to be given only to contractor who were on the "Approved List" and agreed to pay fair wages to workers and to provide them with working conditions, welfare services and housing in the specific standards. A similar system was introduced by the railways for its contractors. The Minimum Wages Act, 1948 sought to fix the minimum rates of wages payable to workers employed in "scheduled" industries and occupations. A large section of contract labour has thus been covered under this act. Contract labour were declared "workmen under the Bombay Industrial Relations Act, 1946 and under similar act in Madhya Pradesh, Gujarat and U.P. As such they may raise disputes and enjoy all such protection and benefits as enjoyed by the directly employed workmen, under the said acts.
Thus, we find that during the period 1947-54, the government attempted to extend a measure of protection and benefits to contract labour, whenever it did so for directly employed workers. As a result of this policy, protection and privileges provided to the contract labour differ from industry to industry, from area to area, and even from one category to another employed in the same industry, in the same city. The secondary position that got assigned to the contract labour due to conjunctive clauses to various definitions gave rise to differences in interpretation and litigation, inadequate procedures and poor implementation.

The government was conscious of these inadequacies, but was not sure about the propriety of a comprehensive measure and its effects on industry. Replying to a parliamentary debate, the then labour minister Khandhubhai Desai: “Big employers generally take excuse by employing contractors in order to evade some of the labour laws. This is under the consideration of the government. At the same time, I must say, that the complete abolition of the system of contract labour throughout the country is not possible in view of the large public works that we are having and which have got to be completed through contract labour.”

A more systematic approach towards the solution of the problem of contract labour seems to have begun with the

1 Loksabha Debated Vol.II Part II 23rd March 1995 P.3033
formulation of the Second Five Year Plan in year 1956. It visualised a definite course of action which included steps to

"a) Undertake studies to ascertain the extent and nature of the problem involved in different industries.
b) Examine where contract labour could be progressively eliminated. This could be undertaken straightway;
c) Determine cases where responsibility for payment of wages, ensuring proper conditions of work, etc. could be placed on the principal employer in addition to the contractor.
d) Secure gradual abolition of the contract labour system where the studies show this to be feasible, care being taken to ensure that the displaced labour is provided with alternative employment;
e) Secure for contract labour conditions and protection enjoyed by other workers engaged by the principal employer;
f) Set up schemes of decasualisation wherever feasible.¹

While these development were taking place, a significant trend was introduced by the observations made in a Supreme Court decision, indicating specific situations wherein contract labour should not be engaged². It may be emphasised that the issue of “job contracting” was seriously considered only after this judgement. The subject of contract labour was discussed extensively at the 19th and

¹ Second Five Year Plan Govt of India PP 582-583
² Standard Vaccum oil refining Co. of India Vs Their workmen and other civil appeal No.130 of 1959.
20th sessions of the Indian Labour Conference when the criteria laid down by the Supreme Court were accepted with certain modifications.

In pursuance of the first recommendation, the labour Bureau, Simla (Ministry of Labour and Employment, Govt. of India) undertook surveys of ten selected industries to “ascertain the extent and nature of the problem “relating to contract labour”. Industries so far surveyed by it includes: Iron Ore Mines, Petroleum Refineries and oil fields, distribution and marketing of petroleum, Ports, Railways, Building and construction, Manganese Mines, Iron and Steel limestone quarries and cotton Ginning and Bailing.1

In 1959, Supreme Court of India in its Judgement is STANVAC Vs their workmen (Civil appeal no. 130 & 1959) observed that work through contract labour should not be allowed where
A) the work is perennial and must go on from day to day
B) the work is incidental and necessary for the work of the factory
C) the work is sufficient to employ a considerable number of whole time workers
D) the work being done is must (other) concerns through regular workmen.

This decision of Supreme Court was considered at the nineteenth session of the Indian Labour conference in 1959. The conference accepted subject to certain safeguards, the principals laid down by the supreme court. It also felt that legislation might become necessary for the effective implementation of the suggestion. Thereafter the Union ministry of labour and employment drafted a bill on the subject which sought “to regulate the employment of contract labour in certain establishment and to provide for their welfare and for matter connected thereof. The draft bill provided for licensing of contractors and registration of factories employing contract labour and made employer responsible for the implementation of its provision.

In the Second Five year plan the planning commission made certain recommendation namely undertaking of studies to ascertain progressive abolition of contract system and implement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite committees at which the state government were also represented and the general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.
The bill aims at abolition of contract labour in respect to such categories as may be notified by appropriate government in the light of certain criteria that have been laid down and of regulating the services conditions of contract labour where abolition is not possible. The bill provides for the setting up of advisory boards of a tripartite character, representing various interests, to advise central and State Government on the legislation and registration of establishments and contractors. Under the scheme of the bill, the provision and maintenance of certain basic welfare amenities for contract labour like drinking water, first aid facilities and certain cases rest rooms and canteen have been made obligatory. Provision have also been made to guard against delays in the matter of wage payment.

As a consequence of the discussions at the Indian Labour conference, the government came to the conclusion that legislation was necessary for the enforcement of the decisions. Accordingly, the Ministry of Labour and Employment drafted the "Contract Labour Bill" and circulated it for comments to the organisations of employers and workers. The draft bill was also discussed at the 23rd session of the Standing Labour Committee (March 1965) and then was referred to special sub-committee which could not come to any agreed decisions. Thereafter, the government went ahead on its own and prepared a revised draft.
The Contract Labour (Regulation and abolition) Act 1970 was enacted in the year 1970 with view to regulate the contract labour and to provide for its abolition in certain circumstances. Generally, it is considered that the practice of engaging contract labour in pernicious, beset with exploiting tendencies and resulted in unwholesome labour practices coming in the way of proper working conditions. However, it is not possible to eliminate engaging of contract labour altogether in that case there are several fields of employment where it is not possible to have a continuous employment. The process, operation or other work incidental to or necessary for the industry, trade or occupation may be of such a nature that a permanent workforce would not be practicable and necessary. In such a situation, it is inevitable for the employer to engage contract labour for a short period of during the intermittent period of work. The act provide for the continuation of contract labour wherever it become necessary and where it is not possible to have permanent labour force. If engaging contract labour is inevitable as a necessary consequence there of their working conditions will have to be properly regulated. These are provided in the act, thus, the act has two main objectives.¹

1) to prohibit the employment of contract labour and
2) to regulate the working conditions of contract labour wherever such employment is not prohibited.

¹ Contract Labour (Regulation & Abolition) Act 1970, Commentaries, V.K. Kharbanda P.4-5
Development of government policy on contract labour in the course of the last one hundred years brings out a few significant features.

First, the breadth of government concern about the conditions of contract labour has shown a gradual widening both in terms of the industries covered and the aspects sought to be regulated. The earliest attempts were directed towards the amelioration of the working conditions of a small section of the workforce in one industry, namely the plantations. The later developments were more inclusive and the proposed legislation seeks to cover the ‘contract labour’ in all industries and to regulate most aspects of the condition of their employment.

Second, all measures adopted during the last one hundred years focussed attention on the labour supplied through contractors i.e. ‘labour contracting’ (another significant form of engagement of contract labour) came to be considered specifically. The proposed bill, however, is wide enough in its scope and coverage to include both “Labour contracting” and “job contracting” under its ambit.¹

Until the recommendations of the Labour Investigation Committee it 1946, all earlier committees and commissions pleaded for an indiscriminate abolition of the contract labour system. These bodies were influenced more by a concern for social justice than by the demands of economy and efficient plant operation. The Labour Investigation committee, for the first time visualised a more pragmatic approach to the problem, viz.

¹ Contract Labour is manufactring Industries report and analysis by K.N. Vaid PP.78
Abolition of the practice wherever feasible and its regulation in other places. This trend has established itself since then and the proposed bill includes provisions covering broadly these two alternatives.

The nature and extent of responsibility imposed on the "principal employer" has undergone a substantial change during the course of this development. Throughout the preceding century it had been felt that the principal employer was only indirectly responsible for the well being of contract labour. But the recent approach suggests that the principal employer would be increasingly saddled with direct responsibility in the implementation of the proposed provisions for safeguarding the interest of contract labour.