CHAPTER – IV

NEW DEAL
PERTAINING TO
CONTRACT LABOUR:
A JUDICIAL
PERSPECTIVE
4.1 INTRODUCTION:-

The system of contract labour may imply a variety of contract labour arrangements, diverse in character, varied in content and form. However, such arrangement may broadly be cast into two categories, "job contracting" and "labour-only contracting", said by Alok Bhasin.1 However, as per sec. 2(1) (b), of The Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act), a workman is called contract labour if he is hired in through contractor in connection with the work of establishment.

The contract labour employment is distinctly different from regular employment. The nature of the job contracting is such that the principal or primary establishment contracts with an established enterprise generally known as contractor. A Contractor is independent person who conducts the business on his own account. His work is to supply goods and services as per the requirement of principal employer. This contractor discharges his contractual obligations with the help of his own employees. The contract workers work under the supervision and control of the contractor. The contract of employment is between the contractor and his employees. The employees are concerned with their employer (contractor) and the principal establishment.

The contractor is paid by the principal establishment on the basis of output. The principal establishment do not take into consideration the number of contract workers engaged for particular

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output. Thus the contract in such circumstances is one between two principals.

On the other hand, in labour only contracting, the main object of the contract is to supply labour and not to supply goods or services by the contractor to the principal establishment. Thus this differs in nature from the job contracting. Under this contract the contractor is paid on the basis of the number of workers supplied by the contractor to the principal establishment.

The contractor is under the obligation of supplying labour only. He is not supposed to provide any specialised service which requires skill or special knowledge or technology. In practice sometimes a contractor supervises the work of the contract workers. But in this type of contract, law has imposed a duty on the employer of supervision on these workers. So the real control, especially the economic control remains with the principal employer.

The CLRA Act does not define the concepts of ‘Labour-only contracting’ and/or ‘job-contracting’. However, the definition of ‘contractor’ as provided in Section 2 (1) (c) of the Act, includes both types of contractors—those engaged in ‘labour only contracting’ as well as ‘job contracting’. Section 2 (1) (c) of the CLRA Act states, “contractor in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor”. Thus this act does not prohibit recourse to ‘labour only contracting’. The Second National Commission on Labour has not recommended any change in the present definition of ‘contractor’ as contained in this Act.

The 85th International Labour Conference held at Geneva on June 2, 1997 contended regarding the position of contract labour in

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the following words. “Contract Labour is one of several terms which are widely used to describe work arrangements which do not fall within the traditional understanding or definition of employment”. It further added that contract labour is neither an employment relationship nor it is a commercial arrangement.

Throughout the world there is increasing tendency on the part of the employers to assign more and more work to contract workers, instead of getting it done through regularly employed workforce of their own. This contract labour system enables employers to save cost and improve their competitive positions. On the contrary, the contract labourers are exposed to various abuses inclusive of insecurity in employment, meagre wages and any prospect in employment sham contractors is also one of the abuses. Due to contract labour system employees can shift their responsibilities or liabilities as employer upon the contractor, who himself is not in good economic conditions.

The International Labour Conference\(^3\) has reported that contract workers are likely to be “more volatile, less skilled and less committed”. This could seriously under- mine quality, productivity and discipline. The main aim of this conference was promoting universal respect for core labour standards, harnessing the employment - generating potential of small and medium sized enterprises, modernizing the regime governing fee-charging employment agencies and adopting the ILO’s programme.

For this purpose different committees were appointed at the conference. One of them was a committee on labour. This committee undertook its first discussion on the development of possible new standards to regulate the use of contract labour. A report prepared for the conference noted that increased competition, globalisation, new technologies and restructuring are dramatically affecting relationships between employers and workers. Traditional long-term formal employment is increasingly giving way to the use of contract

\(^{1}\) supra note2
workers, with a parallel growth in new approaches to the rights of workers as well as social and safety factors.

Globalisation of economy has affected the profitability of small, medium sized and large firms as well. Consequently, to remain globally competitive industrial establishments have been compelled to find out new devices and strategies of cutting costs and improving quality of their products or services. Then and then only they can enhance their competitive position.

For achieving the aforesaid objectives they have to restructure their organisations and production methods by resorting to core and non-core parts of the production. To perform their main work or core part of the production they employ their regular workforce who is their own employees. However, to carry out ‘peripheral’ or non-core activities such as security, cleaning, canteen, stores, transport, housekeeping, gardening or the like, they engage independent contractor, who provides such services by its own employees. Such an arrangement enables the primary firm or establishment to concentrate on its ‘core’ operations. The independent contractor is normally specialised in particular kind of job assigned to him.

Many a times these firms may even outsource their core operations, partly or wholly. This happens when an employer is in need to carry out urgent orders or sometimes for certain reasons regular employees are not responding.

Everywhere in the world including India the trend of big industrial establishments is that of ‘lean production methods’ of decentralised production and ‘outsourcing’ their requirements from small supplies or firms. At the same time they can impose strict norms of quality and standards upon them.

4.2 OUTSOURCING:-

In today’s world a company must outsource to stay competitive. Leading companies worldwide acknowledge that to stay
ahead, they need to reduce costs, provide the best quality, use the latest high-tech skills, as well as be reliable and creative. Outsourcing in the world today is seen as a strategic management option rather than just a cost cutting operation. It aids companies to achieve their business objectives through operational excellence and a better market position. In order for companies to focus on their core competencies, all companies today outsource one or more of their operations. In order to compete in the global economy companies need to focus their resources on their core operations.4

The Webster's Universal Dictionary meaning of "Outsourcing" is, "A Company of person that provides information; to find a supplier or service, to identify a source". Outsourcing is a process in which a company delegates some of its in-house operations to a third party. Thus, it is contract through which one company purchases services from another, while ownership and ultimate responsibility is retained.

The outsourcing is very beneficial for the industries. The industry can avail of professional manpower, modern technology. It can focus its attention and resources on core business process. It is cost saving. Through outsourcing companies receive flexibility in decision making and companies are able to quickly set up or change certain operations or manufacturing processes depending on the requirements at hand. The technology market develops very fast therefore it is difficult to keep with latest innovations and solutions. Through outsourcing companies can get latest and world-class technology at lower rates. Ultimately productivity is increased. The companies also get tax benefits by saving on costs.

There is distinction between outsourcing and contract labour. In contract labour the ownership or control of the operations or process being contracted is with the principal employer, whereas in outsourcing the control of the process is with the third party, instead of the principal employer. In other words through outsourcing a

4 www.go4customer.com
company delegates a part of its in-house operations to a third party. The third party has full control over that operation.

At present along with the appointment of contract labour the practice of outsourcing is also increasing. As per the Financial Dictionary outsourcing is a fashionable word, much loved by bureaucrats, meaning the buying of goods and services as an efficient alternative of producing them 'in-house'. It is much the same thing as calling tenders and awarding contracts.

4.3 THE CIRCUMSTANCES INFLUENCED TO PASS THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970:-

In India, CLRA Act has been passed to safeguard the conditions of service of contract labour. The title of the Act indicates that the Act does not provide for the total abolition of contract labour but provides only for its abolition in certain circumstances and also for the regulation of the employment of contract labour in certain establishments.

Before enactment of this CLRA Act, industrial disputes relating to prohibition of the contract labour system and regulation of the service conditions of contract workers used to be adjudicated upon by the Industrial Tribunals under the IDA. The industrial tribunals used to pass orders for protecting the interests of the contract workers and also their prohibition.

Various courts including the Supreme Court gave the verdict for abolishing contract labour. They have justified their decisions on the basis of the reports of different committees or commissions suggesting abolition of this system of contract labour.

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5 www.anz.com
6 refer annexure 3
One such committee was the Rege Committee appointed in 1946. The committee observed that, "whatever may be the grounds advanced by employers, it is to be feared that the disadvantages of the system are for more numerous and weightier than the advantages". The Rege committee recognised the need for contract labour, but suggested for its abolition where it was possible. The committee also recommended for regulating conditions of service where the continuance of contract labour system was avoidable.

The Industrial Committee on Cement passed a unanimous resolution at its second session held at Hyderabad on March, 1954, for the abolition of contract labour in occupations connected with the manufacturing process.

Before enactment of CLRA Act, different committees or commissions have been appointed to study different aspects of labour. The Royal Commission on Labour in India was appointed in 1929, by the then British Government which is also known as 'Whitely Commission'. It has observed in its report as follows:-

"We have found it to be generally true that workmen employed by salaried managers, who are personally responsible for their workers, receive more consideration than those employed by contractors. We believe that whatever the merits of the system in primitive times, it is now desirable if the management has to discharge completely the complex responsibilities laid down upon it by law and by equality, that the manager should have full control over the selection, hours of work and payment of the workers".

Different committees including the industrial committee on Cement, the Bombay Textile Labour Enquiry Committee advocated abolition of contract labour. The Labour Investigation Committee of the Government of India drew a distinction between essential and non-essential process in an industry. It recommended the prohibition

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7 as referred in Steel Authority of India V. National Union Water Front Workers AIR 2001 SC 3527.
8 as referred in Bombay Metal and Alloys Manufacturing Company Ltd. V. Workmen. (1955) ILJ 102 Bom. (IT)
9 supra note 1.
on the employers which seek to avoid their obligation towards workers by delegating essential process. This committee gave suggestion to regulate the conditions of contract labour in the industries where its existence was inevitable.

In its introductory part the Second Five Year Plan\(^\text{10}\) stated that it seeks to rebuild rural India, to lay the foundations of industrial progress and to secure to the greatest extent feasible opportunities for weaker and under privileged sections of our people and the balanced development of all the country. In 1956, the Second Planning Commission observed that in the case of contract labour the major problems relate to the regulation of working conditions and ensuring them continuous employment. For that purpose the commission suggested that it was necessary to:

"(a) undertake studies to ascertain the extent of the nature of the problems involved in different industries;
(b) examine where contract labour could be progressively eliminated. This should be undertaken straightway;
(c) determine cases where responsibility for payment of wages ensuring proper conditions of work and the like, could be placed on the principal employer in addition to the contractor;
(d) secure gradual abolition of the contract system where the studies shown this to be feasible, care being taken to ensure that the displaced labour is provided with alternative employment;
(e) secure for contract labour the conditions and protection enjoyed by other workers engaged by the principal employer; and
(f) set up a scheme of decasualisation wherever feasible."

In December 1966, the Government of India set up a National Commission on Labour to study and make recommendations on various aspects of labour including wages, working conditions, welfare, trade union development and labour management relations. The Commission submitted its report in August 1969 recording the finding that the contract labour system was functioning with

\(^{10}\) Second Five Year Plan, Ch. 27. Labour Policy and Programmes.
advantage to the employer and disadvantage to the contract labour and recommended that it should be abolished.

The commission observed that the benefits of working conditions and hours of work admissible to labour directly employed were made available to the contract labour as well. While recommending abolition of contract labour altogether, the National Commission on Labour emphasised that such facilities which other regular workers enjoyed, should be made available to contract labour if for some unavoidable reasons the contract labour had to stay the National Commission on Labour noticed the fact of introduction of the Contract Labour (Regulation Abolition) Bill, 1967 in Parliament, which incorporated to a great extent the said recommendations regarding regulation and abolition of employment of contract labour.

The Bill later became the CLRA Act. Thus as a result of the reports and the discussions and the like that took place, Parliament enacted the CLRA Act, 1970 to deal with the abuses of contract labour system.

4.4 CONSTITUTIONALITY OF THE ACT:

In Gammon India Ltd., V. Union of India, a Constitution Bench of the Supreme Court comprising five Judges upheld the constitutionality of the CLRA Act. The Supreme Court said that the Act was passed to prevent the exploitation of contract labour and to introduce better condition of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable and where it cannot be abolished altogether, to regulate the working conditions of contract labour so as to ensure paying of wages and provision of essential amenities. In this case the petitioners carried

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12 (1974) 1 SCC 596.
on the business of constructions of road, buildings, bridges and
dams. The CLRA Act required the contractor to take out licence and
imposed certain duties and liabilities on the contractor. The
Petitioners contended that the provision of the Act and the Rules
made thereunder are unconstitutional. So they challenged the
validity of the Act. The Court declined to hold that the application
of the Act to pending work of construction amounted to an
unreasonable restriction on the right of the contractor under Article
19 (1) (g) of the Constitution of India.

The Hon'able Court said, "The pendency of contract is not a
relevant consideration. There was nothing to show that the petitioner
would suffer. Also that the subject matter of legislation is not
'contract', but 'contract labour'. The Act has not retrospective
operation. Its object is to remedy the interests of the workmen, viz.
ensuring "minimum labour welfare". The court also declined to hold
the provisions of the Act, or of the Central Rules, regarding canteen,
restrooms, latrines and urinals, as unconstitutional being, "incapable
of implementation" and "enormously expensive" and therefore,
amounting to unreasonable restrictions under Art. 19 (1) (g). The
court said that the benefits conferred by the Act and the Rules are
social welfare legislative measures. The provisions for canteens,
restrooms, facilities for supply of drinking water, latrines, urinals
and first aid facilities are "facilities for the dignity of human labour"
provided in the interests of the Public. It is for the legislature to
determine the appropriate conditions for employment of contract
labour. It is difficult for the court to impose its own standards of
reasonableness. There is a rational relation between the Act and the
object to be achieved and the above provisions are not in excess of
that object. There is no violation of Art. 14. The classification is not
arbitrary. The legislature has made uniform laws for all contractors.
4.5 SOCIAL JUSTICE VIS-À-VIS THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970:-

This Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition under certain circumstances. Contract Labour is neither borne on pay roll or muster roll nor is paid wages directly. The establishments, which appoint contractors, do not own any direct responsibility in regard to these workers. Generally, the wage rates to be paid and observance of working conditions are stipulated in agreements, but in practice they are not strictly followed.

The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It does not apply to establishments of casual nature. The Act also applies to establishments of the Government and Local Authorities as well.

It can be considered that this Act is a social welfare legislative measure. The provisions in the Act are in the interest of the workers. The Act was enacted to benefit, as a welfare measures. All these measures are in larger interests of the community. Any legislature is the best Judge to determine what is needed as the suitable conditions for employment of contract labour.

In Dalmia Cement (Bharat) Ltd. V. Union of India.13 Through this case the foundation of social justice is the Constitution of India has been highlighted. It is said that CLRA is also founded on social justice. In this case the constitutionality of Jute Packing Material Act, 1987 was challenged. This Law was made to protect the agriculturists cultivating jute and jute products. The learned court very elaborately explained the principles of social justice. The Supreme Court in this context held that, the Preamble of the

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13 (1996) 10 SCC, 115
Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice—social, economic and political—equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of the Constitution delineated the socio-economic justice. The word 'justice' envisioned in the Preamble is used in a broad spectrum to harmonise individual right with the general welfare of the society.

In the present case Justice K. Ramswamy said that "The Constitution is the Supreme Law. The purpose of law is realisation of justice whose concept and scope vary depending upon the prevailing social environment. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community, keeping pace with the realities of the ever-changing social and economic life of the community envisaged in the Constitution.",

A Bench of three Judges said, "Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well being of the community as well as individual's excellence".

The Apex Court rightly held that social and economic justice in the context of our Constitution must therefore, be understood in a comprehensive sense to remove every inequality and to provide equal opportunity to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic values between men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rules of law dynamic.

14 refer annexure 2.
The Supreme Court further said that the Fundamental Rights and the Directive Principles are therefore harmoniously interpreted to make the law as a social engineer to provide flesh and blood to the dry bones. Thus this case laid down guidelines in the matter of social justice.

4.6 THE CONCEPT OF WELFARE STATE:–

The philosophy of welfare State is the driving force for this judgment, which is referred in the above paragraph. The concept of Welfare State in the Indian Constitution has been conceived and drafted in the mid-twentieth century when Welfare State was the rule of the day. The Constitution is thus pervaded with the modern outlook regarding the objectives and functions of the state. It embodies a distinct philosophy and the Government explicitly declares that India will be organised as a social welfare state i.e. a state which renders social services to the people and promotes their general welfare. In the formulations and declarations of the social objectives contained in the Preamble, one can clearly discern the impact of the modern political philosophy, which regards the state as an organ to secure the good and welfare of the people.

This concept of a welfare state is further strengthened by the Directive Principles of State Policy\(^\text{15}\) which set out the economic, social and political goals of the Indian Constitutional system. These directives confer certain non-justifiable rights on the people, and place the government under an obligation to achieve and maximise social welfare and basic social values like education, employment, health and the like.

In consonance with the modern benefits of man, the Indian Constitution sets up a machinery to achieve the goal of economic

\(^{15}\text{refer annexure 2.}\)
democracy along with political democracy for the latter would be meaningless without the former in a poor country like India.16

Today we are living in an era of welfare state which seeks to promote the prosperity and well being of the people. The Directive Principles strengthen and promote this concept by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve.

The Directive Principles are designed to usher in social and economic democracy in the country. As per Art 37 the Directive Principles shall not be enforceable by any court, but they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The ideals stated in the Preamble are reinforced through the Directive Principles of State Policy which spell out in greater economic content of political freedom, the concept of a welfare state. This socio-economic chapter of the Constitution thus supplements the Preamble to the Constitution. These principles have been characterised as ‘basic to our social order’ as they seek to build a social justice society. These principles have played a crucial role in legislative and administrative policy-making in the country. They have inspired the idea of socialist pattern of society.17 In course of time the courts have raised social and economic justice to the high level of a Fundamental Right. In a number of pronouncements, the Supreme Court has insisted that these Directive Principles seek to introduce the concept of a welfare State in the country. The Supreme Court has upheld the underlying idea of social justice in Preamble and Directive Principles through its decisions.

In Keshavananda Bharti18 Case, it was held that, “what is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws to further Directive

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17 Ibid, pp. 1364, 1365.
18 (1973) 4 SCC 255.
Principles which, under Art. 37 are fundamental in the governance of the country"  

In 1976, by 42nd Constitution Amendment, it gave socialist orientation to the Indian Polity as India was then declared as a "Sovereign Socialist Secular Democracy". In Minerva Mills V. Union of India, the Supreme Court considered the meaning, "Socialism" as to crystallise a socialistic state securing to its people socio-economic justice by interplay of the Fundamental Rights and Directive Principles.

In Air India Statutory Corporation V. United Labour Union (for short Air India), the Hon'ble Supreme Court has held that the term "Socialist" has been broad in the Constitution to establish and egalitarian social order through rule of law as its basic structure.

The Preamble to the Constitution read with Directive Principles, in Art. 38, 42, 46 and 48 A promotes the concept of social justice. The aim of social justice is to attain a substantial degree of social, economic and political equality. Social justice is a device to mitigate the suffering of the poor weak, tribal and the deprived sections of the society and to elevate them so that they can live with dignity.

In fact in furtherance of these objectives of social justice and welfare of the masses the CLRA Act was passed. This Act abolished the system of employing contract labour by an undertaking on work of perennial nature. Section 10 of the Act is the only provision governing the prohibition of employment of contract labour in any establishment. The power to prohibit is vested in the appropriate Government and the power has to be exercised in the matter stated in the said section. The factors to be considered before issuing a notification prohibiting employment of contract labour are stated in sub-section (2) of section 10. The continuance of a contract labour system, as a matter of necessity, has been recognised by Parliament.

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21. refer annexure 2.
while enacting this Act. It was held in Steel Authority of India Ltd., V. Steel Authority of India Ltd. Contract Workers Union\(^22\) (for short SAIL). This power to prohibit the contract labour system in an establishment under section 10 is not an absolute power, but is conditioned by the circumstances stated therein.

It is mentioned in this chapter that industrial disputes relating to prohibition of the contract labour system and regulation of the service conditions of contract workers used to be adjudicated upon by the industrial adjudicators under the IDA. Before passing of this CLRA Act, 1970 in the case of The Standard-Vacuum Refining Co. of India Ltd., Vs. Their Workmen & another.\(^23\) A dispute was raised by the workmen of a refinery company with respect to contract labour employed by the company for cleaning maintenance of the plant and premises of the company's refinery. The work was given to contractors for a period of one year and the result of the system was that there was no security of service to the workers, who were in effect doing the work of the company. Besides, the contractor was paying much less to the workmen than the amount paid by company and they enjoyed no other benefits and amenities given to the regular workers. The work done by the contract workers was incidental to and necessary for the manufacturing process. It was perennial in nature and done daily. The regular workers generally did such work in other concerns. The work was neither intermittent nor temporary, nor so little as to make employment in full time workers. The workmen wanted that the contract system should be abolished and the workers under the contractor should be treated as workers of the company.

The Apex Court said that industrial adjudication generally does not encourage the employment of contract labour in modern times. At the same time, the court made it clear that the Tribunal should not found its decision merely on theoretical or abstract

\(^{22}\) (1992) Lab I C 2332.
\(^{23}\) AIR 1960 SC 948.
objection to contract labour. It should also consider the terms and conditions of employment of contract workers and the grievance made by the employees. In other words, apart from the general considerations that contract labour should be discouraged, the Tribunal should also examine the merits of the dispute.

The court made it clear that had the contract between the company and the contractor been mala fide or a sham, the company would have been liberal to take over all the contract workers and treat them as its own. As a contract was bona fide, the court left it to the company to decide the number of workers for regular employment and their terms of employment subject only to the obligation to give preference to the workers of the then contractor.

The Supreme Court held that the regular workers had a community of interest with the workmen of the contractor who were in effect working for the same employer. They had also a substantial interest in the subject matter of the dispute in the sense that the class to which they belonged (namely workmen) was substantially affected thereby. Finally the company should give relief in the matter. All the ingredients of S. 2 (k) of the Industrial Dispute Act, 1947 were thus present in the case and the dispute and the reference was competent. The decision of the Apex Court is of seminal importance. It anointed the industrial adjudicator under the IDA with the jurisdiction to abolish contract labour and to direct absorption of the contract workers in the regular employment of the principal establishment.

At any point of time the exploitation of contract workers at the hands of the employer will remain same. Therefore to give them justice social and economic, the number of judicial pronouncements, upheld the injustice or exploitation of poor contract workers. The court has directed the abolition of contract labour and or absorption of them in regular employment. A number of cases of the same or similar issue of contract workers have been adjudged by the Supreme Court. Only few are referred in this chapter. Pre legislation
era also the issue was same regarding contract workers. Section 10 of CLRA Act, gives due regard to the principles laid down by the Supreme Court in the Pre Act era for abolition of contract labour. The guidelines provided in clauses (a) to (d) for prohibiting employment of contract labour are practically based on the guidelines prescribed in this case.

In United Salt Works and Industries Ltd V. Workmen\textsuperscript{24}, the Supreme Court upheld the Arbitrator's award abolishing the system of payment of wages to the workers through mukaddams. The company employed labour through mukaddams or contractors. These mukaddams also supervised the labours' work. The company fixed and even paid the wages to the workers, but through the mukaddams who deducted their commission from the wages. The Supreme Court held that while the company was entitled to engage the mukaddams to supervise the workers and held in recruiting them, mukaddams were not entitled to deduct their commission from the wages earned by the workers. The company was free to employ the mukaddams as semi-skilled employees. The Court directed the company to treat the workers as its employees.

The Mill Mazdoor Sabha, Bombay V. Swastik Textiles Mills Ltd., Bombay\textsuperscript{25} is the one of the landmark judgment which directed abolition of contract labour. In this case, the contract labour was employed in a department for which it was "rarely necessary" and "very unusual" to employ any labour that was not regular, as the work was not subject to sudden and great variations. Therefore in the absence of other conditions as well that could justify recourse to contract labour, the Industrial court directed abolition of contract labour.

The Industrial Court, made the observation in this matter. It said, "Contract labour should be tolerated only if necessary and inevitable. The workers employed by a contractor do not enjoy the

\textsuperscript{24} (1962) 1 LLJ 131 SC.
\textsuperscript{25} 1965 (11) FLR 236 Bom (IC).
same security of service as do regular industrial workers. They are also deprived of benefits like gratuity, provident fund and in most cases dearness allowance, etc. The tolerance of contract labour without necessity, as the experience has shown, opens the door to the exploitation of labour by unscrupulous employer, who in order to avoid the obligations and duties placed upon them under the law of industrial relations, resort to employment of labour through contractors. They continue to enjoy all the fruits of the efforts of workmen, without fulfilling the obligations towards them under the law. The employment of contract labour should be only permissible when the demand for production or the work to be done is temporary, and subject to frequent great and unforeseen fluctuations."

In Shibu Metal Works V. Workmen\(^{26}\), in this case the issue was regarding the work of the chhilai lathe and press was of a permanent nature and part and parcel of the manufacturing process or not. The workers engaged by the contractor were deprived of the legal facilities enjoyed by other workers in the factory. It was held that the employment of contract labour was an unfair labour practice and the chhilai lathe and press work was permanent and not intermittent or temporary. The Supreme Court therefore upheld the tribunal's award abolishing contract labour in such work.

In Vegoils Pvt. Ltd. V. Workmen\(^{27}\), the establishment was carrying business of manufacturing edible oil and sope etc. The court held that feeding of hoppers was an essential part of the industry. The work being of perennial nature could be done by permanent employees. Therefore the Apex Court laid down that if the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of perennial and permanent nature, the abolition of contract labour would be justified.

\(^{26}\) (1966) 1 LLJ 717.
\(^{27}\) AIR 1972 SC 1942.
Another important judgment of the Supreme Court is in Mathura refinery Mazdoor Sangh V. Indian Oil Corporation Ltd., Mathura refinery Project, Mathura and Another\textsuperscript{28}. In this case, the appellant union represented 900 casual labours working in the Refinery. These labours are contract labours coming under the CLRA Act, 1970. The nature of their work has grouped them. Some of the labours formed co-operative societies and those societies have enter into labour contracts with the refinery while other working under labour contractors who have contracts with the refinery. It was claimed that these casual labours have been working in the refinery for so many years in the past ranging between ten to fifteen years but were denied wages and other benefits as also other beneficial service conditions enjoyed by workmen who are regular employees of the refinery. They claimed a right to be treated at the par with regular employees.

Following relief given by the Industrial Court which was upheld by the Supreme Court. (i) Refinery was suggested to approach the Advisory Board to make a study with regard to the desirability of continuance of the contract labour system in the refinery. (ii) Till this, the management of the Refinery to ensure that the contract labour is paid at least the minimum of the pay scale of its regular employees performing the same or similar duties as the workmen of the contract labour and whose contract workers who have put 5 years or more of work at the refinery shall be continued to be employed in the same work even if there is a change in the contractor and such workmen shall not be terminated except for disciplinary action, voluntary retirement or superannuation etc. (iii) refinery to give preference to those workmen in its employment by waiving the requirement of age and other qualifications wherever possible and it may also consider the creation of a benevolent fund for the contract labour wherein it may make a lump sum contribution

\textsuperscript{28} (1991) 2 SCC 176.
initially and then make equivalent or even more contribution to match the contribution made by the workmen of the contract labour.

Being aggrieved by this relief the union filed appeal in the Supreme Court. The Supreme Court, however, dismissed the appeal stating that the contract workers had no direct connection with the refinery. The Court said that the tribunal had given to the appellant union the maximum which could be given in the facts and circumstances of the case. The directions /suggestions given by the tribunal appeared to be the only relief. Therefore this judgment of Supreme Court stands good in the interest of contract labour.

The decision of the Apex Court in the case of Steel Authority of India Ltd., and Ors Etc. V. National Union Water Front Workers and Ors. Etc\(^9\) (SAIL), a Constitution bench has laid down the law to do away with a lot of confusion regarding automatic absorption of contract labour by principal employer. The SAIL judgment prospectively overruled the decision in Air India Statutory Corporation V. United Labour Union\(^10\). It is on this background necessary to study Air India case.

In this case aggrieved by the judgment of Division Bench of the Bombay High Court, appellants made an appeal with special leave in the Supreme Court. Facts of the case in short are as under:

The appellants engaged as contract labour the respondent union's members, for sweeping, cleaning, dusting and watching of the buildings owned and occupied by the appellant. One of the issues before the Supreme Court was regarding nature of work as to whether perennial or not?

Apart from the questions pertaining to 'appropriate Government', the Supreme Court was primarily concerned with the question whether the Division Bench of Bombay High Court in the present appeal was right in directing enforcement of the notification

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\(^9\) (2001) II LLJ 1087.
\(^10\) (1997) I LLJ 1113.
issued by the Central Government prohibiting employment of contract labour.

The Supreme Court in this case over-ruled two of its earlier judgments, on the ground that they have not correctly laid down the law. The first case was of Dena Nath V. National Fertilisers Ltd. In this case issue was that if the principal employer does not get registration under section 7 of the Act and/or the contractor does not get a licence under section 12 of the Act whether the persons so appointed by the principal employer through the contractor would be deemed to be the direct employees of the principal employer or not.

On the literal consideration of the provisions it was concluded that on abolition of contract labour altogether by the appropriate Government, neither the Act nor the rules provide that the principal employer should directly absorb the labour. Therefore it was held that non-compliance with sections 7 & 12 penal provisions of CLRA Act are attracted. The Labour employed by principal employer through contractor cannot thereby deemed to be direct employees of the principal employer in absence of any notification under Section 10 prohibiting employment of contract labour in the establishment concerned. The High Court in exercise of power under Art. 226 cannot issue directions for deeming the contract labour as direct employees. It was further held the question as to necessity or bona-fides of employment of contract labour can be referred to as an industrial dispute and Labour Court/ Industrial Tribunal can give appropriate directions in the matter to principal employer.

In another case namely Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat V. Hind Mazdoor Sabha. These four groups of appeals raise common questions of law relating to the abolition of contract system of labour. The appellant Gujarat Electricity Board ran a Thermal Power Station at Ukai in Gujarat. At the relevant time besides the direct workmen, the Board deployed

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31 (1992) 1 SCC 695.
through various contractors 1500 skilled and unskilled manual labourers to carry on the work of loading and unloading of coal and for feeding the same in the hoppers and for doing the clearing and other allied activities in its power station. The contractors according to the respondent – union, exploited these workmen by flouting labour laws. Therefore, disputes arose between the board and contractors on the one hand and the workmen on other.

A Division Bench of the Supreme Court upheld the decisions of the High Court in two appeals in which the High Court had held that the contract labour did not become the employees of the principal employer merely because there were no registration certificates and license with the principal employer and contractors respectively.

In another appeal in Gujarat Electricity Board case, the Labour Court had given the relief of reinstatement with back wages to the workmen only on the basis that the registration certificate and the licences under the Act were not produced by the appellant and the contractors, respectively. The High Court had upheld the Labour Court’s award. The Supreme Court set aside the Labour Court’s award and the High Court’s decision. The Court held that after coming into operation of CLRA Act, 1970, the authority to abolish the Contract Labour system is vested exclusively in the appropriate Government, which has to take its decision in the matter, in accordance with the provisions of Sec. 10 of the aforesaid Act. The Apex Court laid down that the authority to abolish the Contract Labour under Section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and so-called contract is sham or camouflage to hide the reality then the said provisions are inapplicable, then in such circumstances, the concerned workmen raise an Industrial Dispute for relief that they should be deemed to be the employees of the principal employer, the Court or the Industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief.
While setting aside the award proceedings as suggested in the above case, the Supreme Court in this case said that there are several incongruities and obstacles in the way of the contract labour for immediate absorption. Since the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their case for reference under Section 10 of the IDA. The workmen, on abolition of contract labour system have no right to seek reference under Section 10 of IDA.

The Supreme Court in Air India's case said that, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is tardy and time consuming process and years would roll by. Without wages they cannot keep fighting the litigation endlessly. The right and remedy would be teasing illusion and would be rendered otiose and practically compelling the workmen at the mercy of the principal employer. The court further stated that, considered from this pragmatic perspective with due respect to the learned judges, the remedy carved out in Gujarat Electricity Board would be unsatisfactory. The shortcomings were not brought to the attention of this court. Therefore it is not correct law. So both the cases were over-ruled.

The Supreme Court in the present appeal therefore held that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. And all the workmen in the respective services working on contract labour were ordered to be absorbed in the establishment of the appellant.

33 supra note 30.
This was a landmark judgment explaining the meaning of the word 'socialism' used in the preamble of our Constitution. This decision was a welfare measure to prevent exploitation and unfair labour practice prevailing in contract workers employed by industrial establishments. It is necessary to cite some of the observations of the court with respect to social justice from the judgment.

The Court\textsuperscript{34} stated that all essential facilities and opportunities to the people are fundamental means to development, to live with minimum comforts, food and shelter, clothing and health. Due to economic constraints, though the right to work was not declared as a fundamental right. Right to work of workmen lower class, middle class and poor people is means to development and source to earn livelihood. Though right to employment cannot as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and act in public interest assuming equality which is a genus of Art. 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful.

The Supreme Court in paragraph 33 of the same judgment has stated that “The 42\textsuperscript{nd} Constitutional (Amendment) 1976, brought explicitly in the Preamble socialist and secular concepts in Sovereign Democratic Republic of Bharat with effect from January 3, 1997”. Further paragraph 34 states “socialism brought into the Preamble and its sweep elaborately was considered by this court in several judgments. It was held that the meaning of the word “Socialism” in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through rule of law as its basic structure. The Hon’ble Court made a

\textsuperscript{34} supra note 28.
reference to the Minerva Mills case\textsuperscript{35}, wherein the Constitution Bench had considered the meaning of the word “Socialism” to crystallize a socialistic state securing to its people socio-economic justice by interplay of the Fundamental Rights and Directive Principles. The Court in its judgment referred another Constitution Bench case i.e. D.S. Nakara and Ors. V. Union of India\textsuperscript{36} wherein it was held that the Preamble directs the centres of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march, but during the journey to the fulfilment of goal, every state action, whenever taken must be directed and must be so interpreted as to take the society toward that goal.

In paragraph 37 it stated that “the preamble and Art. 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of “social justice", which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social Justice” is thus an integral part of justice in the generic sense. Justice is the genus of which social justice is one of its species. Social justice is dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps penury to ward off distress and to make their life

\textsuperscript{35} supra note 17.
\textsuperscript{36} 1983 LLJ 104.
worth living, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic, political equality, which is the legitimate expectation and Constitutional goal. Social security, justice and humane conditions of work and leisure to workman are part of his meaningful rights to life and to achieve self-expression of his personality and to enjoy the life with dignity, social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results.

Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure would be possible to build up a welfare state.

A recent Judicial Pronouncement has given a set back to social justice-The Constitution Bench of the Apex Court in SAIL, overruled Air India case and held that neither section 10 of the CLRA Act nor any other provision therein or the rules or the forms made there under, whether expressly or by necessary implication, provides for automatic absorption of contract labour, on issue of a notification by appropriate government under sub-section (1) of Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

For the purpose of interpreting the relevant provisions of the CLRA Act, in particular the provisions of section 10, the court said that, “it is a well settled proposition of law that the function of the Court is to interpret the Statute to ascertain the intent of the legislature. Where the language of the Statute is clear and explicit, the Court must give effect to it because in that case words of the Statute unequivocally speak the intention of the legislature. This rule of literal interpretation has to be adhered to and a provision in
the statute has to be understood in its ordinary natural sense unless
the court finds that the provision sought to be interpreted is vague or
obscurely worded in which event the other principles of
interpretation may be called in aid. A plain meaning of the said
phrase, under interpretation, shows that it is lucid and clear. There is
no obscurity, no ambiguity and no abstruseness. Therefore the words
used therein must be construed in their natural ordinary meaning as
commonly understood.

While giving due consideration to Constitutional mandate laid
down in Fundamental Rights and Directive Principles the court
retreated that the preamble of the Constitution is the lodestar and
guides those who find themselves in a grey area while dealing with
its provisions. It is now well settled that in interpreting a beneficial
legislation enacted to give effect to Directive Principles of the State
Policy which is otherwise constitutionally valid, the consideration of
the Court cannot be divorced from those objectives. In a case of
ambiguity in the language of a beneficial labour legislation, the
courts have to resolve the quandary in favour of conferment of
rather than denial of a benefit on the labour by the legislature but
without rewriting and or doing violence to the provisions of
enactment. The Supreme Court adverted to the historical perspective
of the contract labour system leading to the enactment of the CLRA
Act. The Supreme Court referred to recommendations of the Royal
Commission and the Rege Committee that had been set up by the
British Government in the pre-independence era for studying and
reporting the various aspects of contract labour system. The
Supreme Court also referred to the observation of the Second
Planning Commission, and from that the court made a conclusion
that the commission was not unmindful of the fact that abolition of
the contract labour system would result in displacement of labour,
nonetheless what it thought fit to recommend was alternative
employment and not absorption in the establishment where the
contract labour was working.
The Supreme Court referred the Report of the National Commission of labour appointed in 1969. This Commission while recommending abolition of contract labour altogether, it was emphasised that in various enactments, the definition of 'worker' was enlarged to include contract labourer and thus benefits of working conditions and hours of work admissible to labourer directly employed were made available to contract labour, if for some unavoidable reasons the contract labour had to stay. The Supreme Court also referred the report of the Joint Committee of the Parliament on the Contract Labour (Regulation and Abolition) Bill, 1967. The Court found that neither in the main report nor in the dissent note, a reference to the automatic absorption of the contract labour is made. The reason perhaps may be that on abolition of contract labour system in an establishment, the contract labour nonetheless remains as the workforce of the contractors who get contract in various establishments where the contract labourer could be engaged and where they would be extended the same statutory benefits as they were enjoying before. It was clear to the Joint Committee that by abolition of contract labour, the principal employer would be compelled to employ permanent workers for all types of work which would result incurring high cost by him, which implied creation of employment opportunities on regular basis for the Contract Labour. This could as well be yet another reason for not providing automatic absorption.

The Supreme Court further stated that the statement of objects and Reasons of the CLRA Act also does not allude to the concept of automatic absorption of the contract labour on issuance of notification for prohibition of employment of the contract labour.

Finally the Apex Court over-ruled the judgment in Air India's caseProspectively and declared that any direction issued by any industrial adjudicator or any court including High Court for absorption of contract labourer following the judgment in Air

37 supra note 28.
India's case, shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such direction has been given effect to and is final.

The Apex Court further laid down that issuance of notification prohibiting casual labour under industrial dispute brought before Industrial Court by Contract Labour, then the court has to consider whether contract has been interposed is genuine contract or mere camouflage. If contract is not genuine but mere camouflage, contract labour will have to be treated as employee of principal employer and should be directed to regularise service of contract labour subject to conditions that should be satisfied. If contract labour found to be genuine and no issuance of notification prohibiting engagement of contract labour, contract labour shall be given preference if principal employer intends to employ regular workmen provided such casual labour found to be suitable and if necessary, by relaxing conditions as to maximum age.

This decision gave a setback to the principles of social justice as enshrined in the preamble, fundamental rights and also the directive principles of the state policy. The Apex Court gave various reasons for disagreeing with the law laid down in the Air India's case. Among other reasons the Apex Court stated that, a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication or substituting remedy or benefits for that provided by the legislature.

The Air India judgment benefited the working class as it held the field for several years. As declared by their Lordships that judgment canvasses the principles of social justice. It laid down the law that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour.

\[^{38}\text{supra note 31.}\]
The SAIL judgment disallowed the principles of social justice giving way to interpretation and limits of the CLRA Act. The significant feature in that the CLRA Act does not lay down provision for absorption of contract workers. In effect these workers are engaged on contract system through CLRA Act does not get any protection. It is for the appropriate Government to continue or abolish the same. In effect uncertainty of the employment would persist, and unorganised sector will further increase. Ray of hopes which the working class saw through Air India judgment vanished.

New deal pertaining to contract labour has wide spread dimensions. Absorption of contract labour through adjudication has become very difficult. The contract labour or their union are required to get a reference under section 10 (1) and 12 (5) of IDA to get a declaration that a contract is sham and labourers engaged through such contract are the workmen of principal employer. The respective courts in the event of their positive consideration grant the appropriate relief of reinstatement with consequential benefits.

In considering the new deal, the CLRA Act if continued to be the welfare legislation requires amendment to Section 10 of the Act adding either automatic absorption or providing the courts authority to direct absorption in consideration of the nature of employment of contract labour.

Such a new deal if added to the contract labour Act would continue to be social welfare legislation. On the other hand the New deal would be a through reconsideration of CLRA Act examining its failures and weaknesses so apparently seen in various judgements of High Court and Apex Court. The judicial perspective requires quality and equity.

4.7 GLOBAL PRACTICE:-

Contract labour is becoming an increasingly prominent feature of the labour job market throughout the world. An
international trend is emerging whereby traditional employment patterns based on long term (regular) employer-employee relationships are being replaced by non-standard arrangements. Increasingly large number of the workforce is now engaged in a typical work arrangement and many of these workers are contract labourers.

During the 1980’s and 1990’s lot of political, economical and social changes have taken place in the world, which have resulted in a more open and liberal global economy. The distinct national economies have become increasingly integrated into international marketplaces forming global village. The removal of all barriers have resulted in an increased level of international competition to secure trade and business which in turn have led to the decentralisation and specialisation of production process and work organisation.

Employers/entrepreneurs worldwide justify their practice of lean production methods, downsizing, and reduction in labour costs by employing workers on contract basis or outsourcing the work operations to globalisation and economic recession at various levels. Many businesses experience variations in the workload as the demand and supply fluctuates. Therefore maintaining a full workforce through quiet long periods can prove to be expensive. The use of non-standard work practice allows employers to retain a core-workforce of skilled, permanent employees and to retain access through casual or contract labour, to a peripheral work force of general labour.

One more reason for this trend in employment practice is labour shortages. In certain field there is an increase in number of labour migration at both national and international levels. These migrant labourers are often unaware of their labour rights in the host country or are classed as illegal immigrants under the circumstances they have to accept the work on contract basis.
In addition to developing a more flexible work force, employers perceive that access to contract labour affords them the benefit of avoiding their obligations under employment laws and protections. Contract labourers are rarely organised in trade unions and therefore the use of contract labour also allows employer to avoid the constraints that they associate with union representation and collective bargaining.

From the worldwide work force perspective, the need for income is too often a greater concern than how it is earned. Paid work on a contract labour basis is frequently the workers only alternative to unemployment. The economic need of workers effectively places them in a weak position.

Various surveys reveal that increasing number of women and older workers are entering the paid work force. These groups are more likely to accept or even chose more flexible employment arrangements. The availability of workers looking for casual part time or home based work encourages employers to adopt non-standard work practices.

Recourse to contract labour is now not confined to its traditional economic sector like-agriculture, construction, retail trade and plantations. It has spread over to other sectors as well, both in the developing and developed countries, and both in the private as well as public sector. According to the ILO this practice is “increasing in significance”, in manufacturing and service industries including textiles, clothing, forestry, canteens and restaurants, offshore petroleum installations and inland transport and in newly-emerging economic sectors like high-technology industries, eg. ‘Telework’. In the United Kingdom, contract system has permitted even “highly-skilled operations like accountancy, legal, architectural and administrative occupations.” The Government policies there also encourage adoption of contract system in the public sector in order to reduce public expenditure.

39 supra note 1, p. 107.
4.8 LABOUR CONTRACT SYSTEM IN CHINA:

The Chinese industrial relation system is in the process of transition, along with the transition to the Socialist Market Economy, the concept of jobs has changed. In the system of planned economy, the state had the responsibility to create and provide jobs, to fix and pay wages and other allowances. The state also made arrangement for medical assistance and social security of workers.

According to Dr. K. R. Shyam Sundar\textsuperscript{40}, the state played a dominant role in every aspect of social relations, including industrial relation. The communist state relied heavily on danwei system. It is a small self-contained society or "a society in miniature" catering to the needs of the workers. The Chinese enterprise performed several roles apart from its production activity. It ran school and hospitals, provided transportation and housing facilities to its workers. The danwei system enabled the state to monitor the political loyalty of the workers, especially party members and penalise disloyal workers. In this way, protest probabilities were held in check. In this system the firm offered life long employment to workers and extended a range of welfare benefits housing, not only to workers but also to their children and provided pension and insurance cover to employees — those constituted the ‘iron rice bowl system’. The employers by withholding the personnel records could refuse to co-operate with the workers who wanted to move to other factories. The danwei became a ‘cradle to grave’ institution and the workers were forced to be permanently attached to the enterprise.

Now in the Socialist Market economy, it is the function of the enterprises to generate jobs. The jobs are on the basis of contracts. The Chinese government began to introduce the labour contract system since the early 1980s which chips away the iron rice bowl

system. This labour contract system was introduced gradually. In view of Ying Zhu\textsuperscript{41} those previously engaged as permanent workers still enjoy lifelong employment. In contract system, contracts must last for at least one year and contain provisions covering production tasks, probation, working conditions, remuneration, labour discipline and penalties. In addition, the “old-style” temporary workers are also required to sign contracts, but this does not mean that they have been converted into “contract system” for the purposes of the new system; they remain temporary workers with benefits different from those according to contract system workers. On the other hand, the situation of employment varies from one type of firm to another.

The workers are free to resign jobs and shift to some other firm easily. Apart from contract based dismissals, the employer can now discharge workers on certain grounds. The employer has got freedom in setting wage levels and to award bonus. With the introduction of new labour law in 1994 all employees are required to enter into contract with the enterprises.

As per the report of the National Commission on Labour\textsuperscript{42}, these contracts will be for specific periods and can be terminated during specific periods of duration only for grave offences or proved inefficiency or failure to fulfil objectives under the contract and such terminations were open to review on complaint, by bodies specified in law. The disputes have also increased. The social effect of this is increasing unemployment. Now, there are 6.5 million workers who have been laid off. The unemployed are paid a basic living allowance which varies from province to province, but is roughly 300-450 yuans per month in urban areas, and 95 or thereabout in rural areas. The provisions of unemployed or Basic Living Allowance in rural areas are still available only in pilot areas.


Under Chinese Labour Law there also exist collective labour contracts. As stated by Dr. Shyam Sundar\textsuperscript{43} there exist collective labour contracts in China. This collective enterprise on various issues like labour remuneration, work hours, rests and leaves, labour safety and sanitation, insurance, welfare treatment and other matter. The 1994, Labour Law, does not seem to provide a legal basis for the setting up of the collective contract system.

There is a lot of difference between China and India's Labour Contract System. But the effect of globalisation is same for both the countries i.e. downsizing and rationalisation of enterprises, increase in contract labour employment and the like. In China first labour law was passed in 1994 with the object of protecting workers rights. The problem of unemployment or under employment is same in both the countries.

In China there exists State Owned Enterprises (SOEs), Collective Ownership Enterprises (COEs), Domestic Private Enterprises (DPEs) and Foreign -Invested Enterprises (FIE). The Central Labour Law is applicable to the whole territory of China. This law contains different provisions for above mentioned enterprises. But in India that is not the case. The CLRA Act, 1970 is applicable irrespective of ownership whether it is multinational company or national company. There exits a strict work permit system in China because of which agricultural workers cannot migrate to urban area. Such type of restriction does not exist in India. Upon the termination of labour contract by foreign enterprise an employee gets economic compensation. While in India there is no such security for contract workers.

The CLRA Act does not speak about the consequence of abolition of contract labour system. On 30\textsuperscript{th} August 2001 Supreme Court's decision in the case of SAIL\textsuperscript{44}, it is laid down that no provisions of CLRA Act or the rules framed thereunder provides for

\textsuperscript{43} supra note 37

\textsuperscript{44} (2001) 7 SCC 1
automatic absorption of contract labour, on issue of a notification by appropriate Government prohibiting employment of contract labour. Thus this law gave set back to the principles of social justice.

4.9 REASONS FOR INCREASE IN CONTRACT LABOUR:-

There are many factors diverse nature resulted in increase in contract labour. In India, the rapid increase of contract labour in recent times can be linked with the new economic policies liberalising the Indian economy. Increased competition coupled with general recession in economy, and lack of adequate technological expertise and other resources necessary for competing with the bigger employers including multinational companies have driven many employers to cut down their labour costs drastically. The fear in the minds of entrepreneurs that they will be thrown out of the competition and in absence of adequate technological guidance and back up from different government agencies and other sources the employers have to resort to contract system. This is as a means of cutting down their labour costs and to achieve efficiency in work operations. Even big and established companies including public sector enterprises have been taking recourse to contract labour. Instead they could have implemented other means of improving their competitive positions like developing their 'Research and Development' areas, devising new and innovative production and marketing strategies, and enhancing their managerial skills for improving the general work culture. They can also arrange training courses, or skill development programmes for their employees. As India's population is also high and also that there is increase in youth unemployment, poverty. lack of education, skill and the like are other reasons for accepting work on contract labour basis.
According to Mr. Ashis Das and Dhanajay Pandey⁴⁵, jobs of fluctuating workload, one time jobs, project/capital repair based jobs are also contracted out and the cost of outsourcing including contractors overhead profits is lower than that earned by regular workers. The principal employer (organisation) therefore, tends to get non-core jobs done at cheaper rates. The core activities and jobs of regular or permanent nature are performed by organisation's own manpower. Further, considering the high cost of manpower, organisations are looking for areas where regular manpower can be reduced by capital investments and mechanization thus increasing labour productivity. As a result, the recent trend in India has been to reduce regular manpower and if required, to outsource non-core, non-critical activities. This trend studies which have revealed that globalisation of various industrial activities is increasingly thriving on outsourcing. In many cases the outsourcing not only leads to cost saving but also increases efficiency in the outsourcing activity. Thus contractualisation of activities and outsourcing are inevitable, irreversible trends, and are likely to continue in future with increased vigour. That too by following the conditions laid down in CLRA Act. Industries continue engaging contract workers under job contracts to carry out jobs like cleaning, sweeping, loading, unloading and several other unskilled or semi-skilled assignments, for which regular workers are not available.

In India the population expansion and the consequent large-scale unemployment have also contributed to growth of contract labour. With women and retired people showing more readiness than before to take up jobs, the number of job aspirants has increased steeply. In the wake of Globalisation certain fields which were earlier reserved for men they are now made open for women. Sometimes people after accepting the benefits of VRS, get

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themselves employed as contract labour, for doing certain jobs involving skill, knowledge.

The failure of successive Governments to efficiently run the public sector enterprises as viable economic units and the decision to either close down many loss making units or to privatise even profit making units have only helped to add to the sense of general insecurity, not only of the unemployed but even employed. With the shrinkage of the organised sector and expansion of the unorganised sector, accepting employment with contractors is many a time, the only alternative to unemployment.

Poor work culture in general, in many Government organisations and public sector enterprises, has also contributed to the growth of the contract labour system in India. Such enterprises often justify their recourse to the contract labour system on the ground that the contract workers perform much more work for lesser salaries in comparison to the regular (unionised) employees who receive much higher salaries. Sometimes the nature of operations is such that recourse to the contract system becomes necessary to carry out the activity economically.

4.10 CONCLUSION:-

According to Dr. B.D. Singh, the institution of contract labour is inherent in business process. No organisation can afford to have all the assets from start to finish and every one has to depend on outside resources for components and services. Therefore, business society has been resorting to contracting from time immemorial and will continue to do so in future also. One can understand the employment of contract labour on jobs which are casual, seasonal, and intermittent, for whom no permanent employment can be and has been provided. But the contract labours

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46Dr. B.D. Singh, Contract Labour Issue: A Balance Approach. IJIR, Vol. 34, No. 4 April 1999 p. 516.
have been employed even on jobs which are of perennial and permanent nature and for whom permanent employees have been recruited. Contract labour have been employed on all types of jobs, camouflaging them as temporary ones and sham devices have been used (giving a break before completion of 240 days and the like) to justify the employment.

As per Alok Bhasin47, flexibility in the 'labour market' is essential for the accomplishment of the objectives of various forms of collaborations and alliances. Any legal instrument or requirement that impinges upon the 'flexibility' of the 'labour market' would also impinge upon the efficacy of inter-firm/small firm, big-firm coalitions. Faced with the onslaught unleashed by 'multinationals' and 'global giants', the Indian employers, no worker, have been clamouring for more and more flexibility in their relationships with their employees. They are demanding that the provisions of CLRA Act be made less stringent and more flexible, and they should given a free hand to hire contractors to perform their jobs, particularly those which in their opinion do not form part of their 'core' operations.

While flexibility is undoubtedly important for running enterprises as viable economic units, stability and security of services of workers as also their incomes and working conditions, and the like, are also equally important and cannot be ignored. Lowering of incomes of workers to achieve 'cost cutting' by resorting to the device of contract labour system may produce undesirable results, both for the society as a whole and also for the enterprise.

While studying all the aspects of contract labour it is necessary to state the effects of contract labours system. According to the reports in the year 199748, the increased use of contract labour has adverse consequences both for the workers themselves and for

47 supra note1 p. 104.
the industries that they work in. It is also important to note that the effects and problems associated with contract labour affect all countries, this is not simply a problem for either developing or developed countries, or it is linked to any particular political or economic philosophy, neither to any one industry or trade. Contract labour is a global issue. At this conference it was further emphasized that the employment of contract affords the worker certain rights and protections. These rights may be contained within the contract of employment itself or in national legislation. The majority of labour and industrial laws are founded upon the existence of an employment relationship as are many of International Labour Standards formulated by ILO. If the worker is not employed he has no rights under an employment contract and he cannot avail himself of the protection of national employment laws. This lack of protection means that contract labourers are often denied rights which are recognised as fundamental employment rights and leaves workers vulnerable to abuse.

In many cases contract labourers are also denied the right to organise and bargain collectively as a result of trade union laws which state that workers must be employed in a given industry before they can join a union. This further weakens the position of the contract labourer.

The Second Labour Commission\textsuperscript{49} did not comment upon Steel Authority of India’s case. It stated that in the fast changing economic scenario and changes in technology and management there cannot be fixed number of posts in any organisation for all time to come. Organisations must have the flexibility to adjust the number of their work force based on economic efficiency. Taking into consideration the move of the Maharashtra Government to have a distinction between core and non-core functions, the commission recommended that the contract labour shall not be engaged for core production / services activities. However, for sporadic seasonal-
demand, the employer may engage temporary labour for core production/service activity. It further recommended that three aspects must be taken care of:— i) that perennial core services should not be transferred to other agencies ii) where such services are being performed by employees on the pay rolls, no transfer to other agencies should be done without consulting bargaining agents. iii) Where the transfer of such service does not involve any employee who is currently in service, the management will be free to entrust the service to outside agencies. The contract labour will be remunerated at the rate of regular worker engaged in the same organisation doing work of a comparable nature or if such worker does not exist in the organisation, at the lowest salary of a worker in a comparable grade, i.e. unskilled, semi-skilled or skilled. The commission further recommended that onus and responsibility of proof would be on the principal employer. The principal employer will also ensure that the prescribed social security and other benefits are extended to the contract worker. This is so because the commission knew the cases of contractors making deduction from the wages of contract workers as their contribution towards the social security, and then absconding without depositing either the contribution realised from the worker or their own contributions into the accounts of the concerned social security system. The contractors should not be allowed to perpetrate this double fraud at the cost of the poor contract workers. To guard against such eventualities, the commission recommended that the principal employer should be held responsible for the benefits payable to contract labour, as the principal employer are the ultimate beneficiaries from the work given on contract.

Further no worker should be kept continuously as a casual or temporary worker against a permanent job for more than two years unless he is employed on a contract for a specified period.
Thirty years back when in 1969, the National Commission on Labour under the Chairmanship of Justice P.B. Gajendragadkar, in its report stated that the contract labour system was functioning with the advantage to the employer and disadvantage to the contract labour and recommended for its abolition. And also the benefits of working conditions and hours of work admissible to labour directly employed should be made available to contract workers also. Other recommendation like not to employ contract labour if the work is perennial, incidental and necessary for the work of the factory, if sufficient work available for whole-time workman and if the same work is done in other concerns by regular workmen. Thus the recommendations of the two commissions were nearly same even though there is difference in time of economy of the country is concerned.

Today the Contract Workers have no legal protection after the abolition of contract. They can't claim any status of regular employee.

On the background of the changed economic and political circumstances throughout the world and also the Apex Court's response to the call of these multinational giants, the policy of hire and fire has got strength. Henceforth most of the employment will be on the basis of contracts for stipulated period. Employees will remain in jobs as long as provision for job exists. Employers lobby is demanding change in labour laws including contract labour to cope with the changed situation.

It is true that a change in labour laws is a need of the time. But basic labour rights which can be equated to human rights can't be taken away. This change in laws should not be violating principles of natural justice. Further the fact that industrial relations relate to the relations between management and workforce employed in the undertaking. The workers are human beings, they are not commodities. The entrepreneurs, at time of need, in order to increase

supra note 10.
production and profit can hire them and when their need is over drives them out. There should be some check on this sort of practice. There should be some job security. The future of these contract workers should be taken into consideration as in case of China is concerned. This system is beneficial for those who get new job after the old job is over.

Form the conclusion of chapter III and IV it is clear that in India employers falling within the purview of Chapter V-B of the IDA, can legally retrench their surplus workforce only after obtaining prior permission form the ‘Appropriate Government’ in accordance with the procedure laid down therein. The contract labour gives flexibility in the working of industrial establishments as terminating a contract offers a much simpler course than retrenching their own workers. This system helps employers to mange their affairs efficiently. The employers may utilise their own regular workforce for ‘core’ activities while they can outsource their non-core or peripheral activities. Thus though labour laws are there to protect interests of the labour, they are failed in doing so. This gives rise to another important issue/question which is discussed in the next chapter regarding – Future of Trade Union Movement, as white collar jobs are increasing than blue collar jobs.