CHAPTER-VI

CONCLUSION AND SUGGESTIONS

Economic systems do not work automatically, they need to be created, protected and legitimated\(^1\). Certain political, legal and ideological forms are so necessary to an economic system that they can be considered organic to it\(^2\). Labour law is such a strong force which has almost invariably played a central role in the formation, reproduction and discipline of wage workers and of the working class and therefore, the configuration of legal ideologies, institutions and processes, often intimately related, has been among the primary features in the making of present day society\(^3\). Law purports to facilitate labour because the labour has been the weakest party in the contest amongst different factors of production such as land, labour, capital and the entrepreneur. In the new liberalisation, privatisation and globalisation oriented economic order, there is a growing tendency of insecurity and unrest amongst labour class. Employers desire for a market-driven labour engagement system free from regulation and state control. Flexibility in labour laws and practices is one of their principal demands. In practice, they have substantially implemented their campaign. Resultantly, the contract system of employment has become the most significant feature of modern-day workplaces. The contract labour system lends itself to various uses and abuses.

The present research work endeavours to examine the current scenario, major problems and challenges underlying the functioning of contract labour system and to assess the effectiveness of the legislative framework for the protection of contract labour in India. The Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter named as the Act) read with Contract Labour (Regulation and Abolition) Central Rules, 1971 is the major legislation exclusively enacted for the better protection of the contract labour in India. The Punjab Contract Labour (Regulation and Abolition) Rules, 1973 further supplement the law in the state of Punjab. The Act

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\(^2\) Ibid.

\(^3\) Ibid.
has two fold objectives, firstly, to abolish the contract labour system wherever it is possible to do so. Secondly, to regulate the working conditions of contract labour in other cases, wherever abolition is not possible. In such case, the Act sought to provide a detailed framework for the registration of principal employers’ establishments, licensing of the contractors, wage regulation, health and welfare of the contract workers and the obligations of the contractors and employers in this regard, sanctions and the working of administrative authorities under the Act. The Act is applicable to every establishment in which twenty or more workmen are employed or were employed on any day of preceding twelve months as contract labour. Every contractor who employs or who employed on any day of the preceding twelve months, twenty or more contract workers, is subject to the provisions of this Act.

This study is a comprehensive analysis of the law and practice relating to contract labour in India presenting both the doctrinal as well as empirical examination of the research problem. The doctrinal aspect includes the analysis of major issues, problems and challenges underlying the contract labour system, critical assessment of various provisions of the Act, its judicial interpretations and international perspective of the research problem.

Contract labour system is a growing form of employment practice in India. In almost all the workplaces, whether in manufacturing, services, trade, agriculture and even in Government administration, contract labour is employed in core activities of permanent and perennial in nature. Regular or standard form of employment is getting substituted by the contractual or non-standard form of employment. In manufacturing sector, to win over the supply chains, a system of small and medium scale set-ups with advanced technology and a few labourers purely on contractual terms, is taking place throughout the world and India is not an exception. If the present trends continue, the contractisation, casualisation and informalisation of employment practices, is the future model of employment.

Contract labour system has its own positive and negative implications. Positive implications, as expressed by the employers and pro-globalisation reformists include low wage bills resulting into low cost of production and cheap prices for consumers, availability of easy and flexible labour to adjust to economic exigencies,
relief from payment of compensation for lay-offs, retrenchments and social security schemes and no need to maintain a big centralized human recourse establishment. The employers can avail the benefits of specialization and retain competitiveness. Contract workers do not unite to struggle for their causes. They are usually standing in competition with each other. They are often afraid of losing jobs. Employers justify it saying that it avoids industrial unrest and consequential losses. The efficiency of contract labourers is claimed to be higher as compared to regular workers who are usually ill motivated to show excellence at work. Insecurity of employment is deemed to be a factor which promotes work culture. All these points have been raised and supported by employers in the sports goods industry in the focussed group discussion with the researcher. Rising population, unemployment, unwillingness of the youth to perform unskilled or less-skilled jobs, migration and poor performance of the public sector have also been the encouraging factors for the rise in contract labour system. However, if we look from the point of view of labour, the positive implications of the system are nothing but the negative impacts upon the rights and benefits of labour class. Contract workers are denied direct employment relationship and consequential rights under labour law. There is no security of employment. Thus, the positive or negative depends upon the place where a particular person stands for in the matrix of the factors of production.

The Contract Labour (Regulation and Abolition) Act, 1970 is a beneficial piece of legislation specifically enacted for the protection of the contract labour in India. Chapter-II entitled as “Legislative Framework for the Protection of Contract Labour in India” comprehensively explains and critically analyses various provisions of the Act read with Central Rules. The Act contains certain loopholes as well as deficiencies. If a principal employer engages twenty or more contract labourers on any day in the preceding twelve months, such principal employer will have to get his establishment registered under section 7 of the Act and similarly if a contractor employs twenty or more such contract workers on any day in the preceding twelve months, he is required to obtain a license for this purpose as prescribed under section 12 of the Act.

It has been a common matter of contention that what will be the consequences if the principal employer fails to register the establishment or the contractor fails to
obtain license under the Act. Different High Courts have divergent views in this regard. High Courts of Punjab, Kerala, Delhi and Calcutta have held that the only consequence would be the prosecution of the principal employer or the contractor as the case may be because the Act does not provide for any other action. On the other hand, the High Courts of Madras, Bombay, Gujarat and Karnataka have held that in such case the contract workers will acquire the status of direct employees of the principal employer. This controversy was settled by the Supreme Court in the case of Dena Nath v. National Fertilisers limited\textsuperscript{4} and it was held that the non-registration under section 7 and non-licensing under section 12 will lead only to prosecution under the Act and that the contract workers in such cases will not become the direct employees of the principal employer. The view held by the Punjab, Kerala and Delhi High Courts was upheld by the Court. It is submitted that penal consequences theory fails to deter the offenders. The Act should provide for some relief for the contract workers in case principal employer does not get his establishment registered or the contractor fails to obtain license. It will have better impact on the minds of present as well as future offenders.

If the contract labour is performing the same work or the work similar to the work of regular workers, the same wage rate, hours of work and other conditions of the service shall be applicable to the contract labour also. This provision finds place in the Central rules and not in the body of the Act. Rules can be easily changed by the State governments and therefore, it gives a room for hollow implementation of the Act.

The cost of implementation of the Act is higher than the cost of contravention of the Act. Any person who contravenes the provisions of the Act or Rules relating to regulation, prohibition or restriction of the employment of contract labour or contravenes the conditions of the licence granted under the Act, shall be punishable with imprisonment which may extend to three months or with fine to the maximum of one thousand rupees or with both and in the case of further contravention, after first conviction, a fine to the maximum of one hundred rupees for each day of contravention may be imposed. This is the clause which provides for the highest penal

\textsuperscript{4} AIR 1992 SC 457.
consequences under the Act. The penal provisions are meagre and cannot deter the offenders. Imprisonment has not been made compulsory.

It is further noticeable that the amount of fee and the security deposit required to be paid by the principal employer for registration which is payable for each assignment for engagement of contract labour, is higher than the one thousand rupees penalty for contravention. For example, the Punjab Government notification no. G.S.R 46/C.A.37/1970/S.35/Amd. (8)/2014 dated 11 September, 2014 provides that as per the Punjab Contract Labour (Regulation and Abolition) Amendment Rules, 2014, if the number of workmen proposed to be employed on contract on any day is twenty to fifty, the principal employer will have to pay Rs. 1500 as fee for registration. If number of workers exceed fifty but does not exceed two hundred, the fee is Rs. 6000 and if workmen are more than two hundred and up to four hundred, the fee is Rs. 12000 and the highest amount is Rs. 15000, if number of workers exceed four hundred. The licence fee payable by the contractor will be Rs. 450 if the number of workmen employed by him is twenty to fifty. If the number of workmen exceeds fifty but does not exceed two hundred, the fee is Rs. 1500 whereas the fee will be Rs. 3000, if he employs more than two hundred workmen, yet not exceeding four hundred. The highest amount of fee is Rs. 4500, if the number of workmen exceeds four hundred. The amount of security deposit will be paid in addition to the fee paid for licence for due performance of the conditions of the licence and compliance with the provisions of the Act or the Rules made there under. When the fee for implementation of the Act (for each assignment of work) is more than the penalty for the contravention of the Act, the principal employers as well as the contractors will be motivated to evade the provisions of the Act. This is one of the important reasons for non-implementation of the Act.

The Act gives wide powers to the appropriate Government such as power to restrict or extend the application of the Act and abolish contract labour. The advice of the Contract Labour Boards does not hold much water being recommendatory in nature. The Act is silent on the issue of absorption of contract labour after its abolition under section 10. This is one of the biggest loopholes of the Act.
The Act fails to regulate contract labour in out-sourcing which is a post-globalisation phenomenon. It is claimed that these kinds of works are purely commercial transactions between the principal employer and the contractor as independent parties, and therefore, governed by general commercial laws. The outsourced entities possess special skills and therefore their services are hired. The labour engaged by them is their own labour. The Act excludes such workers saying that they are out-workers working outside the place of the principal employer. It is submitted that if contract workers working at premises out of the control and management of the principal employer, for example, the home-based ball stitchers are excluded from the purview of the Act, a large number of workers are thrown out of the coverage of the Act making their situation very vulnerable. It is one of the biggest loopholes of the Act. It is, indeed, being used as a trick by the principal employers.

The International Labour Organization has defined contract labour as, “For the purpose of the proposed convention the term ‘contract labour’ should mean work performed for a natural or legal person (referred to as a ‘user enterprise’) by a person (referred to as a ‘contract worker’), pursuant to a contractual agreement other than a contract of employment with the user enterprise, under actual conditions of dependency or subordination to the user enterprise, where those conditions are similar to those that characterize an employment relationship under natural law and practice”\(^5\). Thus, ILO includes the above stated workers in the definition of contract labour and so should do the Indian contract labour Act. The empirical analysis of the contract labour practices in the home-based production of sports goods presents the finest example of such tricks to avoid obligations under the labour law.

Home-based production of sports goods is a phenomenon which started taking place with the advent of globalisation in the late eighties and took pace in late nineties; a long after the Act was enacted. When a process of production is outsourced through contractors, who employ workers to perform the production activities, the entire livelihood of such workers being dependent on the work given by principal employer and such work is carried out for long time, it does not remain a case of mere independent commercial contract amongst the principal employer, contractor and the

out-worker. Rather it is an employment relationship. The work is perennial in nature and workers work for same contractor and the principal employers for years. In the modern age of globalisation, business is carried through the supply chains. Outsourcing is frequently resorted to cut costs and maintain competitiveness. Work is performed at various places with few labourers engaged purely on contract basis. Intermediaries are engaged to avoid obligations under the labour legislations. Therefore, the definitions should be suitably amended to remove ambiguities and to bring the said workers within the purview of the Act so as to address the challenges posed by the globalisation of the economy.

There is a lack of social security net for the contract workers. Employers argue that if they are to pay high wage rates and social security to contract workers also, then what the advantage of engaging contract labour is. Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, Employees’ State Insurance Act (ESI), 1948, and the Employees’ Compensation Act, 2010 are applicable to contract workers also, however, in practice, no social security is paid to contract workers. The frequent change of contractors or the principal employers was claimed to be the main cause of technical difficulty to implement these social security laws. However, it was found that contract workers work for same contractors and principal employers for years, yet no social security accounts are opened and no such payment is made.

The higher judiciary has been keen to secure the basic rights of the contract workers reading them into the fold of the constitutional provisions. Chapter-III dealing with “Judicial Interpretations” states that by synthesising the contract labour’s rights with Directive Principles of the State Policy enshrined under the Constitution of India, the courts have awarded specific reliefs like securing health and welfare facilities like canteen and crèches for the children of women contract workers, right to equality of remuneration in case of same or similar kind of work, piercing the veil between the contract labour and the principal employer by eliminating the contractor and treating the contract workers as the workers of the principal employer with all consequential legal rights in case the contract system being found mere camouflage and setting aside the contract labour prohibition notification under section 10 for non-fulfilment of statutory provisions. The problem is with the scope and ambit of the Contract labour (Regulation and Abolition) Act, 1970. The scope of judicial
intervention is narrow. Most of the powers are vested in the appropriate Government which includes power to prohibit contract labour, power to extend or restrict the application of the Act and power to fix wages in case of dispute without any specific guidelines being provided in the Act. One of the shortcomings of the Act which becomes a hindrance in the way of courts in doing complete justice is the consequential effects of the violation of the provisions of the Act. For example, the courts have held that the consequential effect of non-registration of establishments and not getting licenses by the contractors will have penal effects only; it does not entitle the contract workers with any specific relief or rights.

One of the major criticism faced by the judicial wing is its decision in the case of The Steel Authority of India Limited v. National Union for Waterfront Workers\(^6\), popularly called SAIL judgment, in which the Supreme Court ruled that the contract workers are not eligible for the automatic absorption after abolition under section 10, overruling its earlier view held in many cases that the contract workers were eligible for regularisation. The Act is silent on this issue and therefore, courts have given different kind of rulings at different times. The Act is welfare legislation and therefore, it is expected to be liberally construed in favour of the labour, the beneficiary. The said judgement, which is still the precedent on the issue, needs to be suitably modified. It can also be drawn from the analysis of the rulings of the courts that the colour of judicial interpretations in the post-globalisation era have faded than the colour that they used to have in the pre-globalisation era which was inspired by high constitutional goals and the welfare of the labour. It encourages and provides leverage to employers to frequently resort to contract labour system.

Contract labour system is a universal phenomenon. Chapter-IV entitled as “International Labour Code and Social Dialogue on Contract Labour Vis-A-Vis National Law and Practice” concludes that there is a serious concern on international level over the exploitative tendencies of the contract labour system. International Labour Organisation (ILO) and its member states agree that a consensus is needed to solve basic issues such as norms to establish employment relationship and extent of legal protection in non-standard form of employments which includes contract labour, however, member states are not prepared to make alterations in their national political

\(^6\) 2001III CLR, 349.
commitments. Other than Recommendation (No.198) on Employment Relationship, 2006 and Convention on Temporary Work Agencies 1997 (which is limited in scope and dimensions), no other specific binding convention could be signed which could provide for basic, uniform and workable legal standards for regulation of contract labour. Deadlock remains in social dialogue on contract labour at international as well as national level. The Stakeholders possess extreme views motivated by class struggle. No consensus could be developed between organisations of employers and workers on the issue of amendments to the Contract Labour (Regulation and Abolition) Act, 1970.

The comparative analysis of the legal provisions of different countries reveals that different jurisdictions provide for certain constraints on engagement of contract labour such as use of contract workers only for temporary works, fixing minimum and maximum duration of contract labour’s work, fixing cap of employability of maximum number of contract workers as a percentage to the regular workers, quarantine periods, preferential rights to contract worker in case regular post is created and a right to compensation in case of violation of such right along with equal remuneration for equal work with necessary social security to be paid by the user enterprise. In India, the Government can adopt any of these measures inter-alia for reforms in the Indian contract labour law. The discussions on the comparative study of different legal systems should take place in the annual labour conference.

6.1 FINDINGS OF THE STUDY

The sports goods manufacturing industry of Jalandhar is the biggest sports goods manufacturing industry of the country with an annual turnover of around 500 crores, sixty percent of the production of which is exported worldwide including the countries like United States, Germany, France and Australia. It is a highly labour intensive industry. Contract labour is employed in abundance including the women at large scale. The empirical survey was conducted on 510 respondents including 400 home-based contract workers, 80 factory-based contract workers, 20 contractors and 10 principal employers respectively along with the focussed group discussions with other stakeholders such as labour department officials, labour lawyers, trade unionists and owners of supply chains. The respondents were chosen on the basis of random sampling method and responses were collected through the interview schedule.
method both from the home-based as well as factory-based contract workers. The researcher faced many difficulties in collection of data from the factory-based contract labour and the principal employers. The principal findings of the survey are as under-

1. **Contract Labour is the general rule and permanency is an exception**- 90 percent of the labour in the industry is contract labour including both home-based as well as factory-based labour. There are more than 200 contractors operating in the industry which employ more than 100 workers, yet only 10 have obtained the licence under the Act showing the minimum number of workers required under the Act i.e. 20 workers to obtain a licence. There are around 100 big factory establishments in the industry. All factories employ contract labour at large scale, yet only 6 of them have been registered under the Act. The big factories employ 200 to 400 workers on an average, though their muster rolls show only 5 to 50 workers. These workers are regular workers who work on big machines or supervise the work of contract workers. The majority of the labour is contract labour. Contractors supply labour to factories and pay them wages. The employers call them temporary job workers; however, the reality is that such workers work in factories for the whole year.

2. **Contract labour is employed in core processes of production**- 60 percent of the total production of the industry comprises of inflatable balls. 90 percent of the production of inflatable ball stitching is carried out in small scale home-based establishments. Inflatable ball stitching is a core process of production and perennial in nature. The whole core process is outsourced and carried out through the contract labour. The employers will have to pay minimum wages to all workers in the state of Punjab if their establishment is covered under the Factories Act, 1948 and therefore, in many cases employers employ less number of regular workers so as to avoid the application of Factories Act, 1948 and consequently to avoid the payment of minimum wages. They either engage contract labour through labour-only-contracting or outsource work to medium scale or small scale and home-based establishments. Home-based
production enables the employers to avoid payment of minimum wages as well as social security.

3. **Contract workers are poor and belong to downtrodden sections of society**- Home-based contract workers are poor and oppressed class. 80 percent of them belong to scheduled castes. Majority of them live in small rented houses. 25 percent of the respondents are illiterate and 35 percent of them are only primary pass-outs. Majority of the labour i.e. 75 percent are local persons. Majority of the home-based workers i.e. 60 percent are women. Women are paid equal remuneration for the same work.

4. **Principal employer supplies the raw material to home-based contract workers**- 95 per cent of the raw material in the form of packed kits is supplied by the principal employers from the factory to the contractors who hand them over to houses of workers or small home-based stitching centres. 5 percent of the raw material which includes the wax, needle and thread are purchased by the workers themselves. The process is going on in the industry for around 30 years. Contractors work as mere transporters of the semi-finished products from and finished products to the factories of the principal employers and do not use their own tools, skills, equipments or raw materials. They make payments to workers out of the payments they receive from the principal employers. Employers claim that such contractors are independent contractors who employ their own labour. Employers have no employment relationship with them or any other obligation towards such labour. It is submitted that the contractors cannot be regarded as independent contractors. The contractors as well as the workers, both are solely dependent on the principal employer for their livelihood. An independent contractor is that person who is hired to produce a given result to the user enterprise in which the contractor hires his own labour, arranges their own equipments, tools and raw materials and uses his own skill and crafts in one or the other way. He is not solely dependent on principal employer for his livelihood. Here in the given industry, the contractors are engaged merely to avoid direct employment relationship between the workers and the factory establishment and resultantly to avoid obligations under the labour laws.
5. **Contract workers’ wages are less than the statutory minimum wages** - In home-based ball stitching, in standard 8 hours, majority of the workers i.e. 62 percent earn between Rs. 101 to 150 and 18 percent earn Rs. 151 to 200. It is noticeable that ball stitcher contract workers are skilled labourers. The minimum wage for skilled labour with effect from 1\textsuperscript{st} March, 2015 is Rs. 328.22 on daily basis making a total of Rs. 8524.75 for a month\textsuperscript{7}. It is apparent from the data that workers are not paid even the statutory minimum wages. It is below the wages paid to an unskilled industrial worker which is Rs. 267.13 making a total of Rs. 6935.62 with effect from September, 2015\textsuperscript{8}. It is further noticeable that majority of the workers earn wages less than Rs. 180 per day, the wage provided even under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005. The annual increase in wages is not satisfactory. A big majority i.e. 90 percent of the workers replied that the maximum increase in wages remains to be 5 percent only and sometimes there is no annual increase in wages. All the workers admitted that no representative of the employer has ever been present at the time of disbursement of wages by the contractors neither any employer ever inquired for in this regard.

6. **Contract workers are not paid any social security benefits** - 100 percent of the workers replied that no other payment is made by the contractors or the principal employers in the form of social security. Medical problems such as weak-eye sight, needle cuts, joint pain in hands and pain in spinal cord, are the common health problems of stitchers, yet no medical relief has ever been provided by the contractors or principal employers.

7. **Home-based contract workers work for longer hours in unsatisfactory working conditions** - 76 percent of the workers work for 8 to 12 hours a day. 9 percent workers were found to be working for more than 12 hours. Contract workers are low paid workers and therefore, they are forced to work for long hours to earn adequate amount of livelihood. Sometimes, contractors also require them to work for longer periods so that they need to employ fewer workers. However, it was found that working conditions of contract workers

\textsuperscript{7} Retrieved from www.labourlawreporter.com/wp-content/uploads/PUNJAB. MW.pdf visited on 9\textsuperscript{th} June, 2016 at 6.04 pm.

\textsuperscript{8} Retrieved from pblabour.gov.in/html/PDF/March2012/Webdata/January 2014 to September 2015.pdf visited on 9\textsuperscript{th} June, 2016 at 6.15 pm.
working at organised workplaces where large scale production takes place are better than the small scale workplaces.

8. **Contract workers work for the same contractor for sufficiently long periods** - 37 per cent of the home-based workers are working with the same contractor for more than 2 years and up to 5 years. 15 per cent are working for more than 5 years with the same contractors. 45 per cent respondents answered that they knew 31 to 40 persons who were working with their contractor whereas 30 per cent of them could enumerate 21-30 workers they knew who work for their contractor. The Act provides that every contractor who employs 20 or more workers on any day in the preceding 12 months is required to obtain licence for the engagement of contract labour.

9. **Factory-based contract workers also work in a state of exploitation** - The survey of factory-based workers also displays the state of exploitation of contract workers and abuse of the contract labour system. Their personal profile and living conditions are almost the same as that of the home-based workers because they also live in the same Basties.

10. **There is inequality of wages between contract workers and regular workers doing the same or similar kind of work** - For the same work of ball stitching in standard 8 hours, a home-based contract worker earns Rs. 3500 per month, the factory-based contract worker earns Rs. 5000 and on being regularised, he may get Rs. 8000 per month apart from the social security, if so paid to him. Thus, the ratio of difference of wages between a contract and a regular worker was found to be 5:8. The percentage difference between wages of contract worker and regular worker is 37.5 percent and between wages of home-based worker and the factory-based worker is 30 percent.

11. **Contract workers and regular workers jointly enjoy the cost-free tea once a day, medical care and the use of bathrooms and urinals in factories** - There are three facilities which are shared by both regular and contract workers jointly. These are cost free tea once a day, medical facilities in case of injury and the use of bathrooms, urinals and drinking water. Factories remain closed on Sunday. No social security is paid to contract workers. Only two factories were found to be having canteens; however no subsidised food is supplied there. An independent contractor runs such canteens.
12. **Labour department officials are indulged in corruption**- Majority of the factory-based respondents i.e. 85 percent replied that official of the labour department inspect factories, however they do not talk to labour. Labour officers are indulged in corruption.

13. **The sports goods industry has made good efforts to eradicate child labour**- All the respondents denied engagement of child labour in their establishments. However, it is noticeable that home-based production system gives more room for engagement of child labour in poor households.

14. **Trade union density is low and exercise of collective power of labour is deficient** - General trade unions such as All India Trade Union Congress (AITUC), Indian National Trade Union Congress (INTUC), Centre of Indian Trade Unions (CITU) and Bhartiya Mazdoor Sangh etc are not much active in the industry. Regular employment is found to be minimal and therefore; the union density is very low in the industry. Factory level associations headed by “Factory Pradhans” undertake bargaining and dispute resolutions with the employers. Low impact of trade unions is also one of the reasons of exploitation of workers.

15. **There is a tendency of shifting the burden of social security from the shoulders of the employer to the public exchequer**- Contract labour system facilitates the employers to avoid social security benefits. The contract labour system converts the standard form of employment into non-standard of employments such as labour-only contracting, outsourcing, part-time work, casual labour and the like. In such kind of arrangements, it becomes difficult to establish the requirements of employment relationships so as to avail social security benefits. Consequently, the labour becomes labour of unorganised sector which is dependent on Government’s social security programmes for betterment of their lives. In this way employers succeed in shifting their burden of social security by deliberately shifting it to public funds. It is against the principle of distributive justice enshrined in the directive principles of the state policy. Government should not become a pray in the hands of mighty rather it should come up with strong measures to eradicate processes which put it into jeopardise and lead to violations of the provisions which are the spirit of the Constitution of India.
16. **Technological developments have facilitated contract labour system**-
Technological advancements have lead to increase in non-standard form of employment worldwide. The home based-production started in sports industry when, due to the technological up gradation, it became feasible to stitch balls at homes. Earlier it was a craft which needed careful cutting of panels and their symmetrical stitching, however, in the late seventies, machines started cutting and setting the symmetry of panels of balls. Now, the stitchers are supplied kits of semi-finished products that perform the task of final stitching. It led to immense increase in home-based production of inflatable ball stitching through contract labour, a task which was earlier performed in the factory. The question before us is that whether the dividends earned by technological progress are dully shared by the workers also or are they operating in derogation to their well being as a class. The technological up gradation, its consequential effect on workers and alternative solutions, is a subject that needs more research and analysis. This issue should also become a part of the national thought process on the labour law reforms in India.

17. **Increase in contract labour system reduces labour solidarity**- Contract workers are not motivated to organise and therefore, union density reduces. This is one of the reasons of their poor conditions because the strength of labour lies in its unity and collective bargaining. Contract workers should form their own unions or associations. Some organisations have worked well even in unorganised sector. The example of Self-Employed Women’s Association (SEWA) is significant which an association of unorganised sector’s women engaged in manufacturing, craft and services. SEWA has been instrumental in bringing greater security and prosperity to its members.

18. **Increase in labour participation of women encourages contract labour system and outsourcing, in particular**- The study presents another interesting analysis that more participation of women in labour market encouraged contract labour system. There was a steep rise in home-based contract labour when women entered the ball stitching work in the late nineties. Women labour seemed to be pleased with home-based production system. It raised

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their economic and social status. However, women are not motivated to organise into unions and get satisfied on low wages if the conditions better help them to integrate their family responsibilities with their jobs. Majority of the workers, basically the women refused to go to factories even if paid better than the present remuneration in case home-based production is stopped and the work is shifted back to the factories.

19. Migration of workers puts extra pressure on the local employment market and leads to decline in wages and other conditions of service- Respondents revealed that migrant workers are easily satisfied with low rates of wages and are not willing to organise with the local workers to fight for labour causes as a class. Migrants are the source of cheap labour and it leads to deterioration of working conditions and low wages for local labour.

20. The awareness of labour laws is not found in labour class- Most of the workers are not much educated. Even in case of need, they cannot avail services of legal experts due to ignorance and poverty.

21. The institutional gaps exist in the industrial relations machinery of the Government-The institutional gaps in labour department such as the lack of staff, lack of budgetary support, lack of will power of the Government to support the officials have been found to be other reasons for the poor implementations of the Act.

22. Huge paper formalities dishearten the stake-holders to implement the Act in their establishments- Contractors and employers stated that a lot of paper work is involved in the implementation of the Act. Different kinds of forms, registers and other records are needed to be maintained. It discourages them to dully execute the mandate of the Act.

Thus, the implementation of the Act in sports goods industry is very poor. Those who are supposed to implement the laws and help the poor and needy workers are indulged in corruption. Contract labour system, in its present form, is beneficial for the employers but exploitive for the labour. It degrades dignity of labour. It denies employment security and important legal rights and benefits to labour. It, therefore, needs to be curbed. The study has been undertaken to test the following hypothesis-

1. Contract labour is the growing form of employment practice in India.
2. Contract labour is employed even in core activities of production which are permanent and perennial in nature.

3. Contract labour system lends itself to various uses and abuses.

4. Contract workers are low paid workers and in many cases, they are not paid even the statutory minimum wages.

5. There is a lack of adequate social security system peculiar to the conditions of contract labour.

6. The working conditions of contract workers are poor and undignified.

7. The scope of judicial intervention is narrow. The crucial powers under the Contract Labour (Regulation and Abolition) Act, 1970 have been vested in the appropriate Government without adequate guidelines.

8. The Contract Labour (Regulation and Abolition) Act, 1970 was enacted to safeguard the interests of contract labour. The implementation of the Act is unsatisfactory. The Act failed to achieve its desired objectives. It has become out-dated and deficient in the post-globalisation era.

It is clear from the above stated discussion that all the points of hypothesis are proved to be true except one point regarding the poor and undignified working conditions of contract workers, which was partially proved to be true. The working conditions of contract workers in big factory establishments were found to be satisfactory whereas in medium and small scale establishments, working conditions are poor and undignified.

6.2 RECOMMENDATIONS AND PROPOSED AMENDMENTS IN THE ACT

The study concludes that the Act has some loopholes and deficiencies which need to be rectified. To remove these irregularities and make the Act more effective, following suggestions are given-

1. **Prohibition on employment of contract labour for core activities**- Contract labour should not be used in core activities of production and services which are permanent and perennial in nature. The expression ‘core activities’ should be defined in the Act. The activities which are essential for a product to become finished and marketable and are undertaken as a routine process (not being a temporary work) should be defined as ‘core activities’. A new section
should be added to the Act which strictly prohibits the use of contract labour in core activities and provides that such labour will be deemed to be the direct and regular workers of the principal employer, in case the labour is so engaged in violation of the said section. Apart from that, the establishment of principal employer and the contractor should be made liable for penal consequences also. A minimum fine of Rs. 20,000 on the contractor and Rs. 50,000 on the principal employer should be imposed. Imprisonment should be made mandatory with a maximum term extendable up to one year. However, an exception may be granted for engagement of contract labour in temporary exigencies duly explained by the section. In case of non-core activities, the appropriate Government should be given discretionary power to prohibit the contract labour. Thus, section 10 should be applicable to such cases.

2. **Same wages for same or similar work** - The provisions regarding regulation of wages should be inserted in the Act. Section 21, through a new clause (5), should provide that “If the contract labour is performing the same work or work similar to the kind of work performed by regular workmen of the principal employer, the same wage rates shall be applicable to the contract labour also”. At present, such provision is included in Rule 25. The expression “same or similar kind of work” should be defined in the Act taking into account the factors such as qualifications required to perform such work, the work process, working hours and the responsibility regarding such work. There is great need for strict implementation of the minimum wages for contract labour. It must be ensured through strong executive actions such as regular inspections and instant prosecution of the offender. Penalty for non-payment of minimum wages should be exemplary which deters the offenders from contravention of such provisions. It must not be less than Rs. 50,000 for all in all cases for a single contravention. There should be an independent authority to listen to the voice of the contract workers and to enable them to make it reach to the appropriate authority\textsuperscript{10}. A National Floor Level Minimum Wage should be fixed and no employer should be allowed to engage workers for wages less than the so fixed, whatever may be the kind of work he engages the labour for. The implementation of such measure should be backed by legal

\textsuperscript{10} Ibid.
sanctions. An amendment to this effect should be made into Minimum Wages Act, 1948.

3. Social security measures- A new section should be added to Act that provides for which of the social security measures are applicable to contract workers because much of the contest is undertaken between employer and the contract worker to decide which and to what an extent a particular social security legislation is applicable to contract labour. Various High Courts have taken different views at different times. This irregularity needs to be corrected. Further, the paper formalities for availing the benefits of social security schemes should be reduced. A common and portable number for different social security schemes should be given to all beneficiary workers. A new approach for integration of poverty reduction schemes (e.g Pradhan Mantri Jan Dhan Yojna) with the social security accounts may be helpful. For example, if a worker has opened an account under the Pradhan Mantri Jan Dhan Yojna, his social security contribution (by the employer) may be deposited in the said account. Contract workers will not have to open separate accounts under different social security legislations. The Government may also be able to keep an eye on the implementation of social security legislations. However, the potentiality of this system is a matter of further research.

4. Piercing the veil in sham or camouflage contracts- If the intermediary is engaged only to avoid labour obligations; it is a fraud on labour law. It is sham contracting and a mere camouflage. There should be an express provision in the Act that prohibits it and provides for consequential relief for workers. It will empower the courts to inquire into and decide upon the consequential rights to labour, if the contractor is engaged for a sham contract or a mere camouflage. Before the enactment of the Act, this power was assumed by the courts under the Industrial Disputes Act, 1947, when an industrial dispute could be raised by workers and Tribunal had the power to abolish contract labour and grant consequential reliefs. However, after the enactment of the Act, this power of courts has been curtailed. There is always a contention by the employers that contract workers are not eligible to raise an industrial dispute under the Industrial Disputes Act because they are governed by the Contract Labour (Regulation and Abolition) Act, 1970 which is a special
legislation enacted to regulate contract labour practices and which entrusts the power to abolish contract labour with the appropriate Government only. This limitation of the Act should be done away with; however, necessary guidelines may be enacted for the direction of courts. It will enhance the scope of judicial intervention for the cause of contract workers.

5. **Deemed regularisation of contract labour**- The Act should also expressly provide for regularisation of contract labour after its abolition. Section 10, through a new clause (3), should therefore provide that “Contract workers shall be deemed to the regular workers of the principal employer from the day, the notification for prohibition of contract labour is published in the official Gazette”. However, suitable principles may be introduced through a proviso as to the duration of service, qualification of workers and the assessment of their quality of work before an order for regularisation is made.

6. **Checks on the exercise of discretionary powers by the appropriate Government**- The expressions such as “intermittent”, “casual”, “perennial”, “incidental”, “similar kind of work” need to be elaborated and suitably principled through explanations in the verbatim of the Act. It will ensure that the discretionary powers are not arbitrarily exercised by the appropriate Government. It is noticeable that non-exercise of discretion where the situation justifies the exercise of such power, is also arbitrary decision and liable to be checked. It is usually seen that appropriate Governments do not take any action under section 10 even after the recommendation of the Contract Labour Boards for abolition of contract labour. It deteriorates the impact of the Act on the minds of employers. Deemed regularisation clause will encourage the due exercise of such power.

7. **Inclusion of out-workers**- For the application of the Act, the contract worker must be working in the premises of the principal employer or in premises under the control and management of the principal employer. This is premises theory and it is out-dated in modern times. Thus, if the principal employer changes the premises, the Act fails, though he may be getting the same work from same workers and through the same contractor. It needs to be changed. The exception clause (i)(C) regarding out-workers in the definition of “workman” under section 2(h) should be omitted. It will include out-worker,
where all the characteristics of employment relationship exist, whatsoever may be the place of work. However, for this purpose, a regime of recognized norms for establishment of employment relationship in non-standard of employments is required. It is interesting to note that there could not be a consensus even in ILO on any such norms. There is a great need to have such recognised norms at national and international level and it needs further research on fundamental principles of labour jurisprudence. Legislature and judiciary are also expected to make efforts in this regard.

8. Modifications in the health and welfare provisions- The provisions regarding health measures like medical help, accidental compensation or health insurance should be strictly implemented. For health and welfare measures, the primary responsibility, in the case of labour contracts, should be fixed on the principal employer and in service contracts too, if the contract workers work in the premises of the principal employer; the responsibility should be fixed on principal employer. In other cases, it may be fixed on the shoulders of the contractors. The responsibility should be individual and dually implemented. At present, the primary responsibly lies on contractor and if he fails, the vicarious liability lies on the principal employer in all cases. Dual responsibly theory has failed to achieve its ends. Therefore, section 20 should be omitted and the word “contractor” in sections 16 (1)(c), 17(1)(b), 18 and 19 should be replaced by the words “principal employer, in case work is done at the premises under the control and management of the principal employer and by the contractor, in other cases”. In cases like that of home based contract labour, the provision for canteens, rest rooms, bathrooms and urinals etc. need to be omitted. The threshold limit of number of workers required for the establishment of canteen should be reduced to 50 persons, which, at present are 100 persons. Section 16 (1)(c) should, therefore, include the words “fifty or more persons” instead of “hundred or more persons” However the provisions regarding standard requirements in the canteen should be amended so as to provide for relaxed norms in this regard.

9. Insertion of rules regarding maximum working hours and overtime pay- The rules regarding maximum working hours and overtime pay of contract workers should be inserted in the Act and be strictly implemented.
10. **Deterrent punishment**- The penal clauses under the Act provide for meagre punishments. Imprisonment should be made compulsory. The amount of fines should be considerably increased. The punishment for non-payment of minimum wages should be exemplary. Accordingly, section 22, 23 and 24 should be amended. In all cases, the fine should not be below Rs. 10,000 for the contractor and Rs. 20,000 for the principal employer and maximum imprisonment should be increased to one year and be made compulsory. A fine of Rs. 1000 per day for each day of continued contravention, after the first such conviction is made, should be imposed. The fines collected by courts should be used for the welfare of labour.

11. **Reduction in the fee for registration, and fee and security deposits for licensing**-The fee for registration of establishment to be paid by the principal employer and fee and security deposits for obtaining licence by the contractor should be reduced and should not be based on number of workers employed. It is not the task of the labour department to collect revenues from the employers and contractors; rather the real motive is to motivate them to implement the Act and to secure the welfare of labour. Higher fee encourages evasion of the Act. Moreover, the certificate of registration and licence should be valid for at least two years. There should not be need for fresh application for each assignment of work taken from contract labour rather there should a provision simply for written intimation to the labour officers of the change in number of workers and nature of work.

12. **Reduction in paper formalities**- Paper formalities in the form of different forms, registers and other records should be minimised. Clause (1) of Section 29 should be amended only to contain the words “Employment cards, and a register showing names and addresses of workers, amount of remuneration and social security paid to contract workers, nature of work, estimated duration of their work and the name and address of the contractor and the principal employer shall be maintained at the place of both contractor and the principal employer”. Central Rules should be accordingly, amended.

13. **Institutional overhauling**- Corruptive practices of the labour officials in the state labour department should be strictly checked. Other institutional gaps such as shortage of staff and lack of modern infrastructure should be filled in.
There is strong need for the contract workers to have their own unions so as to collectively fight for their causes. Collective action may be one of the strongest measures to ameliorate their conditions. The labour department should encourage and facilitate for the proper formation and execution of such collective agreements.

14. Need for a comprehensive international convention on contract labour-

There is a need for a comprehensive convention from the ILO which provides for definition of contract labour, contractor and principal employer along with other necessary expressions, basic rights of contract workers, the norms for establishment of employment relationship, identification of the employer and the implementation mechanism. India should ratify such convention.

Social justice, social equality, international uniformity and national economy are the guiding principles of Indian labour legislations. These principles have been enshrined in the Constitution of India. The Constitution is a modernising force for our country and is rightly called as the precursor of the new Indian renaissance. It reflects the aspirations of the people who took part in the national freedom movement. It lays down a comprehensive political, social and economic programme for the independent state of India. The Constitution specifically endeavours to protect and safeguard the interests of poor, weaker, oppressed and the marginalised people which include the working class. A constitutional survey reveals that it contains various provisions for the protection of rights of labour in its different parts. However, in present times, the legislature and the executive wing of the Government seem to undermine the mandate of the Constitution which comes up as a set-back for the poor and feeble labour class. Nobel principles of the labour policy as enshrined in the Constitution should be upheld in letter and spirit by all the organs of the Government, the law of the land to which they owe their very origin. The researcher recommends that a new interpretation of the clause (d) of Art. 39 is required. The principle of equal pay for equal work should not be seen to be applicable from the gender point of view only, rather it should be interpreted from other angles also such as discrimination of remuneration based on undue employment segmentation such as permanent, contract, casual or part-time basis when the workers are performing the same or similar kind of work under similar working conditions.
It is submitted that the Contract Labour (Regulation and Abolition) Act, 1970 and the Central Rules have been instrumental in the protection of contract labour in the early period following its enactment. The Act makes appreciable provisions for the protection of the rights of contract workers. However, with the passage of time, the legislation lost its colour due to poor implementation as well as the change in economic order. Change in technology led to change in production processes. During the 1990s, globalisation of the economy posed new challenges before the business fraternity. Indian firms began to face competition from the global firms. Contract labour system expanded at fast growth rate. It helped the employers to save costs and to remain competitive in the market. However, after some time, the contract labour system became very exploitive for labour. At present, it seems that the labour has lost its edge in the contest amongst different factors of production. Labour is not getting its fair share in the fruits of economic progress. The unrest amongst the labour class is evident from the incidents of violence in factories in the last decade including that of the Maruti’s Manesar Plant. The prominent reason for such incidents has been the engagement of excessive contract labour and its consequential exploitation. It is a prominent issue and needs to be promptly addressed.

There is urgent need to make necessary amendments in the Act and related Rules. It is humbly submitted that the suggestions put forward in this study are not in any way conclusive or exhaustive; however, if they are implemented properly, the desired ends of better protection of contract labour enshrined in the Contract Labour (Regulation and Abolition) Act, 1970 will be achieved.