CHAPTER-III
JUDICIAL INTERPRETATIONS

3.1 INTRODUCTION

The role of judiciary has been immensely significant and dynamic in the interpretation and evolution of labour laws in India. The noble principles enshrined in the Constitution such as equality, justice and dignity of labour have been reaffirmed by various judgments of courts. Judiciary not only interprets the existing laws but many a times paves the way for enactment of new laws by way of various decisions and directions. Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter named as the Act) is such a case. The Act was enacted after the Supreme Court’s landmark judgment in the case of *Standard Vacuum Refining Company of India Ltd. v. It’s Workmen and Others*\(^1\). This Judgment was considered at length by the legislature before the enactment of the Act. Section 10 of the Act relating to abolition of contract labour, more or less, is the verbatim of what Supreme Court ruled in this case. After the enactment, the law was further evolved by the higher judiciary.

The general affinity of the judicial activity has been in favour of the poor and the weak party which is undoubtedly, the labour. Judiciary, within the scope of the Act, has tried its best to protect the rights of contract workers. It is true particularly till the rise of the era of globalisation. However, the human rights approach taken by the judiciary in favour of labour in general and contract labour in particular, is said to have deviated after the adaptation of new capital centric economic policies by the Government. It has been argued that the courts are also being influenced by the capital driven growth syndrome and their decisions regarding contract labour particularly after the judgment in the case of *The Steel Authority of India Ltd. vs. National Union for waterfront workers*\(^2\) (SAIL case for short) tell a similar story. From all around the economic world, there are arguments challenging the practicability and viability of the Indian labour legislations in the changed economic realities and their consequent interpretations by the courts. It is in this context that this chapter endeavours to analyse the scope of the role of judiciary under the existing

\(^1\) (1960) SCR (3) 466.

\(^2\) 2001 III CLR, 349.
framework of the Act (read with Rules) by extensively examining the specific reliefs granted in the cases involving contract labour. The broader object of the chapter is to find out the means to secure proper access to judicial action to the poor and vulnerable contract workers.

Historically speaking, there are a few judgments which set out the law relating to contract labour before the enactment of the Act. Amongst them, one case has the most significant implications in the pre-Act era and it remains to be a precedent. Therefore, it has been discussed at length. The judgment in the case of *The Standard Vacuum Refining Company of India Ltd. v. Its Workmen and Others* is of great importance for two reasons. First, it laid down the test for deciding whether contract labour should be continued on regular basis in a particular establishment or not. Secondly, it also spelt out the circumstances in which the workmen of an establishment could espouse the cause of the contract labour who were not the direct employees of the establishment and raise an industrial dispute within the meaning of the Industrial Disputes Act, 1947 and when the adjudicators will have, the jurisdiction to investigate as to whether the contract is genuine or not, and if the industrial adjudicator comes to the conclusion that contract is not genuine, will have jurisdiction also to give suitable relief.

In this case, the workmen of the petitioner company (Standard Vacuum Refining Company) raised an industrial dispute and made a demand for abolition of contract labour employed in the company for cleaning maintenance work at the refining, including premises and the plant belonging to it. The workers also urged for the absorption of existing contract workers as the regular workers of the company retrospectively from the date of their employment in the company. The dispute was raised by regular workers in association with the contract workers. The dispute was referred to the industrial tribunal under section 10 of the Industrial Disputes Act, 1947. In a special leave petition to the Supreme Court, against the order of the industrial tribunal, the petitioner contended the case on the following grounds-

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3 (1960) SCR (3) 466.
5 Ibid.
1. That the tribunal is incompetent to adjudicate upon the matter because the contract workers were the workmen of the contractor who is their independent employer and not that of the company.

2. The work done by contract workers was not germane to the manufacturing process and was therefore entrusted to the contractor. The contract was genuine and it is the contractor against whom the remedy can be claimed.

3. The nature of work of regular workers and the contract workers was different. Therefore wages could be different. If there is any difference of wages and other benefits of contract workers and regular workers then it is a case between the contractors and his contract workers and company had nothing to do with it.

4. It is within the province of the company to decide best suitable methods of business functioning and tribunal is not required to decide upon such matters.

The workers had contended before the tribunal that many a times, the company changed the contractor year to year and thereby the contract workers of the previous contractors are thrown out of employment to avoid regularity of their service. The result of this system is that there is no security of service of the workmen. The contractors pay much less than the wages paid by the company to its regular workmen. The contract workmen were denied the basic benefits like provident fund, gratuity, bonus, privilege leave, medical facilities and subsidised food and housing to which the regular workmen of the company were entitled. The contract system was introduced to avoid security of employment and to deny the legal rights of the aggrieved workers.

The industrial tribunal had held that the work was continuous, perennial and necessary for the petitioner company and therefore, the contract labour must be abolished. However, the tribunal rejected the workmen’s contention for absorption of existing contract workers as the regular workers of the company as it was proved that the contract was genuine and not merely a camouflage.

In appellant jurisdiction, the Appellant Company raised two issues before the Supreme Court asserting that whether the dispute was an industrial dispute and therefore the reference to tribunal was competent and whether the tribunal was
justified in interfering with the management’s function as to how it should get its work done?.

The honourable Supreme Court held that the tribunal was competent to decide the matter. The Court observed that there must be a community of interest for a party to raise the dispute on behalf of another party. The employers as a class or the workers as a class are competent to raise an industrial dispute. Consequently the court held that there was a community of interest between regular and contract workers as in the long run, the contract system, if allowed to prevail as per present conditions, may be introduced in other departments of work in the company and thereby, may damage the security of employment and other legal benefits of regular workers. All the workers worked for the same company. Therefore, the action of the workmen as a class was justified. The factum of real and substantial dispute between the eligible parties was established. The honourable court held that the work was incidental and perennial and not temporary or intermittent. The tribunal’s decision was held to be correct and no interference was called for, except that the decision had to come in force at the end of the term of the present contractor. The appeal was dismissed with costs to be borne by the company.

The court evolved some important principles which are to be followed while deciding for the abolition of contract labour. The court stated that the “only criterion should be whether the work is perennial in nature and must go on day to day and which is incidental and necessary for the work of the refinery and which is sufficient to employ a considerable number of whole time workmen and which is being done in most concerns through regular workmen”6.

3.2. INTERPRETATION OF PROVISIONS OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 AND CONSEQUENTIAL RELIEFS

Within the scope of the provisions of the Act, the Supreme Court and various high courts have laid down some legal principles and provided for the following reliefs-

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6 (1960) SCR (3) 466.
3.2.1 Constitutional Validity of the Act

The petitioner challenged the constitutional validity of the Act in the famous case of *Gammon India Limited v. Union of India* on the ground of unreasonableness and violation of Art. 14, 15, 19(1)(g) and Art.265 of the Constitution. The petitioners carried on the business of contractors for the construction of roads, building, weigh bridges and dams. Under the Act, contractors are required to take licences subject to conditions imposed by the Act. The contractors will have to fulfil the obligations relating to security deposits, wages, canteens, rest-rooms, latrines, urinals as contemplated by sections 16 and 17 of the Act read with Central Rules 40 to 56 and Rule 25(2)(vi) which are incapable of implementation and enormously expensive as to amount to unreasonable restrictions within the meaning of Art. 19(1)(g).

In a petition under Art.32 of the Constitution, the petitioners contended that the Act is not applicable to them as they are not contractors within the meaning of section 2(c) of the Act because neither the work of the petitioner is the work of the principal employer nor it is the work “in connection with the work of the establishment”, namely the principal employer and therefore, the labourers employed by them is not contract labour within the purview of the Act. However the Court rejected the contention of the petitioner and stated-

“Work of an establishment means the work site where the construction work of the establishment is carried on by the petitioners by employing contract labour. Every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words will be by looking at the context and the collocation of the words and the object of the words relating to the matters. The words are not to be viewed detached from the context of the statute. The words are to be viewed in relation to the whole context”.

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7 AIR 1974 SC 960.
8 Ibid.
The definition of contractor, workman, contract labour, establishment, principal employer all indicate that the work of an establishment means the work site of the establishment where a building is constructed for the establishment. The construction is the work of the establishment. The court further clarified:

“Employed in or in connection with the work of the establishment does not mean that the operation assigned to the workmen must be a part or incidental to the work performed by the principal employer. The contractor is employed to produce the given result for the benefit of the principal employer in fulfilment of the undertaking given to him by the contractor. The employment of the contract labour that is the workmen by the contractor is in connection with the work of the establishment. The petitioners are contractors within the meaning of the Act. The work which the petitioners undertake is the work of the establishment”\(^9\).

The petitioners further argued that the conditions attached to licensing and other obligations imposed on contractors violate the contractors’ right to freedom of trade, business and profession under Art. 19(1)(g). The appropriate Government has been given arbitrary power to extend the application of the Act to other enterprises not covered by the Act and to decide upon the wages in case of dispute regarding difference of wages for same or similar kind of work in an establishment. Thus, the Contract Labour (Regulation and Abolition) Act, 1970 is unconstitutional and hence, liable to be declared void. Rejecting the contentions of the petitioner, the Apex Court upheld the constitutional validity of the Act. The Court observed that the Act was passed to abolish contract labour in cases it is feasible to do so and to regulate the working conditions of the contract labour in other cases. The appropriate Government is required to find out whether the contract labour is necessary for any business or industry or that it needs to be continued for the survival of the business or industry and if yes, it may refuse to issue a notification for abolition of such contract labour. The power of the appropriate Government is subject to the criteria mentioned in section 10.

\(^{9}\) AIR 1974 SC 960.
The Court rejected the plea of the petitioners that the fees prescribed for registration, licences or renewal of licences amount to levy of taxes. Government provides the service of registration and licensing and it requires financing and therefore, fee is collected in lieu of service. Moreover, there is no excessive delegation of power to appropriate Government with regard to issue of licences, registration, appointment of inspectors and issuing of different kinds of notifications under the Act. The petition was dismissed and parties were ordered to pay and bear their own costs.

3.2.2 Applicability of the Act

The Act is applicable to every establishment and every contractor employing twenty or more contract workers on any day of preceding twelve months. However, appropriate Government may apply the Act to any establishment or contractor employing less than twenty workmen at two months prior notification in the official Gazette. In the case of *Asia Private Limited, Bangalore v. Union of India*\(^{10}\), The Karnataka High Court has held that provision for applicability of the Act to less than twenty workmen is an exception, applying to special and exceptional cases only. The appropriate Government must ensure proper application of mind on this issue. Any decision arising out of arbitrary exercise of power will be liable to be quashed. While interpreting the meaning of the expression ‘twenty or more workmen’ in relation to a case of Employees State Insurance Corporation (ESIC), the honourable Supreme Court in the case of *Regional Director, ESIC v. Ramanuja Match Industries*\(^{11}\), held that the “expression does not cover partners of a firm even if they are receiving wages in as much as a partner cannot also be an employer of the partnership firm for a man cannot be his own employer. A partner who would not answer the definition cannot be taken into account for the purpose of fixing the statutory minimum number”\(^{12}\).

3.2.2.1 Work of Contract Labour being Intermittent or Casual in Nature

The Act is not applicable if the work of contract labour is of intermittent and casual in nature. In the case of *Himmat Singh and others v. I.C.I India Limited and*
Others\textsuperscript{13}, Supreme Court held that if the work done by contract labour is the same as done by regular workers but in fact the work is of intermittent in nature, such contract workers cannot claim the protection of the Act and similar conditions of service as enjoyed by the regular workers. It is noticeable that the Court did not define what is meant by ‘intermittent or casual’. The Act is silent on this issue. It is submitted that a criterion must be carved out to decide which work is of intermittent or casual in nature.

For the applicability of the Act, it is imperative that the establishment engaging contract labour must be an ‘industry’ as defined by section 2(j) of the Industrial Disputes Act, 1947.\textsuperscript{14} In the case of \textit{Leelaben Parmar v. Physical Research Laboratory}\textsuperscript{15}, the Gujarat High Court has held that the National Physical Laboratory not being an industry, the Contract Labour (Regulation and Abolition) Act, 1970 will not be applicable whereas the Equal Remuneration Act will apply and the people will be entitled to the wages which are being paid to the permanent sweepers of the laboratory.

\textbf{3.2.3 Interpretation of Definition Clauses}

The Act defines the important terms used in the text of the Act. The scholars on the subject have explained the meaning of definitions but their views are not identical and, therefore, it can be said that there is a lack of clarity in this regard. The present researcher also feels that the definition clauses of the Act suffer from some ambiguities. Therefore, it will be very useful to look into the interpretation of some definitional terms which is given as under-

\textbf{3.2.3.1 Appropriate Government}

As per amended section 2(1)(a), in a given case, the appropriate Government will be determined as per the provisions of the section 2 (a) of the Industrial Disputes Act, 1947. Thus, the definition of the appropriate Government as given in the Industrial Disputes Act would apply for the purposes of the Contract Labour (Regulation and Abolition) Act, 1970. Supreme Court in the case of \textit{Steel Authority

\begin{flushright}
\textsuperscript{13} 2008 II CLR 414. \\
\textsuperscript{15} 2011 LLR 813 (Guj. HC).
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of India Limited and Others v. National Union for Waterfront Workers and Others\textsuperscript{16} held that in case of Central Government, “the criterion is that the industry must be carried on by or under the authority of the Central Government and not that the company or undertaking is the instrumentality or an agency of the Central Government for the purpose of Art.12 of the Constitution and such an authority may be conferred either by a statute or by virtue of relationship of principal employer and agent or delegation of power and this fact has to be ascertained on the facts and circumstances of each case”\textsuperscript{17}. It is submitted that same criterion will be applicable where the establishment comes within the sphere of State Government.

In the case of Cochin International Airport Limited v. Regional Labour Commissioner and Another\textsuperscript{18}, the Kerala High Court, on the issue that whether Cochin airport is subject to the jurisdiction of state Government or not, held that the ratio of the SAIL case will be applicable to this case also. Mere requirement of obtaining the license for running the establishment from the Central Government being regulatory in nature is not sufficient. The existence of the establishment as juristic personality should be traceable to the conferment of any specific authority by the central Government. If the relationship of principal and agent does not exist between the establishment and the Central Government, the appropriate Government is the State Government.

In a recent case of Delhi International Airport Private Limited (DIAL) v. Union of India\textsuperscript{19} and Others, the Supreme Court held that the Airport Authority of India (AAI) transferred its air transport service to DIAL and it does not immune DIAL from the authority of the Central Government. Since the appropriate Government for AAI is the Central Government, no matter the DIAL is a private party, the appropriate Government for DIAL is the Central Government and the notification for abolition of contract shall also apply to DIAL also. AAI is under statutory obligation to follow the directions of the Central Government and if it contracts with a private party to fulfil such obligations then such private party will also be subject to the jurisdiction of the Central Government.

\textsuperscript{16} 2001 II LLJ 1087.
\textsuperscript{17} 2001 II LLJ 1089.
\textsuperscript{18} 2010 II LLJ 307.
\textsuperscript{19} 2011 III CLR 538 (SC)
3.2.3.2 Contract Labour

Section 2(1)(b) of the Act provides, “A workman shall be deemed to be employed as ‘contract labour’ in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer”. In the case of Steel Authority of India Limited v. National Union Water Front Workers and Others\(^20\), the Supreme Court clarified that the contract worker constitutes a part of the general expression ‘workman’. There are two methods of recruitment. Firstly, a principal employer himself or through his agent may hire a workman in his establishment or in connection with the work of the establishment. Similarly a workman may be engaged through a contractor for the same purpose. In case, such a workman is hired through a contractor, a question arises whether the contract between the principal employer and the contractor is a genuine contract or a mere camouflage to avoid obligations under labour laws. If the contract is found to be a mere camouflage or a sham contract, the workman belongs to the principal employer as a direct workman and if the contract is genuine, the workman is contract labour and belongs to the contractor.

In the case of Royal Talkies v. Employees State Insurance Corporation\(^21\), the Apex Court, interpreting the expression ‘in or in connection with the work of the establishment’, held that that “this expression ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. A cinema theatre in Andhra Pradesh is not bound to run a canteen or keep a cycle stand but no one will deny that a canteen service or a cycle stand surely has a connection with the cinema theatre”.\(^22\) If the contractor fails to obtain license, even then the workmen hired by him will be contract labour within the meaning of section 2(1)(b) of the Act otherwise the words ‘licensed contractor’ would have been used. Supreme Court considered the meaning of the term ‘work of establishment’ in the case of Gammon India Limited v. Union of India and Others\(^23\). The Court observed that the expression “employed in or in connection with the work of the establishment does not mean that the operation assigned to the

\(^20\) 2001 I LLJ 1087
\(^21\) AIR 1978 SC 1478.
\(^23\) AIR 1974 SC 690.
workmen must be a part or incidental to the work performed by the principal employer. The contractor is employed to produce the given result for the benefit of the principal employer in fulfilment of the undertaking given to him by the contractor. The employment of contract labour as the workmen by the contractor is in connection with the work of the establishment”.  

3.2.3.3 Contractor

The term ‘Contractor’ is defined in relation to an establishment to mean “a person who undertakes to produce a given result for the establishment through contract labour or who supplies contract labour for any work of the establishment and includes a sub contractor but excludes a supplier of goods or articles of manufacture to such establishment”.  

The Act includes both kinds of arrangements of contract labour i.e. ‘labour-only contracting’ as well as ‘job-contracting’. The Act does not mention these expressions and does not define them in any other manner. However, the definition of the term ‘contractor’ includes both type of contract labour. In the case of Steel Authority of India Limited v. National Union for Water Front Workers and Others, it has been held that an industrial adjudicator, under the Industrial Disputes Act, 1947, in appropriate cases, is obliged to determine that whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse or camouflage to evade compliance of various beneficial legislation. Both kinds of contracts i.e. labour-only contracting as well as service contracting are included within the purview of the Act, however labour-only contracting will be more prone to be tested on the ground of sham or camouflage contract.

3.2.3.4 Establishment

The term establishment “means any office or department of the Government or a local authority or any place where any industry, trade, business, manufacture or

26 2001 II LLJ 1087
occupation is carried on”\textsuperscript{27}. In the case of \textit{Gammon India Limited v. Union of India}\textsuperscript{28}, the petitioners carried on the business of contractor for construction of roads, buildings, weighbridges and dams. The contention of the petitioners was that they were not contractors within the meaning of the Act because the work performed by them was not part of the work of the principal employer, nor was it the work ‘in connection with the work of the establishment’, namely, principal employer. Secondly their work was normally not done at the premises of the ‘establishment’ of the principal employer. The basis of their argument was that establishment means any place where any industry, trade, business, manufacture or occupation is carried on and, therefore, the workmen employed by the petitioners were not ‘contract labour’ because they were not employed in connection with the work of the establishment. The honourable Court observed-

\begin{quote}
\textquote{The place where business or trade or industry or manufacture or occupation is carried on is not synonymous with the work of the establishment when a contractor employs contract labour in connection with the work of the establishment. The error of the petitioners lies in equating the work of the establishment with the actual place where the business or industry or trade is carried on and the actual work of the business or industry or trade}\textsuperscript{29}.
\end{quote}

The court further stated –

\begin{quote}
\textquote{The contractor under the Act in relation to an establishment is a person who undertakes to produce a given result for the establishment through contract labour. A contractor is a person who supplies contract labour for any work of the establishment. The entire context shows that the work of the establishment is the work site. The work site is an establishment and belongs to the principal employer who has a right of supervision and control and who is the owner of the premises and the end product and from whom the contract labour receives its payment either directly or through a contractor. It is the place where the
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\textsuperscript{27} Section 2(1)(e) of the Contract Labour (Regulation and Abolition) Act, 1970.
\textsuperscript{28} (1974) 1 SCC 596.
\textsuperscript{29} Id. at p. 600, at para 12.
establishment intends to carry on its business or trade or industry or manufacture or occupation after the construction is complete. The construction is the work of the establishment. Employed in or in connection with the work of the establishment does not mean that the operation assigned to the workmen must be a part of or incidental to the work performed by the principal employer. The contractor is employed to produce the given result for the benefit of the principal employer in fulfilment of the undertaking given to him by the contractor. The employment of workmen by the contractor is in connection with the work of the establishment. The petitioners are the contractors within the meaning of the Act. The work which the petitioners undertake is work of the establishment. 

3.2.3.5 Workman and the Principal Employer

In the case of Steel Authority of India Limited v. Steel Authority of India Limited Contract Workers Union, a full bench of Karnataka High Court held that the term ‘workman’ under the Act denotes the contract labourer entitled to certain benefits under the Act and it cannot be taken as a substitute to the definition of workman under any other law. The term ‘workman’ itself does not create any rights and liabilities. Similarly in the case of Singareni Collieries Company Limited (Chairman and Managing Director) v. Kota Posham, it was held that the use of words principal employer itself denotes the existence of a middleman i.e. contractor i.e. no direct master-servant relationship, otherwise the word employer would have been used instead of principal employer.

3.2.4 Regulation of Contract Labour

The Contract Labour (Regulation and Abolition) Act, 1970 provides for the prohibition of contract labour whenever possible and for its regulation in other cases. Looking at the verbatim of the Act, it comes out that except one section that is section 10, all other provisions deal with the regulation of contract labour. The regulatory

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30 Id. at p. 602, para 19.
31 1992 Lab IC 2332.
32 1990 Lab IC 1405.
provisions have been subject to litigation in many cases. The important interpretations have been discussed as under-

3.2.4.1 Effect of Non-Registration of Establishment by the Principal Employer and Non-licensing by the Contractors

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 such license under the Act. Different High Courts have divergent views in this regard. High Courts of Punjab & Haryana, 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.

Gujarat High Court in the case of Food Corporation of India Workers’ Union v. Food Corporation of India\textsuperscript{33} held that to attract the provisions of the Act both the conditions that is registration and licensing are mandatory. If the principal employer fails to take registration and the contractor fails to obtain licence, they cannot take benefits of the Act. The consequences will be that the workers will be workers of the principal employer as the matter will come out of the purview of the Act. Similar view was held by the High Court of Bombay in the case of United Labour Union v. Union of India\textsuperscript{34} However, the Kerala High Court held that if the principal employer fails to get the establishment registered or the contractor fails to obtain license, the only consequence is the prosecution under section 23 and 24 of the Act. The Act does

\textsuperscript{33} (1990) Lab IC 1968.

\textsuperscript{34} (1990) FLR (60) 686.
not provide for any other discourse. The Punjab and Haryana High Court held the similar views in the case of Gian Singh v. Food Corporation of India.35

This controversy was settled by the Supreme Court in the case of Dena Nath v. National Fertilisers limited36 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 case will not become the direct employees of the principal employer. The view held by the Punjab & Haryana, Kerala and Delhi High Courts was upheld by the Supreme Court. The honourable Court observed that it is within the province of the appropriate Government to issue a notification for abolition of contract labour under section 10 of the Act. The appropriate Government is required to look into the necessary considerations provided under the said section before issuing any such notification. It is not appropriate for the high court to intervene under writ jurisdiction to issue a mandamus against the principal employer to take the contract workers as his regular worker in case he fails to get his establishment registered under section 7 of the Act or the contractor fails to obtain a licence under section 12 of the Act. The consequential effect of violation of section 7 and 12 is penal in nature and a reference may be made to section 23 and 25 in this regard. The offenders would be liable for punishment for the given offences and no other relief will follow in favour of any other party.

3.2.4.2 Refusal to Renew Licence

In the case of M.Gopal v. Assistant Labour Commissioner37, the Karnataka High Court has held that if the circumstances for abolition of contract labour exist, it cannot be the basis for decision of the licensing officer to refuse the renewal of licence. The decision of the officer is incorrect. The court set aside the order of refusal of renewal of licence.

3.2.4.3 Responsibility for Payment of Wages

Section 21 read with Rule 25(2)(iv), 25(2)(v)(a) and 25(2)(v)(b) provide for the regulation of payment of wages to contract labour. It is the duty of the contractor

36 AIR 1992 SC 457.
37 1997 Lab IC 3428.
to timely pay wages to the contract workers. Such wages are to be disbursed in the presence of the representative of the principal employer. If the contractor fails to pay such wages or makes less payment, the duty is cast upon the principal employer to pay such wages or the remaining such wages. Principal employer can recover the amount so paid from the contractor from any payment due to him or as a debt from the contractor. Supreme Court in the case of Senior Regional Manager, Food Corporation of India, Calcutta v. Tulsi Das Bauri\textsuperscript{38} has held that if contractor fails to make due payment of wages to contract labourers, it is a mandatory duty of the principal employer to make payment of due wages and such wages include balance or arrears thereof.

3.2.4.4 Same Wages for Same or Similar Kind of Work

Rule 25(2)(v)(a) provides that where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work\textsuperscript{39}. Now the question arises how to determine that the work done by direct workers and the contract workers is same or similar kind of work.

Relying on the Webster’s Dictionary\textsuperscript{40}, a Division Bench of the Allahabad High Court in Mehrotra Enterprises v. State of U.P.\textsuperscript{41} held that “an object or an operation can be said to be the same as another if it is absolutely identical to it or resembles it in every way. If there are a few points of dissimilarity existing between the two but on the whole the majority of the symptoms or characteristics are alike or common then they would be called similar. The word similar connotes the existence of two objects with some dissimilarity. If there were no dissimilarities it would be the same kind of object but the preponderance of similarities as compared with the microscopic or insignificant dissimilarities entitle that object to be called of a similar

\textsuperscript{38} AIR 1997 SC 2446.
\textsuperscript{39} Rule 25(2) (v) (a) of the Central Contract Labour (Regulation and Abolition) Act, 1971.
\textsuperscript{40} 1961 Edn., pp.2007 and 2120.
kind". The Court held that the legislature has deliberately used both the words. Legislature was aware of the fact that there may be little dissimilarity between the work of regular and contract work yet on the whole, majority of the characteristics of the work are alike or common. In such cases, it will be unjustified to unduly distinguish between the two just to deny the rightful claims of the contract workers.

The Allahabad High Court had to decide whether the work performed by the company’s loaders at the conveyor belt at loading 50 kg bags of urea in the railway wagons or the trucks differed materially from the work performed by the contractors labour in unloading the same from the trucks to the godown and loading the same again in the trucks or the railway wagons. The honourable court refused to make any difference between the regular loaders and the contract loaders on the ground that the work performed by the contract loaders was intermittent to the work of regular loaders. The other contention of the employer was that the work of regular loaders needs special skill. The Court held that it is not maintainable as the skill of loading was acquired by the regular loaders through practice and not by any specific skill development training by the employer. The contention of the petitioner that qualifications to be taken into account for the fixation of fair wages on the lines of the Report of the Central Wage Board for Engineering Industries are the basis for differentiation was also rejected by the Court saying that it was for the convenience of the Labour Commissioner only. The circumstances and conditions of work of both kinds of loaders were held to be identical and all the loaders to be paid on same wage scales.

_Airport Authority of India v. Authority under Rule 25(2)(v)(a) and 25 (2)(v)(b) of the Contract Labour (Regulation and Abolition) Act_ is one of the recent cases related to the issue of same and similar wages for same and similar work. The Madras High Court in this case categorically held that the workmen employed through contractor performing same and similar nature of work which was being done by the regular employees of the petitioners will be entitled to same rates of wages, holidays, hours of work and other conditions of work as were being enjoyed by regular workers.

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42 Ibid.
of the petitioner/principal employer as per provisions of Rule 25(2)(v)(a) of the Rules. The Court in this case further observed that the issue of similarity in nature of work is to be determined by the Government i.e. the concerned Chief Labour Commissioner and not by the High Court under writ jurisdiction as per the provisions of rule 25(2)(v)(b) of the Rules. Dismissing the petition, the High Court finally held that the impugned order passed by the Chief Labour Commissioner could not be interfered with by the High Court under Writ Jurisdiction.

3.2.4.5 Employer’s Liability to Contribute to the Provident Fund and ESI

The contract workers are eligible for contribution of provident fund and ESI benefit under the respective legislations. It has been held in the case of Bharatiya Kamgar Sena v. Udhe India Limited that if the principal employer is complying with his statutory liability for ESI benefits and provident fund contributions for the employees engaged through contractor, it cannot be the deciding factor that the employees of the contractors will become the employees of the principal employer. The liability of the principal employer is statutory and limited to the purpose served by the respective statute.

3.2.5 Abolition of Contract Labour

Section 10 of the Act is the only provision which prohibits the use of contract labour in any establishment. As per sub-section (1) of section 10, the appropriate Government has the power to issue a notification for the prohibition of contract labour in any process, operation or other work in any establishment. However, before issuing any such notification, the appropriate Government may consult the Central Board, or as the case may be, a State Board constituted under the Contract Labour (Regulation and Abolition) Act, 1971. Sub-section (2) of section 10 states the factors to be taken into consideration before issuing any such notification. The appropriate Government shall have regard to the conditions of work and the benefits provided for the contract labour in that establishment, and other relevant factors, such as-

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44 2008 (I) LLJ 371 (Bom HC).
A) Whether the process, operation and other work is incidental to or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

B) Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of the industry, trade, business, manufacture or occupation carried on in that establishment;

C) Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

D) Whether it is sufficient to employ considerable number of whole time workmen.

The explanation to sub-section (2) provides that if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government shall be final.

3.2.5.1 Power of the Tribunal to Abolish Contract Labour System- The Pre-Act Period

Section 10 of the Act incorporates all the principles laid down in the Standard Vacuum Refining Company case which has been discussed at length in the beginning of the chapter. Before the enactment of the Act, Supreme Court applied the principles of Standard vacuum Refining Company case in the case of Godavari Sugar Mills Ltd. v. Kopargaon Taluka Sakhar Kamgar Sabha, Sakarwadi\(^{45}\), and ruled that the industrial tribunal has power to decide whether the abolition of contract labour is justified or not. If it is unjustified, abolition does not amount to reasonable restriction on the employer’s right to freedom of trade and business and hence tribunal will be competent to decide what is reasonable or not in the light of individual circumstances of the case. Similarly, in the case of Shibu Metal Works v. Their Workmen\(^{46}\), the honourable Supreme Court stated that the work in question was performed for a core activity of production, continuous in nature. It was a part of the whole production process. The work is not intermittent or casual, but perennial in nature. It is sufficient to employ whole-time workman for that work. Therefore, the court refused to interfere with the award of the tribunal.

\(^{45}\) AIR 1961 SC 101.

\(^{46}\) 1966 (1) Lab. LJ 717 (SC).
It is clear from the above stated cases that the matter relating to abolition of contract labour system was taken as industrial dispute by the industrial tribunals and was decided as per the merits of each case. The Tribunal in these cases would inquire into the nature of work performed and in matters where the work was found to be perennial in nature; it would direct the abolition of contract labour system.

3.2.5.2 Power of the Appropriate Government to Abolish Contract Labour System - The Post-Act Period

The explanation to sub-section (2) provides that if a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government shall be final. It is pertinent to note that the power to prohibit the contract labour system is not an absolute power, but is conditioned by the circumstances stated under section 10 and therefore, if a legality of a notification issued under section 10 is challenged, the court can always examine the question whether the notification has been issued “within permissible limits”.

However, in the case of Vegoils Pvt. Ltd. v. Workmen, Supreme Court ruled out that the appropriate Government has conclusive power to issue notification for the abolition of contract labour in any process, operation or other work in any establishment. However, a consultation with the Central or State Board, as the case may be, which comprises the representatives of the workers, contractors and the industry, must be held. Thus, it is clear that it is only the appropriate Government which can issue notification for abolition of contract labour but as per the circumstances and in the manner stated under the Act. The Courts, in general, cannot direct appropriate Government to issue such notifications. However, the matter would be different if the contract labour system is mere camouflage or the bogus one to avoid the obligations under labour legislations.

3.2.5.3 When the Contract between the Contractor and Principal Employer is Sham or a Camouflage

It is a settled law that if the contract between the Contractor and the Principal Employer is not genuine i.e. found to be a sham and camouflage, the workers of the

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47 Deepanjan Dey, Concept and Supreme Court Rulings on Contract Labour (Regulation and Abolition) Act (Hyderabad: Asia Law House, 2013) 3.
49 (1971) 2 SCC 724.
contractor are the workers of the principal employer and are eligible for absorption after the abolition of such contract labour system as their employer is the principal employer like other regular workers. The industrial adjudicator has all power to lift the veil and order for abolition of such contract labour system and to award consequential relief as it thinks fit for the cause of justice. There are a number of cases in which it has been so held. In the case of *R.K.Panda v. Steel Authority of India*\(^5^0\), The Supreme Court stated that when a contract is entered into between a principal employer and a contractor, the labour belongs to the contractor. However, the moment it is found to be a sham or camouflage, the labour becomes the labour of the principal employer. At what point of time a contract becomes a camouflage, depends upon the evidences proved in the court of law, oral or documentary and it all to be decided on the facts and circumstances of each and every case. The Labour Court or the Industrial Tribunal is within jurisdiction to order for abolition of camouflage contracts under the Industrial Disputes Act, 1947.

The important question, however, is that what amounts to a sham contract or a camouflage. In the case of *International Airport Authority of India v. International Air Cargo Workers’ Union and another*\(^5^1\), it was ruled out that the crucial point is that whether the principal employer pays the salary instead of contractor and secondly whether the principal employer controls and supervises the work. In this case, contract labour was used to get the cargo loaded, unloaded and moved away. The labour worked at the instructions of the airport authority officers. The court held that mere supervision is not enough. Exercise of some control over the activities of labour is inevitable and it will not establish the relationship of direct employment of the labour with the International Airport Authority. If the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor i.e. contractor directs where the worker will work and how long he will work and subject to what conditions, the labour is the labour of contractor. The Court ruled out that it is the contract workers who will have to establish direct employment and each case will have to be determined on its individual merits.

Integration test is also one of the relevant tests which helps in determining whether the person was fully integrated into the employer’s concern or is independent.

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\(^{50}\) 1994 (69) FLR 256 (SC).
\(^{51}\) 2009 (4) LLJ 31 (SC).
of it\textsuperscript{52}. The other factors which may be relevant are-who has the power to select and dismiss, organise the work, supply tools and materials and what are the ‘mutual obligations between them’\textsuperscript{53}.

\textbf{3.2.5.4 Automatic Absorption of the Contract Labour}

Before the enactment of the Act, the Supreme Court had rejected the plea for absorption of contract labour after an order for its abolition in the famous case of Standard Vacuum Refining Company. The honourable court directed that the continuation of contract labour after the completion of the term of the present contractor will be illegal but refused to declare the contract workers as the workers of principal employer after such abolition.

The ratio of the standard Vacuum refining Company case was followed in many cases after the enactment of the Act including Dena Nath, R.K.Panda and Gujrat Electricity Board cases. However, this settled law was overruled in the Air India Statutory Corporation case in which it has been held that after abolition of contract labour under section 10 of the Act, the contract labours will be treated as the workers of the principal employer and will be eligible for automatic absorption. Earlier in the case of \textit{Dena Nath v. National Fertilizers Ltd}\textsuperscript{54}, the Supreme Court has held that the Contract Labour (Regulation and Abolition) Act has two purposes- “to provide for the regulation of contract labour through statutory provisions and to provide for the abolition of contract labour in certain processes and operations which are perennial in nature and subject to other conditions stated under section 10 of the Act. The Act nowhere provides expressly or impliedly that the workers are legally entitled to automatic absorption as the regular workmen of the principal employer after the abolition of such contract labour. It was also observed that the Act does not provide for abolition of contract labour in its entirety but only in appropriate cases”\textsuperscript{55}.

In the case of \textit{R.K. Panda v. Steel Authority of India}\textsuperscript{56}, the Supreme Court observed that contract workers have no right to claim for automatic absorption as

\begin{itemize}
\item \textsuperscript{52} Deepanjan Dey. \textit{Concept and Supreme Court Rulings on Contract Labour (Regulation and Abolition) Act} (Hyderabad: Asia Law House, 2013) 32.
\item \textsuperscript{53} Ibid.
\item \textsuperscript{54} 1992 (II) LLJ 46(SC).
\item \textsuperscript{55} 1992 (II) LLJ 46(SC).
\item \textsuperscript{56} (1995) 5 SCC 304.
\end{itemize}

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regular workers in case the contract labour is abolished. If the principal employer is Government or an authority which is an agency or instrumentality of the state under Art.12 of the Constitution, there is a trend that a pressure is built upon the Government and the Courts that contract workers be regularised as regular workers of the principal employer after an order for abolition of contract labour is made. It is not maintainable within the provisions of the Act.

Whether the contract workers have legal right to claim for absorption (after abolition of contract labour under section 10) or not, is the burning issue of the debate on rights of contract workers. The Act is silent on this issue. In the case of *Air India Statutory Corporation vs. United Labour Union*,57 (hereinafter referred as Air India Case) contract labour was engaged for the work of sweeping, cleaning, dusting and watching of the building owned and occupied by the appellant (Air India Statutory Corporation). The appellant company had obtained a certificate of registration from the Central Regional Commissioner on 20 September, 1971. In 1973, the Central Regional Commissioner revoked the certificate of registration stating that the state Government was the appropriate Government for the appellants. On December 6, 1976, the Central Government issued a notification under section 10(1) of Act prohibiting the employment of contract labour for the work of sweeping, cleaning, dusting and watching of the buildings of the appellant company with no prohibition for the contract labour employed for outside cleaning and other maintenance operations of multi-storyed buildings where such cleaning and maintenance cannot be carried out except with specialised experience. The appellants did not abolish the contract labour system. In 1986, by an amendment in the Industrial Disputes Act, 1947, the status of appropriate Government, in respect of Appellant Corporation, was again conferred on the central Government.

The respondents filed a writ petition in the Bombay High Court under Art. 226 praying that the contract labour should be abolished for the work of sweeping, cleaning, dusting, washing and watching of buildings of appellants and such labour should be absorbed as regular workers from the date of their joining as contract workers for the given work with all consequential rights and benefits. The Bombay High Court allowed the writ petition and directed for abolition of contact labour and

57 1997 1 LLJ, 113.
consequential absorption of such labour as the regular workers of the principal employer. In a special leave petition to the Supreme Court, the appellant company challenged the order of Bombay High Court contending that the notification to prohibit contract labour (dated 9 December, 1976) by the Central Government was without jurisdiction because at that time, the appropriate Government was the state Government and hence, the Central Government could not issue such notification. Secondly, the Act does not provide for absorption of contract workers after abolition of contract labour system under section 10. The respondents argued that right from its inception, the appellant corporation was carrying on business under the control and authority of the central Government and even after its registration under the Companies Act, the appropriate Government is central Government. As per the public law interpretation, the appellant corporation is an instrumentality of the central Government and, therefore, the writ petition under Art. 226 and the order of the Bombay High Court were correct in law.

The Supreme Court upheld the automatic absorption of contract labour on abolition of contract labour system under section 10 and ruled that contract workers can avail of the remedy under Art.226 of the Constitution also. Thus, a writ or an order may be passed by a High Court or the Supreme Court to direct the employer to absorb or re-employ the already working contract labourers in preference to the new applicants. The court clarified that once the contract labour system was abolished, the contractor is removed and a direct employer-employee relationship is established between the principal employer and the contract workers. The decision creates a new channel of employment. The Supreme Court interpreted the Contract Labour (Regulation and Abolition) Act in the light of the Directive Principles of the State Policy under Part-IV of the Constitution. Air India case overruled the earlier cases like *Vegoils Private Limited v. The Workmen* 58, *Dena Nath and Others v. National Fertilizers Ltd. and Others* 59, *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha* 60 and *Mathura Refinery Mazdoor Sangh v. Indian Oil Corporation* 61 in which the courts had denied the right to absorption under the Act.

58 AIR 1972 SC 1942.
59 1992 (64) FLR 39 (SC).
60 (1995) 5 SCC 27.
The doors of judiciary which were opened in Air India Case were shut down in *The Steel Authority of India Ltd. vs. National Union for Waterfront Workers*. The Supreme Court overruled the judgment of Air India Case and prospectively held that there cannot be any automatic absorption of the workmen of the contractor when contract labour system is abolished. In this case, the contract labour was engaged for the work of handling the goods in the stockyards of the appellant company. The Government of West Bengal issued a notification under section 10 (1) of the Act (dated 15 July, 1989) prohibiting the engagement of contract labour in four specified stockyards at Calcutta. This notification was kept in abeyance till July 31, 1994. The Respondents filed a writ petition in the Calcutta High Court praying that prohibition notification dated 15 July, 1989 should be enforced and contract labour should be absorbed as regular workers of the appellant from the date of notification. High Court allowed the petition and decided in favour of regularisation of contract workers within six months from the date of judgment i.e. 25 April, 1994.

In a Special Leave Petition, two major issues came up before the Supreme Court; first, what is the true meaning of the term ‘appropriate Government’ under section 2(1)(a) of the Act and secondly, whether the Act provides the remedy of automatic absorption? It was contended by the appellant that the appellant company is covered under the expression ‘other authority’ under Art.12 of the Constitution and hence, appropriate Government in respect of the appellant company was the Central Government and the prohibition notification of the state Government was not applicable to it. The appellant sought help from the omnibus notification issued by the Central Government dated 9 December, 1976 (referred in Air India Case which provides for abolition of contract labour in sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment in respect of which the appropriate Government under the said Act is the Central Government). Rejecting the contentions of the appellants and upholding the validity of the State Government notification, the court observed that the public law interpretation of the words ‘by or under the authority of .....Government’ is applicable in cases of Constitutional law and it does not extend to other Central and/or State Acts or under private law.

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62 2001 III CLR, 349.
The central Government will be appropriate Government under the Contract labour (Regulation and Abolition) Act, 1970 and the Industrial Disputes Act, 1947 if the authority to the establishment is conferred either by a statute or by virtue of relationship of principal and agent or by delegation of power. In case the power is conferred by a statute, there is no further question. However, if it is not so, the case needs to be decided as per its individual facts and circumstances. Regarding the notification to prohibit contract labour issued on 6 December, 1976 (as that of the Air India case), the Court stated that the notification did not fulfil requirements of section 10 of the Act and was not sustainable in law. The appropriate Government is required to apply its mind in relation to factors given under section 10 individually in case of each and every establishment and that too after a proper consultation with the Contract Labour Board. A collective notification will not sustain within the provisions of the Act.

The second issue before the Court was that whether the Act provides for automatic absorption of contract labour as regular workers of the principal employer when the appropriate Government prohibits the engagement of contract labour in any establishment by a notification under section 10 of the Act. It was contended by the appellants that no writ of mandamus could be issued by courts even before the enactment of the Act for automatic absorption of contract labour. The courts used to order for absorption as per the terms and conditions set out in the judgement. The contract of employment cannot be specifically enforced under the Specific Relief Act, 1933. When the principal employer, being a Government, Government company or local authority, engages a contractor who undertakes to produce a given result for the principal employer and employs contract labour for such work, no statutory service rules are followed and no reservation is given to scheduled caste and scheduled tribes. If such employees are automatically absorbed, it will violate the constitutional provisions relating to right to equality of new employment aspirants as well as the reasonably classified candidates.

The responsibility to provide various health and welfare facilities lay on contractor and not on the principal employer whose responsibility is only vicarious in case the contractor makes a breach. Contractor does not become agent of the principal employer in any case. It shows that the legislature did not envisage any direct
relationship between the principal employer and the contract labour and it cannot be established by courts. If it is so done, it amounts to judicial legislation and the creation of a new channel of employment which the Contract Labour (Regulation and Abolition) Act, 1970 did not provide for either expressly or impliedly. Moreover, the Rege Committee as well as the First National Commission headed by Justice Gajendragadkar who was a party to the judgement in *The Standard Vacuum Refining Company of India Ltd. v. Its Workmen and Others* did not recommend for automatic absorption. If automatic absorption is allowed, it will become very difficult for the employers to engage contract labour which is contrary to the purpose of the Act which allows for and regulates contract labour and provides for its abolition only in a few cases set out in section 10.

In response to the contentions of the appellants, the respondents argued that when a person agrees to bring out a desired result for another person which is the contractor in this case, he becomes an agent of that other person. Thus, a relationship of agency is created between the contractor and the principal employer. The labour employed by the contractor is engaged for or in connection with the work of the principal employer. A relationship of employment (master and servant) is created between such labour and the principal employer. It is particularly true in cases where such labour works at the premises of the principal employer. Various provisions such as definitions of ‘contract labour’ in Clause (b) and of ‘establishment’ in Clause (e) of Section 2 of the Act, Sub-section (2) of Section 10, Rules 21(2), 25(2)(V)(a), 72, 73, 74, Form XII, Rules 75, 76, 77, 81(3), 82(2) and Forms I, II, III and IV relating to certificate of registration, Form VI relating to license, Form XIV relating to issue of employment card and Form XXV relating to annual returns were cited in favour of the arguments by the respondents. It was stated that notification under section 10 eliminates the contractor, a mediator or an agent, and establishes the direct relationship between principal employer and the contract workers by necessary implications. If absorption is not allowed, it would amount to a big blow to the poor labourers for whose benefit the clause for abolition of contract labour is incorporated in the Act. The remedy of the abolition of the contract labour would be worse than the mischief sought to be remedied. It is contrary to the objectives of the Act. Speaking

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63 (1960) SCR (3) 466.
about the violation of rule of reservation and referring to the judgement of Air India case, it was stated that the rule of reservation could not be complied with e.g. when a private company had made appointments, without following the rule of reservation and if such a company were to be taken over by the State the claim of the workers for absorption could not be denied on the ground that it would upset the rule of reservation.

The respondents further argued that if automatic absorption is legitimatised, it does not disentitle the principal employer from retrenchment of excessive labour in case the circumstances so warrant. Retrenchment or lay-off can be effected by paying due compensation under the Industrial Disputes Act, 1947.

Supreme Court upheld the order of the High Court at Calcutta, under challenge, insofar as it relates to holding that the West Bengal Government is the appropriate Government within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970 but the direction that the contract labour shall be absorbed and treated on par with the regular employees of the appellants, is set aside. The appeals were allowed accordingly in part.

The court further observed that the first requirement for the industrial adjudicator is to ascertain whether the contract between the principal employer and the contractor is genuine or not. If it found to be sham or mere camouflage, to evade compliance of labour legislations and to deny the workers their legal claims, the workers will be treated as the workers of the principal employer and he shall be directed to regularise them. However, if the contract is found to be genuine and the prohibition notification fulfils all the requirements of section 10, the principal employer will be disentitled to engage contract labour for such work. He will have to recruit regular workers for such work and in doing so, the court directed; he should give preference to the existing contract workers, if found suitable, relaxing the requirements regarding age and educational qualifications. However, such contract workers have no legal right under the Contract Labour (Regulation and Abolition) Act, 1970 to claim automatic absorption and derive all the benefits of regular employment. It will amount to creating a new channel of employment which the Act does not, either expressly or impliedly provide for. This decision of the apex court has
been subject to criticism from various interested stakeholders. The decision, however, brought forward the weaknesses of the Act and made a ground for debate on suitable amendments to the Act.

The Honourable Supreme Court again clarified in the case of *Bhilwara Dugdh Utpadak Sahkari Sangh Ltd. v. Vinod Kumar Sharma* that the SAIL decision is applicable to cases where the contract labour is abolished under section 10 of the Act as a consequence of the notification of the appropriate Government. Where the contract between the principal employers is a subterfuge or camouflage to avoid obligations under beneficial legislation, the matter becomes different. In such a case courts have power to eliminate the contractor and hold that the workers belong to the principal employer. The court observed that subterfuge trend has started since the advent of globalisation and it needs to be checked. Globalisation or liberalisation in the name of growth cannot be at the cost of exploitation of workers.

### 3.3 CONCLUSION

Judicial response has generally been in favour of the weak party to the industrial relationship which is undoubtedly, the labour. Particularly, the higher judiciary has been keen to secure the basic rights of the contract workers reading them into the fold of the constitutional provisions. 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 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, setting aside the prohibition notification under section 10 for non-fulfilment of statutory provisions etc. The problem is with the scope and ambit of the Contract Labour (Regulation and Abolition) Act, 1970. The hypothesis point no.7 which provides that under the Act, the scope of judicial intervention is narrow, has been proved to be positive. Most of the powers are vested in the appropriate Government which has been given some

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64 Retrieved from jlsr.thelawbrigade.com/wp-content/uploads/2016/04/Indranali-Sen pdf visited on 20th June, 2016 at 3.00 pm.
quasi-judicial powers such as 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 been provided in the Act. Sometimes, there is an arbitrary use of powers or arbitrary non-exercise of such powers.

The contract workers are not eligible for the automatic absorption after abolition of contract labour under section 10. The Act is silent on this issue and therefore, courts have given different kind of rulings at different times. This is one of the major drawbacks of the Act. One more 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 rights or benefits. The courts are expected to do justice in all circumstances. Contract workers are poor, unorganised and downtrodden and therefore, unable to seek justice which is costly and often delayed. Cases relating to contract labour usually do not come before higher judiciary and whenever they so come, courts should seize the opportunity to do justice and should not easily let the principal employer off the hook.\(^{65}\)

The object of the Act should be taken into account while interpreting its provisions. The courts may assume wide powers under the ‘sham or camouflage’ test and may order for absorption of contract labour because in such case, the matter comes out of the purview of the Act. The dispute is an industrial dispute and the Industrial Tribunal and Labour Court have power to grant appropriate reliefs in such cases. If the courts make efforts in this regard, it may prove to be great check on the abuse of contract labour system.

From the above discussion, it can be drawn that the Act has some loopholes which restrict the judicial action. It is therefore, needful that the Act and Rules should be amended and due access to justice should be assured to contract labour through the statutory provisions providing for greater scope for judicial intervention.