THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 AND JUDICIAL INTERVENTION

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INTRODUCTION:

In India, contract labourers are protected by the Contract Labour (Regulation and Abolition) Act, 1970. Before the enactment of this Act there was no specific legislation which dealt in detail with the problem of the contract labour. Although there were legislations like Industrial Disputes Act, 1947, Payment of Wages Act, 1936 etc. but none of them was specifically designed to regulate contract labour. Thereafter the enactment of the Act, took place on 5th September, 1970 but came in force on the 10th February, 1971. As to who is a contract labour is not defined in the Act but a workman is deemed to be a contract labour as defined in S.2 (1) (b) of the Act employed with or without the knowledge of the principal employer by the contractor in any establishment and the workman here is the workman as defined under S.2 (1) (i) of the said Act of 1970. However, the *International Labour Organisation has* defined the term contract labour. Now it will be found in this paper that though the objective of the Act is to prevent exploitation of contract labour and also to introduce better conditions of work, but under S. 10 of the Act which is one of the most important section of this Act has turned out to be the major issue in this paper where judiciary plays an important role in protecting the contract labourers and in protecting the objective of the Act. S. 10 provides for the procedure for abolition of employment of contract labour but it do not mention that whether they should be automatically absorbed in the establishment as regular employees after a notification is issued under Section 10 abolishing the system of contract labour in that establishment and here the role of the judiciary is analysed in protecting the contract labourers and in protecting the objective of the Act.

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Thus in this paper the researcher with the help of various case analysis has tried to show how contract labourers are safeguarded by the judicial intervention in the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

UNDERSTANDING THE ACT IN RELATION TO THE PARTIES WITH PROPER JUDICIAL PRONOUNCEMENT:

Before the enactment of the Contract Labour (Regulation and Abolition) Act, 1970 there was no specific legislation which dealt in detail with the problem of the contract labour. Although there were legislations like Industrial Disputes Act, 1947, Payment of Wages Act, 1936 etc. but none of them was specifically designed to regulate contract labour. This restricted the Courts from forming the basic guidelines as to abolish or restrict the contract labour. Therefore they required an Act which completely dealt with the regulations of the contract labour. After the enactment of the said Act, which took place on the 5th September, 1970 but came in force on the 10th February, 1971, the courts did not have to face much difficulty as regarding the facilities which should be provided to these contract labours.

The main crust of this Act, The Contract Labour (Regulation and Abolition) Act, 1970 [hereinafter referred to as the said Act] is the "contract labourers". There is no such definition of the term "contract labour" under the said Act. But a workman is deemed to be a contract labour as defined in S.2 (1) (b) of the Act employed with or without the knowledge of the principal employer by the contractor in any establishment and the workman here is the workman as defined under s.2(1) (i) of the said Act of 1970. However, the *International Labour Organisation* defines the term 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 'user enterprise') by a person (referred to as 'contract worker'), pursuant to a contractual arrangement other than a contract of employment with the user enterprise, under actual condition of dependency on or subordination to the user enterprise, where these conditions are similar to those that characterise an employment relationship

under national law and practice”[18] in short contract labour can also be said to be someone within the pay roll of someone and working for someone else. There are *three parties* – the principal employer, the contractor and the contract labour. This contract labour has no direct employer – employee relationship with the party called principal employer, for whom the work is ultimately done. The principal employer has secondary control over the contract labourer. The intermediary between the Principal Employer and the contract labour is the Contractor and it is with him that the contract labourer has an employer and employee relationship and it is they who employ and pay them. S.2(c) gives the definition of ‘contractor’ and this relationship was evidenced in the case of *G.M., O.N.G.C., Silchar v. O.N.G.C. Contractual Workers Union*[19] wherein the O.N.G.C. workers union demanded regularization of services of labourers of contractors. On a reference having been made by the Government to the Tribunal, the Tribunal gave an award that the labourers were workmen of the appellant and not of contractors and was entitled for regularisation. This award was challenged and was reversed by the single judge of the High Court. The Division Bench of the High Court reversed the order of the Single Judge and hence the present appellant preferred an appeal to the Supreme Court. However, the Supreme Court dismissed the appeal and held that when the Tribunal arrived at a conclusion that there exists relation of master and servant and that there was no contractor appointed by O.N.G.C and hence the workmen were only employees of O.N.G.C. and were entitled for regularisation, the High Court’s interference was not proper. There was no illegality in the order of Division Bench restoring the order of Labour Court. Thus in this case as there was no contractor appointed so the workmen were directly under the principal employer. In this Act as to who is a principal employer is also well defined in S.2 (g) of the Act and judiciary has taken a further step in clarifying the position of a ‘principal employer’, in the case of *National Airport, Delhi v. Bangalore Airport Service Co – op. Society and others*,[20]the question was whether porters in airport engaged through a principal employer or not. It was held that in order to determine whether there was relationship of employer and employee two important questions have to be decided first whether there was a contract of employment between the applicants and the appellants even though indirectly. Secondly whether the porter age

[18] http://homepages.iporlink.ch/-fitbb/IFBWW_Campaigns/ILO_Contract_Labour_Conv.html

[19] 2008 L.L.J. 1071 (S.C.)

[20] (1992) II L.L.J. 534 (Karn)

service was incidental or integral part of the airport authorities. It was pointed out by the court that the Labour Court and the Ld Single Judge committed an error to arrive at a conclusion that there was relationship of employer and employee merely because the appellants had a little control over the activity and attitude of the applicants while discharging their duties of porter age service without noticing that mere exercise of control is not sufficient to hold that the authority so exercising the control is the principal employer without noticing from where that part of control emerges. So, also the power to suspend or to recommend to remove from service is also not an important factor. The test of control may be relevant factor but it is not the decisive factor in master servant relationship in all cases. Hence, the aerodrome office was not a principal employer. All the cases mentioned above show the relationship that exists between the three parties and also shows that the condition of the contract labourers are always at risk. Thus in order to safeguard their interest the judiciary has played an important role and in the case of *Vegolis Pvt. Ltd. v. Their workmen*[21] , wherein the Supreme Court has rightfully held the object behind the establishment of the said Act. The Court held that the Act was implemented to regulate and improve the conditions of service of the contract labour and not merely to abolish contract labour. The Calcutta High Court in Lionel *Edward LTd. v. Labour Enforcement Officer*[22] also held that The Contract Labour (Regulation and Abolition) Act, 1970 is an important piece of social legislation and seeks to regulate the employment of contract labour and where necessary to abolish the same. It is thus legislation for the welfare of labourers whose conditions of service are not at all satisfactory. It has also been held by the Calcutta High Court that this Act being a piece of social legislation for the welfare of the labourers should be literally construed. The primary object of the Act being the prevention of the exploitation of the contract labour by the contractor or the establishment as also evidenced in the case of *R.K Panda v. Steel Authority of India.*[23]

Constitutional Validity of the Act - Judicial Perspective:

The Supreme Court while interpreting the preamble of the constitution laid down that the aim of social justice is to attain substantial degree of social, constitutional goal. Social security, just and

[21] AIR 1972 SC 1942 (1951): 1972 Lab JC 760: 1973 I SC 471

[22] 1977 Lab IC 1037 (Cal.): 51 FJR 199: 1978 II Cal LJ 333 (Cal HC)

[23] 1994 LLR 634

humane conditions of work and leisure to workmen are part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity.[24] The benefits conferred by the Act and the rules are in their nature, social welfare legislative measures, thereby is in connection with the provisions of the constitution. There is a rational relation between the impugned Act and the objects to be achieved, and the provisions are not in excess of those objects. This Act donot violate the provisions of Article 14 of the constitution. The application of the Act also does not amount to an unreasonable restriction on the rights conferred under Art 19(1)(g) of the constitution. [25] The Supreme Court has examined the constitutional validity of the said Act in *Gammon India Ltd. v. Union of India*[26] wherein the Court found that there is no unreasonableness in the measure taken by the Act. The Court repealed the contention that the application of the Act in respect of pending work amounted to unreasonable restriction on the contractors under Article.19(1)(g), it was held that pendency of the contract was not a relevant consideration. The subject matter of the legislation is not contract but contract labour. The Supreme Court well expressed that the provisions of the said Act is constitutional and reasonable. The canteens, rest-rooms, supply of drinking waters, latrines, urinals, and first – aid – facilities are amenities for the dignity of human labour and are not in excess of the object of the Act and there is no violation of Art. 14 of the constitution. The legislation has made uniform laws for all contractors. Thus The Contract Labour (Regulation and Abolition) Act, 1970 which deals with the welfare of the workmen is truly constitutionally valid and in no way contravenes the rights of the contractors and the principal employers but do give protection to the contract labourers at large.

Thus after a detailed analysis about the concept of the Act, the next chapter will deal with the protection that is granted to the contract labourers and the protection that is granted to them under S.10 of the Act.

ROLE OF JUDICIARY:

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[24] H.L.KUMAR, PRACTICAL GUIDE TO CONTRACT LABOUR REGULATION AND ABOLITION ACT AND RULES, Universal Law Publishing Company,11

[25] Prachishah, *Regulation of Contract Labour,* April 03, 2011, http://www.legalservicesindia.com/article/article/regulation-of-contract-labour-616-1.html accessed on 26.02.2015.

[26] AIR 1974 SC 960

The judiciary plays an important role in the decision making of the country. So in this paper also with the aid of various judgments the researcher has tried to make all aware of the circumstances and the various provisions where the Judiciary has a very important role in decision making in sphere of contract labour.

The judicial world woke up to the plight of the suffering workmen in the case of *Standard Vacuum Refinery Company Private Limited v. Their Workmen*[27]

'It was concerned with an Award of the Industrial Tribunal, which considered the demand made by the Union for abolition of contract system of work, where the nature of work was of cleaning and maintenance of machinery. The award was in favour of workmen. The said award was challenged by the employer in special leave petition before the Apex Court wherein two issues were raised *as to whether such dispute constitutes an Industrial Dispute under (Sec.2-K) of the Industrial Disputes Act and justifiability of the tribunal in interfering with the Managements right.* The Supreme Court observed that *"there was a community of interest between the concerned workers and the workers of employer, who had a substantial interest in the contractors' labour.* In this Judgment, Supreme Court referred to the observation of the Royal Commission of the Labour and observed that the complex responsibility lay down upon it by law and by equity, that the manager should have full control over the selection, hours of work, and payment of workers". The Supreme Court observed the system to be primitive and baneful. A reference was also made to a discussion of Indian Labour Conference. The other issue regarding justifiability of the tribunal in interfering with the Managements right was also negated by the Supreme Court. The Supreme Court observed "*so far as this work is concerned it is incidental to the manufacturing process and is necessary for it and of a nature which must be done every day. Such work is generally done by workmen in the regular employment of the employer and there should be no difficulty in having regular workmen for this kind of work".* Thus it is clear that the Supreme Court has simply upheld the order of the Industrial Court which directed the company to discontinue the practice of getting work done through contractors and to have it done through workmen engaged by it. Surprisingly there was no justification given by the Industrial Court in holding that the workman of the contractor could not claim any relief in respect of their past services rendered to the company. All that was said was that the company was free to give preference to the workmen engaged by the

[27] 1960 LLJ II 233, SC

contractor. Pursuant thereto a Bill was introduced in the Lok Sabha on 31.7.1967 for regulation and abolition of employment of contact labour. The said bill aimed at abolition of contract labour in respect of such categories as may be notified by the appropriate government in the light of certain criteria that had to be laid down and at regulating the service conditions of contract labour where abolition is not possible. The Bill also provided for various other things such as establishment of Central and State Advisory boards, on the basis of whose report, the appropriate government may take a decision of abolition or regulation of contract labour. The Bill provided for coverage of establishments, employing 20 or more persons. It provided for registration of the principal employer and license for the contractor and also for certain welfare measures.

Since then there have been a cartload of Judgements which have reiterated the need of abolishing contract labour but has however not granted any practical relief to the contract workers. As such, despite the passing of 40 years, after the implementation of the Act the plight of the workers continues to be the same.[28] While analysing the case law, reference have only been made to the Supreme Court judgements and not High Court judgements, though the latter have also dealt with the issue appropriately, as the finality rests with the Hon'ble Supreme Court. It is also made clear that in this analysis, it had not been intended to show any disrespect to it nor is there an intention to criticise its hon'ble judges or the judiciary in general. This exercise is intended to find out the reasons for ineffectiveness of the Act in doing justice to the subject viz. Contract labour.

This researcher now speaks of S.10 of the Act in the light of judicial pronouncements which is the most important section of the Act.

"S.10 sub section 1 of the Act states that notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

Sub section (2) states that Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

[28] S.M Dharap, *Including the Excluded A Study of the Impact of Contract Labour Act 1970*, (30.04.2012) visited at http://www.slideshare.net/rmponweb/including-the-excluded-a-study-of-the-impact-of-contract-labour on 12.03.2015

(a) whether the process, operation or 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 industry, trade, business, manufacture or occupation that is 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.

Explanation. -If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."[29]

Where The Contract Labour (Regulation and Abolition) Act, 1970 applies to an establishment, it is for the appropriate Government under S.10 to prohibit the employment of contract labour and no reference under s.10 of the Industrial Disputes Act, 1947 can be sought for absorption of contract labour by principal employer and for payment of all benefits available to the permanent employees of principal employer.[30]

Analysis of the Supreme Court Judgements:

Post Enactment of the Law:

Supreme Court Judgments on the provisions of the Act especially with reference to Section 10 (2) of the Act:

Vegoils Pvt. Ltd. v. Its workmen, [31]

In this case a reference was made under Section 10 of the I.D. Act for adjudication to decide whether contract labour system should be abolished and whether the workmen engaged by the contractor should be treated as principal employer's regular employees.

[29] The Contract Labour (Regulation and Abolition) Act, 1970

[30] Plilips Workers Union v. State of Maharashtra and another, (1987) II L.L.J 91 (Bom.) *see also* S.N. MISHRA, LABOUR AND INDUSTRIAL LAWS, 1072, (26TH Ed., 2011)

[31] 1971 II LLJ 567. AIR Supreme Court 1972, pg. 1942

The Industrial Tribunal, Maharashtra delivered an award directing the employer, not to engage any labour through a contractor. The claim for abolition was rejected by the Tribunal in respect of Canteen Section and directed not to engage contract labour for work of loading and unloading.

The Hon'ble Supreme Court held that "the abolition of contract labour in respect of feeding the hoppers, for the requirements of the solvent extraction plant, is quite correct in accordance with the various decisions.

The issue whether the Act, which is the Central legislation or the State legislation viz. Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act would prevail and also the one about the jurisdiction of the Tribunal for its direction not to engage contract labour, was set aside.

Under Section 10 of the Act, the jurisdiction to decide matters connected with prohibition of contract labour is now vested with the Appropriate Government.

On facts of the case, the Supreme Court directed the enquiry about the regularisation. At that time the Act had received assent on 05/09/1970, which eventually came into force from 10/02/1971 and the Mathadi Act was in force from 13/06/1969 at the time of passing award, by the Industrial Tribunal. The said award was thus set aside by the Apex Court, in view of the later day development of the Act coming into being (Paragraph 44).

It is clearly mentioned under The Contract Labour (Regulation and Abolition) Act, 1970 that the Section 10 of the Act provides for the procedure for prohibition of contract labour. Under this section, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Before issuing such notification in relation to an establishment, the appropriate Government *shall have regard* to the conditions of work and benefits provided for the contract labour in that establishment, and other relevant factors, such as—

(a) whether process, operation or 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 a perennial nature, that is to say, of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment,

(c) whether it is done through regular workmen in that establishment or an establishment similar thereto, and

(d) whether it is sufficient to employ considerable number of wholetime workmen.

If a question arises whether any process or operation or other work is of a perennial nature, the decision of the appropriate Government thereon shall be final.[32]

Thus S.10 of the Act, abolishing contract labour is passed by the appropriate Government.[33] The judiciary has also however made it clear as The Supreme Court has categorically dealt with the issue in *B.H.E.L. Workers Association, Hardwar v. Union of India*.[34] wherein it is observed that it is not possible for this Court in an application under Article 32 of the constitution to embark into an enquiry whether these thousands and odd workmen working in various capacities and engaged in multifarious activities to do work identical with work done by the workmen directly employed by the B.H.E.L and whether for that reason they should be treated not as contract labourers but as direct employees of the B.H.E.L.

The Learned Counsel appearing on behalf of the B.H.E.L. Workers Association advanced the extreme argument, the Court must ban the employment of contract labour in public sector undertakings. It was submitted that in order to give intention of Parliament as well as Directive Principles of State Policy, the Court should declare illegal the employment of contract labour by the state or by any public sector undertaking as a public sector undertaking is a State under Article 12 of the Constitution of India. Thus the Counsel by its writ petition wanted a total abolition of employment of contract labour by state or by any public sector undertaking.

The Court observed that it is not for the Court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter to be decided by the Government as to be considered under S. 10 of the Act.

[32] THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

[33] P.K PADHI, LABOUR AND INDUSTRIAL LAWS, 293 (EASTERN ECONOMY EDITION, 2nd Ed. 9, 2013)

[34] AIR 1985 SC 409

Now, the issue of whether there should be automatic absorption of contract labour on its abolition first came before the Supreme Court in the case of *Air India Statutory Corporation v. United Labour Union*[35]

In this case, the appellant Corporation engaged the respondent Union's members, as contract labour for sweeping, cleaning, dusting and watching of the buildings owned and occupied by the appellants. The Central Government exercising the power under Section 10 of the Act, on the basis of the recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification of 12-9-1976 prohibiting "employment of contract labour on and from 9-12-1976 for sweeping, cleaning, dusting and watching of the buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government" (SCC p. 392, para 3). The appellant did not abolish the contract labour system and failed to enforce the abovementioned notification.

The respondents filed writ petitions to give directions to the appellant to enforce the aforesaid notification and to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the buildings owned and occupied by the appellant with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights and benefits. This writ petition was allowed by the learned Single Judge on 16-11-1989 directing that all contract workers be regularised as employees of the appellant from the date of filing of the writ petition. However, preceding the judgment of the learned Single Judge, the Government of India had referred the matter to the Central Advisory Board (known as the Mohile Committee) yet again under Section 10(1), and the Committee recommended to the Government not to abolish contract labour system in the aforesaid services. The Division Bench dismissed the appeal of the appellants in the impugned judgment dated 3-4-1992. Hence, this appeal came before the Apex Court.

Here, the Supreme Court provided clear and specific relief, holding that on abolition of contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employer stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees.

[35] AIR 1997 SC645

The Three – Judge Bench of the Supreme Court upheld that the High Court under Article 226 of the Constitution can direct the principal employer to absorb the contract labour after its abolition. There are instances where statutes provide for some welfare measures such as canteen, etc. Section 46 of the Factories Act, provides that in case where the factory engages 100 or more workers, the principal employer must make a provision for canteen. Provisions of Section 46 of the Factories Act came to be considered in various judgments and ultimately it was held that though the factories Act provides for a canteen in the factory engaging more than 100 workers it cannot be said to be a regular activity of the principal employer. The employer therefore can give contract of the canteen to the contractor and make a provision of canteen as provided for under section 46 of the Factories Act. There are cases where contractor continues to be same for years together but workers are changed or where the workers continued to be same for years together but the contractors are changed and the third case is that the contractor and workers continued to be same for years together. The issue whether the activity is of perennial nature came to be considered for various courts and it was held that since it's a statutory liability therefore the nature of work is perennial. Lordship S.B. Majumdar, J.[36] in his concurring judgement observed that S.10 nowhere provides in express terms that on abolition of contract labour the workmen would become direct employees of the principal employer. It is obvious that no such express provision was required to be made as the very concept of abolition of a contract labour system wherein the work of the contract labour is of perennial nature for the establishment and which otherwise would have been done by regular workmen, would posit improvement of the lot of such workmen and not its worsening.

However, it is submitted that the Court took a pragmatic approach and cast a duty on the principal employer to absorb the contract labour once the notification for the abolition of contract labour is made under S.10 (1) of the Act. Otherwise the true intention of the Act which is to prevent exploitation of contract labour would be frustrated.

Thus S.10 of the Act states that it is the appropriate Government which can abolish a contract labour but it does not state as to what will be the condition of the labourers after its removal. The judiciary plays a very important at this point of time in protecting the workmen and also in protecting the intention of the Act.

[36] Supra note 12 at p.295

The Constitution Bench of the Supreme Court has reversed its earlier decision given in the case of *Air India Statutory Corpn.*v. *United Labour Union*[37]and ruled *in Steel Authority of India Ltd. v. National Union Waterfront Workers*,[38] that though the main issue for consideration was whether for Steel Authority of India, the Appropriate Government is the State or the Central Government and even though the issue of interpretation of section 10 of the Act was not there, the Supreme Court while holding that for Steel Authority Of India the Appropriate Government was the State Government went ahead and thought of deciding the issue of section 10 of the Act.

In this case though the issue in respect of contract labour did not directly arise, as there was no specific prayer, the Hon'ble Supreme Court took a stock of various judgments on the Act, and in paragraph graph l04 and 105 considered the previous decisions. The Supreme Court summarised the decision in various cases in the said paragraph graphs. In paragraph 122 of the said Judgment the Supreme Court dealt with the powers of the appropriate Government u/s 10 of the Act. By this paragraph the Supreme Court overruled the judgment in Air India's case prospectively holding that there cannot be absorption of the workmen of the contractor even if the contract is abolished or it is held to be sham and/or bogus. Though the said issue was incidental one, the Supreme Court went on to decide it as a main issue. The issue of contract being bogus, sham or not genuine mainly depends upon facts, the knowledge of which is with the employer and the contractor and therefore, in fact, the door for adjudication was completely closed. Indirectly it also resulted in denial of opportunity to the workers to ventilate their grievances as the power of deciding the issue is exclusively in the hands of the Government whose order is an administrative order and the issue is not decided there by any judicial or quasi-judicial process.

In a nutshell the detailed reasons afforded by the Apex Court were as follows—

1. Either Section 10 nor any other provision of the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour upon issuance of a notification under Section 10(1) of the Act. Neither is such a provision alluded to in the Report of the Joint Committee of Parliament on the Contract Labour

[37] Supra note15

[38] 2001 III CLR 349, 2001 II LLJ 1087

(Regulation and Abolition) Bill, 1967 nor in the Statement of Objects and Reasons of the Act.

2. The Act does not spell out the consequences of the abolition of the contract labour system.
3. There must be some reason why the Act does not specifically provide for automatic absorption of contract labour. The Act is intended to work as a permanent solution to the problem, rather than to provide a one-time measure by departmentalising the existing contract labour, who fortuitously happened to be the employed contract labour on the relevant date over and above that contract labour employed for a long duration of time earlier. Therefore, it is not for the High Courts and the Supreme Court to read in some unspecified remedy on Section 10. Such an interpretation will go far beyond the principle of ironing out the creases and the scope of interpretative legislation and therefore is clearly impermissible.
4. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit the Act is intended, does not extend to reading in its provisions something the legislature has not expressly provided for, whether expressly or by necessary implication.
5. It must be considered whether the contractor has been hired on a genuine contract or contract is a mere camouflage to evade compliance of various beneficial legislations so as to deprive the workmen of the benefits thereunder. If the contract is found to be a sham, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to direct the regularisation of the services of the contract labour. If, however, the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable, and if necessary, by relaxing the condition as to maximum age taking into consideration the age of the workmen at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.
6. It cannot be said that by virtue of engagement of contract labour by the contractor for any work of an establishment, the relationship of master and servant is established

> between the contract labour and the principal employer. What is true for a workman need not be true for contract labour. A workman is a generic term, and contract labour is the species. In the absence of an express provision in the Act, a relationship of master-servant cannot be imputed between the principal employer and contract labour.

Thus though in the above Air India case the Supreme Court was very lenient towards its workmen but in this case the Supreme Court reversed its own decision and from this case it can be inferred that the Court had no role to play according to the provisions of this Act. In the above mentioned case it can also be found that the judiciary has very nicely depicted the loopholes of the said Act and also came out with solutions for the same.

But again in the case of *Municipal Corporation of Greater Bombay v. K.V. Shramik Sangh* [39] the Supreme Court had the same view point as in the case of *Air India Statutory Corp. v. United Labour Union* and gave the same reasoning as well. Thus it can be found that judiciary always acted for the benefit of the workers and for the protection of the objective of the Act.

However, from the Steel India Authority case it can be seen that the jurisdiction of the dispute with the contract labourers lies with the Government. Similarly in the case of *Gujarat Electricity Board v. Hind Mazdoor Sabha and others* [40],

In spite of there being an agreement between the company and the contract labourers'union as regards the service conditions of the members of the latter under section 2(p) read with section 18 of the ID Act and award being declared the Supreme Court considered to give importance to the point of jurisdiction and held that the issue of jurisdiction of court under ID Act is ousted and a reading of section 10 of the Act, it is evident that only the appropriate Government is the authority to decide whether the system of contract labour should be abolished. The Apex Court for the first time however, observed that the Act was silent on the question of status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate government. It also expressed its dismay over the fact that even the public sector undertakings were indulging in unfair labour contracts by engaging contract labour when the workmen can be employed directly. It further

[39] AIR 2002 SC 1815, 2002 (5) BomCR 718, (2002) 3 BOMLR 718, 2002 (93) FLR 838, JT 2002 (4) SC 115, 2002 LablC 1672, (2002) IILLJ 544 SC, 2002 (3) SCALE 532, (2002) 4 SCC 609, 2002 2 SCR 1122, 2002 (2) SCT 756 SC, (2002) 2 UPLBEC 1687

[40] 1995 1 CLR 967.

observed that economic growth is not to be in terms of production and profits alone but to be gauged primarily in terms of employment and earnings of the people. Hence, observed that the role of the judiciary cannot be ignored for the welfare of the workmen, for which this Act is quiet insufficient.

Denanath vs. National Fertilizers[41]

This is a case of non-compliance of section 7 and section 12 by the principal employer and contractor and the issue involved was whether due to non- compliance, the employees of the contractor are deemed to be the employees of the principal employer.

Paragraph 22 of the Judgment states "it is not for the High Court to enquire into the question and decide whether the employment of the contract labour in any process, operation or any other work should be abolished or not. It is entirely in the hands of the Government. Therefore under Article 226 of the Constitution the Court cannot issue a writ of mandamus or any writ for deeming the contract as having become the employees of the principal employer."

In view of the difference of opinion of the various High Courts, after consideration of those judgments, the Supreme Court upheld the view that Non Compliance of Section 7 of the Act would result only in prosecution.

A ray of hope was again created by the recent Supreme Court judgment reported by an observations in paragraph 23 in the judgement of the Hon'ble Supreme Court in the case of *Harjinder Singh v. Punjab State Warehousing Corporation*,[42] reported[43] wherein, "the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of state policy constitute an integral part of justice due to the workmen should not be denied by entertaining the spacious and untenable grounds put forward by the employer/ public or private".

Similarly, in the past too, there were a few such Court verdicts, though more as exception, but nevertheless provided the much needed ray of hope. They are as follows:

National Federation of Railway Porters, Vendors and bearers v. Union of India [44]

[41] 1992 1 CLR *1,* 1992 LIC 75, 1992 I LLJ 289

[42] 5 January, 2010

[43] Manu /SC/0060/2010,

[44] 1995 II CLR 214, SC

In this case the Supreme Court granted regularisation to the railway parcel porters, provided by societies or private contractors as contract labour, at the backdrop of those porters having worked so continuously for a number of years and also that the work of parcel-handling was perennial in nature.

Again in, *Bhilwara Dugdh Utpadak Sahakari Sangh Ltd. v. Vinod Kumar Sharma Dead*[45]

The Labour Court had held that the workmen were the employees of the appellant and not the employees of the contractor. The High Court too had upheld the said position. In the appeal to the Supreme Court, it not only upheld the said finding but also observed, "This appeal reveals the unfortunate state of affairs prevailing in the field of labour relations in our country. In order to avoid their liabilities under various labour statutes, employers are very often resorting to subterfuge, by trying to show that their employees are in fact the employees of their contractors. It's high time that such subterfuge must come to an end. Globalisation / liberalisation in the name of growth cannot be at the cost of exploitation of workers".

Ironically, every judgment stated above has very broadly reiterated the principles and foundations on which the Act was based, that are to prevent the exploitation of contract labour and also to introduce better conditions of work.

Thus it can be said that the Hon'ble Supreme Court did not give due importance to the object of providing for job security for such of those employees who have been engaged as contract labour and bring them at par with the permanent employees. Except for a few Judgements passed by the very same Supreme Court that have boldly pointed out that there is a gross lacuna in the Act itself which required a very strong amendment, none of the Judgements have in fact, set out any path nor shown the way to help these contract employees.

In view of the provisions of S.10 of the Act, it is only the appropriate Government which has the authority to abolish the system of contract labour in accordance with the provisions of the said section. No Court including the industrial adjudicator has jurisdiction to do so. The exclusive jurisdiction to abolish contract labour in any establishment lies with the appropriate Government and therefore the High Court can neither issue a writ to abolish the contract labour nor prevent a principal employer from engaging contract labour where no order under the Act is provided.

[45] LRS and Ors. (SC, Sept., 2011)

Now from the above case analysis it can be easily inferred that the Courts therefore faced a problem and in some of the judgements gave their decision solely based on the basis of the provisions given in the Act while others gave decisions based on the object of the Act i.e. to protect these labourers from exploitation. Now if the object had to be achieved the Act should have been more expressive because on issues like this there has to be certain guidelines provided by the legislation otherwise these labourers may be kept on being exploited.

CONTRACT LABOURERS AND SOCIAL SECURITY MEASURES:

From the analysis of the above chapters it can be pictured that The Contract Labour (Regulation and Abolition) Act, 1970 has been implemented for safeguarding the contract labourers but in this study it is also found as to how the judiciary has played a very vital role in protecting the areas where this Act has various loopholes specially under S.10 of the Act. However not only under the said Act but under other labour laws the judiciary has played an important role in aiding other Acts for giving protection to the contract labourers. In the Contract Labour (Regulation and Abolition) Act, 1970 the Act has laid down several provisions which aid in the protection of the contract labourers.

Every principal employer to whom this act applies should register his establishment in the prescribed manner for employing contract labour. Unlike the industry sector, generally, there is no provision for remaining unregistered.

If the Government at any point of time is dissatisfied with the practices followed, it can revoke the registration of an establishment.[46]

There is also an obligation on every contractor to take a licence issued in that behalf by the licensing officer to execute any work through contract labourers, in the specified manner as mentioned under S.12 of the Act. It was held in *General Labour Union (Reg Flag) v. K.M. Desai and others*[47] that there is no provision in the Contract Labour (Regulation and Abolition) Act, 1970, whereby it can be construed even by remote possible way that in case of failure on the part of the contractor to register his contract under S.12 of the Act, the employees employed by the

[46] Meenakshi Rajeev ,*Contract Labour Act in India: A Pragmatic View,* 9-12 (August 2009)
[47] (1990) II L.L.L.J. 259 Bom.

contractor would become the direct employees of the company. But failure to register the contractor would lead to penal provisions. But in the case of Employers in Relation to *Management of Sudamdih Colliery of Bharat Cooking Coal Ltd., Dist. Dhanbad v. The Presiding Officer, Central Government Industrial Tribunal No. 1, Dhanbad*,[48] engaging employees though the contractor without obtaining licence or registration by the contractor will be violative of the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and such employees of the contractor will be deemed to be workmen of the principal employer.

Not even a contractor but also a sub – contractor who comes within the definition of contractor in S.2 clause (c) is bound to obtain a license under S. 12 sub – section 1. [49]Section. 16 to Section. 19 deals with the provision whereby the Government had made rules whereby the contractor is required to maintain canteens, restrooms , other facilities and first – aid facility for the workmen so that the workers are not deprived of any facility. S. 21 of the Act clearly deals with the responsibility for payment of wages to the contract labourers which is on the contractor who employs them. In case of any default by the contractor, the principal employer is required to make good the default, but at the cost of the contractor from whom the principal can recover the amount. [50]

In *Hindustan Paper Corporation Ltd. v. Kagaj Kal, Thikadar Sramik Union and others*[51] the respondent union espousing the cause of contract labourers sought orders for payment of wages to them on par with regular employees.

The Supreme Court observed that when the competent authority (Labour Commissioner) was seized of the matter and he instructed his subordinate to submit a report on the matter, the High Court ought not to have ventured a roving enquiry and decide the issue leaving the authority in lurch. i.e it is not desirable for courts to interfere and decide matter pending disposal by competent authority.

[48] 2000 LLR 100 (Pat HC)

[49] Supra note 7

[50] Supra note 7 at 19

[51] 2008 1 L.L.J. 917 (S.C.)

However in the case of *Senior Regional Manager, Food Corporation India, Calcutta v. Tulsi Das Bauri*, [52] the Supreme Court held that the principal employer is liable to pay wages in case the contractor defaults and the term wages include balance or arrears thereof.

The judiciary interfered for the protection of the contract labourers and gave a decision in a case that the contract labourers and the casual workers who were doing the same work which were being performed by the regular workers working in the same godown, the contract workers will be entitled to the same wages which were being paid to the regular employees.[53]

Neither the said Act nor the Payment of Gratuity Act speaks of payment of gratuity to the employees but the judiciary has interfered in this case and gave the ruling that the contractor who is holding license under the Contract Labour (Regulation and Abolition) Act, 1970 is also obliged to make payment of gratuity to the contract labourers as was decided by the High Court of Madras in the case of *Madras Fertilizers Ltd. v. Controlling Authority under the Payment of Gratuity Act, 2003*, [54]

The Madhya Pradesh High Court has also clarified that the workers through contractor under the Contract Labour (Regulation and Abolition) Act, 1970 will be entitled to equal wages which were being paid to the regular employees and, as such, the High Court has modified the order of the Authority under the Minimum Wages Act in directing for payment of wages as awarded by the Authority under the Minimum Wages Act.

Other than all these provisions available for the protection of the contract labourers the Act further deals with Ss.22 – 27, wherein it is clearly stated that any act done in contravention of the provisions laid down for the protection of the contract labourers will be penalised under the said Act.

In *S.B. Deshmukh v. Labour Enforcement Officer*,[55] a complaint was filed under S. 23 and S.24 of the Contract Labour (Regulation and Abolition) Act, 1970 against the petitioner who was the Chief Regional Manager of the State Bank of India and the contractor for supplying 12 persons as contract labour for maintenance, cleaning, dusting, building of bank which was prohibited by

[52] LLR 601 (SC)

[53] Food Corporation of India v. Shyamal K. Chaterjee, 2000 LLR 1293 (SC)

[54] LLR 244:2003 – LLJ 854:2003 (97) FLR 275 (Mad HC)

[55] 1986 (1) BomCR 17, 1987 (54) FLR 204, (1986) IILLJ 382 Bom

notification issued by the Central Government under S.10 (1) of the Act. It was held that the prohibition under S.10 of the Act is not qua the establishment but qua the particular activity of contract labour. It prohibits the employment of contract labour in any process, operation or the work in any establishment. If the contractor had aided and abetted the employer in the commission of such offence then he ought to have been prosecuted on those allegations.

Thus any type of non-compliance of provision made by the contractor will be penalised under the Act or by the decision of the Court.

Protection under Other Laws:

The contract labourers are not only protected under the Contract Labour (Regulation and Abolition) Act, 1970 but also under the following other labour laws and these are as follows:

1. The Employees Provident Fund and Miscellaneous Provisions Act, 1952:

S.2 (f) of the Act, any person employed by or through a contractor in or in connection with the work of the establishment is also an employee unless otherwise covered under the Act and will thus be eligible to get the benefits of the scheme framed under the Act. Thus, the employees engaged through the contractor will be liable to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act.[56] '

2. The Employees' State Insurance Act, 1948

This Act states that the factories and the other establishments to which the Employees' State Insurance Act applies, contract labour will be entitled to the benefits as conferred under the Act to the employees so long as they meet the requirements of the expression employees as defined in S.2(9) of the Act.

2. The Payment of Bonus Act, 1965

Neither the Contract Labour (Regulation and Abolition) Act, 1970 nor the The Payment of Bonus Act, 1965 provide that the said Act will be payable. It has been held by Kerala High Court that the principal employer will be liable to pay wages to the employees of the contractor

[56] D.C.M Limited V. Regional Provident Fund Commissioner, 1998 LLR 532 (Raj HC)

if the latter fails to make the payment of wages to his employees. It has further been held that the bonus will not be payable by the principal employer to the workers engaged by two contractors since the bonus does not come within the purview of wages.[57]

3. The Mines Act, 1952

As per s. 2(1) of the Act any contract labourer working in the mine or part threof shall also be liable for compliance of various provisions of the Act and Rules.

4. The Minimum Wages Act, 1948

Sub – rule IV of Rule 25 of the Contract Labour (Regulation and Abolition) Act, 1970 provides that the principal employer will ensure that the workers as engaged through the contractor will be paid wages not less than the wages as fixed under the Minimum Wages Act. As also evidenced in the case of *T.R. Turkey and Company v. Regional Labour Commissioner*[58] decided by the Karnataka High Court.

5. The Industrial Disputes Act, 1947

The workman under the Contract Labour (Regulation and Abolition) Act, 1970 is also a workman under the Industrial Disputes Act. Here also the workmen as contact labourers are given protection as is provided under the sais Act. In the case of *Bharat Earth Movers Ltd. v. Gangaramaiah by Sri Mahmood Mirza,* [59] the Karnataka High Court has clarified that if the workers are paid less than the minimum wages then they can recover the same from the principal employer by filing petition under S. 33(c) (2) of the Industrial Disputes Act, 1947providing for recovery of money due from the employer since the workers will also have the status of workmen as defined under S.2(s) of the Act.

6. The Workmen's Compensation Act, 1923

[57] Supra note 7 at 96

[58] 1985 Lab JC 909 (Ker HC)

[59] 2007 LLR 719:2007(114) FLR 700 (Karn HC)

This Act also speaks of protection to a contract labourer as dealt under S.12 of the Act which deals with the liability of payment of compensation as per the provisions of the Act to a contract labourer for personal injury caused by accident arising out of and in the course of employment.

Thus from the above provisions and case analysis it is found that not only under the Contract Labour (Regulation and Abolition) Act but also under other labour laws it is found that the contract labourers are well protected, and the Judiciary has always intervened in order to give complete protection to the contract labourers. And it is found that any act done in contravention of any provisions of the Act is penalised.

CONCLUSION:

After going through a research relating to the Contract Labour (Regulation and Abolition) Act, 1970, it is no doubt observed that this Act has been made keeping in mind the welfare of the contract labourers. The Government of India has been deeply concerned about the exploitation of the workers under the contract labour system and thus with a view to remove all the difficulties bearing in mind the recommendations of all the committees and commissions and the decision of the Supreme Court this Act was enacted in 1970. However later on, it was found that there were some loopholes in an important section i.e. in section 10 of the Act which spoke about abolition of contract labourers but it didnot speak about their absorption. However, later on with the judicial intervention and with the aid of some landmark judgments it was found that the judiciary played an important role in safeguarding the position of contract labourers under S.10 of the Act and also in protecting the objective of the Act. However, the Act itself also provided protection to the contract labourers as is dealt with under different sections of the Act and the judiciary has also supported and enhanced the protection under the Act. But it can be suggested that for an effective implementation of Contract Labour (Regulation & Abolition) Act 1970 it is very necessary to establish and maintain very good relations indeed between Contract Labour and the Organization. Government should become more active for the safer side of the labour workers by making some things mandatory for them so that they can get essentials and can work effectively and 100% use of this Act would lead to 100% presence of the labour on the site, no conflicts, more productivity & all would help in making the goodwill of the organization. Thus it can be concluded by saying that though the Act provides for protection to the contract labourers but it has some loopholes in

totally protecting the contract labourers as to when they are abolished, and in this research work it is found that with the help of various case analysis it is proved that the judicial intervention at this point of time plays a very important role in safeguarding the interest of the contract labourers and in protecting the interest of the Act.