

PLIGHT OF CONTRACT LABOUR IN POST INDEPENDENCE ERA: AN ANALYSIS

Written by Wasim Ahmad

Research Scholar, Aligarh Muslim University, Aligarh

INTRODUCTION

The expression “Contract Labour” has been characterized in the Encyclopedia Britannica as “the labour or workers whose freedom is restricted by the terms of a contractual relation and by-laws that such arrangements permissible and enforceable”. It normally refers to labourers connected through a mediatory and is founded on three parties’ relationship among the user enterprises, the mediator and the workers. Contract labour in India lacs in number and usually belong to the informal and private sector. Though they form a sizable chunk of our workforce but have very limited contractual power, have insufficient or no social security, moreover are often engaged in risky occupations endangering their strength and safety. They have often rejected minimum wages and have scarce or no certainty of employment.

Currently, industrial form paradigm in the world, as well as India, had entirely changed pursuing the adaption of the open market policy. With the outset of globalization, liberalization and privatization, the country does, by and large, capable to preserve a qualitative and positive industrial relations environment. The acute insecurity of employment of such labour and their exploitation in various form was invariably attributed to jobbers who recruited them and supervised their work. Government policies for contract labour.[1]

CONTRACT LABOUR IN POST REFORM ERA

‘Liberalization’, privatisation and ‘Globalization’ inaugurated a transformation in the employment ground and raised race among enterprises for existence. Potential marketability and presence of workforce tempted many international firms to establish its offices in India. To remain in this competitive market scenarios, businesses need flexibility in handling

workforce to address casual ups and downs in demand. But the old and strict Indian industrial laws, which were passed decades ago, prohibiting right-sizing of manpower. These factors are creating problem in developing industries. Foreign Direct Investment (FDI) to India grew by 6 per cent to USD 42 billion in 2018, with strong inflows in the manufacturing, communication and financial services sectors, and cross-border merger and acquisition activities.[2]

The above determinants are tending enterprises to engage more and additional numbers of contract workers to have vaster flexibility to regulate the number of manpower based on financial efficiency, decent utilization of means, optimization of gain and making cost-effective way. These factors are resulting in the threat of lower worker devotions. We need to understand who is “Contract Worker”? Contract worker can be differentiated from the direct worker. A workman is considered to contract worker when he is engaged in connection with the job or contract for service for any third party by or through a mediator or contractor. They are secondary workers who are engaged, supervised and paid by a mediator who, in turn, is funded by the third party. The contract labour is neither born on the pay list or muster list. The salaries also not paid directly to these workers. They are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment. In either form, contract labour is neither borne on payroll or muster roll or wages paid directly to the labour.[3]

The problem of these workers in India has been strengthened in the last few decades, especially in the last three decades. The status of workers has rapidly been changing from permanent or conventional workers to contract or informal workers. In fact, the demography at the bulk of workplaces including in state-owned and public sector undertakings has presently reached a stage where the contract worker outnumbers the permanent workers. During the last three decades, the Government of India’s policy of zero funds or ban on recruitment has brought to non-filling up of regular vacancies. Such a situation created an inadequacy of man-power at workplaces and to meet the burden with the result either the works are outsourced or contract labour is assigned for the same jobs. Similarly, private employers in order to continue competitively in the global trade environment initiated various measurement of cost-effectiveness and employment of contract labour became a very safe and easy option for them.

The whole system of getting work done through contract labour is alien to this country and is a legacy from the British colonial rule.[4]

The post-reform era in the world has been witnessing the formalization of the world economy and enhanced contractualization and casualization of the world labour market. In India since the early 1990s, the job structure of organized manufacturing enterprises in India has undergone significant changes with the upright rise in the use of contract labourers in place of permanent labourers. This process has led to increased wage inequality, prejudice as well as the concern of job loss in the labour market. This phenomenon, in reality, is striking at the very essence of the working class of India today. Many of the respectable jobs have vanished in the previous three decades and are reborn anywhere else. But they arise in the form of informal or contract work in the unorganized/informal sector.

PROFIT- THE PRIME AGENT FOR PROMOTING CONTRACTUAL LABOUR

The principal magnet of the contract labour system, as discussed above, is in its benefit to the employer. The cost of fringe benefits particularly as leave wages, bonus, provident fund etc, which is otherwise payable to normal worker is cut down. It is also believed that labourers, when employed as contract workers by or through a contractor, give higher productivity of a conveyed quality at the lowest possible cost. Payment by the result, nearer supervision by contractors and the prompt penalty for staying lower than the output norm and low waste and good work which were the only basis of job security included workers to deliver more. Poor workers are already under the pressure of unemployment and poverty, when parked against the economic might of employment, is left with no other choice but to work for beyond his physical capacity.

Contract labour is becoming a nicer prominent feature of the labour market throughout the world. A worldwide trend is emerging whereby traditional employment pattern founded on long term or open-ended employer-employee relationship is being replaced by non-standard

arrangements. The increasingly large number of the workforce is now engaged in a typical arrangement and many of these workers are contract labourers.

The increased use of contract worker has adverse effects both for the workers themselves and for the enterprises in which they are engaged. The contract of employment affords the labourers certain rights of protection.

The rights may be contained in the contract of employment itself or in the legislation also. If the worker is not engaged, he has no rights in the job and he cannot claim the protection of national legislations. In many cases contract worker is also denied the right to association and bargain collectively.

LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF CONTRACT LABOUR

The Government of Assam appointed Assam Labour Enquiry Committee in 1925. This committee recommended, among other things the abolition of the workman's breach of Contract Act, 1859 and Section 490 and 492 of Indian Penal Code which were utilized by the employers to the detriment of the workers. The said Act and both the sections of the Indian Penal Code were repealed in 1925.[5]

The mediatory system has caused most of the problem for contract worker as he has been primarily responsible for their exploitation. Indian legislative history right from the passage of Transport of National Labourers Act 1863 to the Contract Labour (Regulation and Abolition) Act 1970 has been a passage of seven legislations to ensure the betterment of contract worker and to reduce the extent of the abuse. Thus, the Bihar Labour Enquiry Committee also condemned the practice of engagement of labour through contractors. It observed: "The contractor ordinarily lack a sense of moral obligation towards labour which the employers or managers are expected to have and therefore do not often hesitate to exploit the helpless position of labour in their charge." [6]

In the post-independence era, almost all existing and new regarding labour laws were amended and so legislated as to contain in their purview to Contract workers. This was done with the belief of extending maximum gains to the Contract workers and to reduce the extent of the abuse. This Act provides many protective measures for Contract worker including proper wage payment and many other facilities like canteen, first aid and restroom etc. Many enquiry committees were also arranged during this period to go through the nature of the work and situations of employment of Contract Labour. Royal Commission on Labour and Labour Investigation Committee hold a central position along with them. The later suggested for the repeal of this system wherever feasible and regulations of the employment condition in an establishment where abolition was not possible. The Contract Labour (Regulation and Abolition) Act 1970 incorporates this suggestion as propounding by Labour Investigation Committee and has enhanced the responsibilities of the principle employer.[7]

The Ministry of Labour and Employment drafted the Contract Labour Bill and circulated it for comment to the organizations of employers and workers. The bill was also discussed at the 23rd session of the standing labour committee in March 1965 and then it was referred to a special subcommittee which could be come to any agreement. Therefore, the government went ahead on its own and prepared a revised draft. The revised bill entitled “Contract Labour (Regulation and Abolition) Bill was introduced in the Parliament on 31st July, 1962. The then Minister of Labour and Rehabilitation Jai Sukh Lai Hathi moved a motion on 7th March 1968 for referring the Bill to a Joint Committee of both the Houses of the Parliament. Late Kashinath Pandey was a Chairman of the Joint Committee. The joint committee was divided into study group for the purpose of undertaking on the spot study. Representatives from public bodies, government departments, trade unions and employers’ organization were invited to present their views before the committee. The study group visited various industries, ports docks, railway establishments etc. in the states of West Bengal, Bihar Maharashtra, Goa, Karnataka, Andhra Pradesh, Tamil Nadu and Orissa to study the working conditions of the contract labour and hold discussions with various officials and representatives of non-official organization on the provision of the bill. The report of the committee was not unanimous. R.K. Amin, one of the members submitted a detailed minute of dissent the report of the Joint Committee. He observed: while it is true that even step should be taken to protect labour (contract labour) wherever employed possible malpractice and also to ensure in regard to their employment, observance

of fair standard and practices, this does not mean that one should throw away the baby with the bath tub. In fact, there are areas where the contract labour should be abolished, while on the other it should be restricted, but there will remain some areas where it should be encouraged since it is both desirable and necessary for the efficiency of the economy.[8]

The contract worker in India is engaged as per the Contract Labour (Regulation and Abolition) Act, 1970. This Act was legislated for the abolition of the contract worker wherever it is possible and to rectify the system where its negation is not possible. The legal support through industrial labour laws involving the Contract Labour (Regulation and Abolition) Act 1970, for the absorption of contract labour as the permanent labourer, does not provide any instantaneous and appropriate relief to contract labour. As a result, the contract labour goes on to encounter job insecurity even after their constant working for years. Due to lack of suitable legal consolation, the contract labour suffers from employment insecurity, income insecurity and unsafe job conditions. The contract labour is paid meagre wages even less than ordinary minimum wages and is connected in precarious work without extending them health first aid and safety measures at the workplace. No worker should be kept continuously as a casual or temporary worker against a permanent job for more than 2 years unless he is employed on a contract for a specified period.[9]

In spite of the contract labourer performing traditional jobs of permanent labourers, they are not extended similar advantages of leave, group insurance, provident fund, dividend, bonus etc. Migrant contract workers face numerous social problems, beyond the workplace. One of the main concerns associated with accommodation. Majority of migrant contract labourers are residing in slums and shanties in pathetic and unhealthy conditions with inadequate sanitation, insufficient privacy etc. The fear of victimization and exploitation in the event of organizing under association keeps contract workers away from trade unions. The contract workers are not even conscious that their basic human rights are being suppressed upon by contractors.

The Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into existence on 10-02-1971. The Constitutional confirmation of the enactment and the rules was questioned before the Supreme Court in *Gamman India Limited* case. The Supreme Court confirmed the constitutional validity

of the Act & Rules and maintained that there is no unreasonably in the Act. This Act & Rules were enforced w.e.f. 21-03-1974.

MEASURES SUGGESTED ALLEVIATING THE WOES OF CONTRACT LABOUR

Holding in view the ideas of a recent scenario of contract labour system in India the proposals of Second National Commission on Labour, below initiative can take into deliberation in order to remove the defect of contract labour system.

1. Establishing Central and State Contract labour Boards

The Central Contract Labour Board (CCLB) be formed on the union level enforce, administer, monitor and handle the contract workers. Moreover, each State shall comprise the State Contract Labour Board, who would be the single authority to enlist, refer and supervise the contract labour in each state in the direction of Central Contract Labour Board.

State Contract Labour Board will be given with the job of enrolling contractors and contract labour, delivering of authorizations and smart card, solve disputes or complaints and administer social security benefits and wages.

Labourers working as contract workers register himself with the concern State Contract Labour Board to provide help with the government for having the account the sum of labourers employed as contract labour, proposing social security policies and making effective execution of the social security. The Board shall regularise the job of contract labour and oversee the working of the contract labour schemes in India.

The Central Boards along with the State Boards shall be administered by the Central and state government (as the case may be), Employers (Principal Employers) and Workers representatives (Trade Unions).

2. *Contractors are treated as a distinct establishment*

Many of the difficulties in the existing contract workers legislations arise because of labourers as exploited by the greedy contractors', despite the welfare drives started by the chief employers. A condition of specific eligibility criteria is laid down before attaining a license from the registering authority.

A contractor who has fulfilled all standards and received a license under the enactment be treated as a distinct establishment. It shall be entirely responsible as main employer for all kind of irregularities. Any default to pay statutory dues like employee provident fund & employee state insurance or in the issue of injury occurred in the factory or establishment where the occupier has given and met with the safety & security measures, the mediator should be equally held liable with the main employers.

This action would compel the intermediaries more accountable for his actions and also would develop a contract of service alliance where the ends of the contract labourers can be safeguarded. Therefore, Chapter III and IV of the enactment be appropriately amended to abolish the problem of contract labour system.

3. *A single point accumulation of social security funds from the establishment and compliance of the whole statutory requirements*

There is the need for preparing of an all India recognized social protection management association for the one level collection of social safety contributions. There should be one windows clearance for the establishment. It would ensure practical social safety coverage to the contract labourers and also protect the employer from the administrative problems. The unique proposed carrier called National Social Security Management Authority of India (NSSMAI) will be formed for the accumulation of social security contributions. There should be a one-window clearance arena for all Social Security Organizations, for example, Employees' State Insurance Corporation as well as the Employees' Provident Fund Organization. These will be assigned with the duty of facilitation and controlled through

Central Contract Labour Board. It would also be governed by the representatives from ESIC, EPFO as well as by Central Government, Employers and Workers.

NSSMAI will be assigned with the underwritten works.

a. Collecting payment from all the institutions/establishment.

NSSMAI be assigned the duty of collecting all the accumulation from every beneficiary organizations/establishments through a demand, on behalf of all the social safety institutions through one-window. It would deliver a certificate of permission under one form with a voucher to all respective beneficiaries.

b. Depositing money with all social safety organizations

It (NSSMAI) will secure the collected funds with the respective social protection institutions. The Social protection institutions like EPF & EST should remain to continue to supervise these funds, enforce the execution of the policies and inspect all work.

c. distribution of benefits

NSSMAI will allocate the benefits of these social security plans to the through the one window approval. It would claim the benefits by the respective social security organizations through one pattern for all the social safety schemes e.g. (ESI and EPF).

4. Granting a biometric-enabled card to each contract worker, mentioning his qualification and social security member number

Biometric allowed cards indicating the rate of the ability (it possesses), the experience of years in that skill, signature, eye scanning, fingerprints, thumb impression and photograph be granted to the contract labourers to bring them to avail several social advantages and receive cash benefits. The smart card will remain based on the recent technology and regulated by the Central Contract Labour Board or State Contract Labour Board.

The Smart Card shall predict the abilities of the labourer in any specific area if he possesses; to deliver him a job in handy. As his skill gets facilitated it will be indicated in his report account. This could exist evaluated by an employer from the Central Contract Labour Board or State Contract Labour Boards.

The card would hold the account number of social securities of the labour. The contract workers frequently shift from the one establishment to other and from one area to others. Due to the higher rate of shifting, it is not accessible for social security institutions to provide the benefits effectively. Moreover, the labourers are not in a situation to use the benefits. This all India - recognized social security smart card would deal with these issues. Through this smart card, all social safety institution will be in a nicer situation to deliver their aids and the labourers would furthermore avail the advantages irrespective of their locations.

5. Contribution of additional 4.81% assistance as a gratuity be disbursed by establishment other than the employee provident fund and employee state insurance benefits

There should be the arrangement of payment of gratuity by the establishment of the contract labourers except for other social protection benefits. An establishment assigning contract workers through intermediaries in both supplemental and secondary actions would offer 4.81% of the labourers' basic pay as gratuity to the social protection account of the labourer. Since the social safety card number would be run through a technology-assisted smart card and institutionalized one door centre for the collection of assistance, it would be helpful for the establishment to put their share of money in the bank account and again for the labourers to avail the advantages from any area in India.

The passbook method may be governed, contributing to affixing seals of the value of the monthly payment, en-cashable after retirement age. One more option could exist to utilize the monthly gratuity to be paid as a premium to LIC. By the help of this initiation, the contract labourers would be kept under the different social security web which would narrow down the break between a permanent employee and a contract labourer.

6. Skills criteria are evaluated during salary fixation

The minimum wages advantages of the contract labour are adjusted according to the norms laid down by enactment showing unskilled, semi-skilled and skilled workers. This would hold parity through the industry and support the labourers. A systematic method can be developed to reach the skills of the contract labour by involving the job exchanges of the respective regions.

7. 20 % more minimum wages

The labourers those are active as contract labourers i.e. engaged through mediator are to pay 20% extra the fixed minimum salary at entry-level.[10]

Thus, the job of a contract worker in India has attracted discussions and raised a dispute of interest between the civil partners, it has been a growing pattern of employment, involved in different occupations involving skilled, semi-skilled and unskilled employment. The system of utilizing contract worker is widespread in almost every area; in agriculture, textile, manufacturing and service sector.

Liberalization of the Indian economy in the early nineties has increased more flexibility of job for the enterprises to compete in this international perspective. The old labour laws have compelled enterprises to hire contract worker to address the continuous needs and creating a trade-friendly compliance agency to survive in the global market economy.

Therefore, addressing the issues of contract worker through a sustainable way avoiding prospective industrial unrest is a demand of the time and single solution to it is by covering this segment of labours under a social security net.

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