

CONTRACT LABOUR IN INDIA

BACKGROUND

1. Contract Labour is a significant and growing form of employment. It is prevalent in almost all industries, in agriculture and allied operations and in service sector. It generally refers to workers engaged through an intermediary and is based on a triangular relationship between the user enterprises, the contractor (including the sub contractor) and the workers. These workers are millions in number and generally belong to the unorganised sector. They have very little bargaining power, have little or no social security and are often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and have little or no security of employment. On the other hand, reasons like sporadic nature of work, difficulty in ensuring closer supervision by the employer or cost effectiveness, flexibility in manpower deployment, concentration in core competencies etc. justify the system of contract labour.

2. Recognising the need for protecting the interest of contract labour, the Contract Labour (Regulation and Abolition) Act, 1970 was brought on the Statute Book to regulate the employment of Contract Labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

3. The Contract Labour (Regulation and Abolition) Act, 1970 Act and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force on 10.2.71. The Constitutional validity of the Act and the Central Rules was challenged before the Supreme Court in Gammon India Limited Vs. Union of India 1974-I-LLJ-480. The Supreme Court upheld the constitutional validity of the Act & Rules and held that there is no unreasonableness in the measure. The Act & Rules were enforced w.e.f. 21.03.1974.

PROVISIONS OF THE ACT & THE PRESENT STATUS

4. The Act applies to every establishment/contractor in which 20 or more workmen are employed or were employed on any day in the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months, 20 or more workmen. It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and seasonal nature will be covered by the Act if the work performed is more than 120 days and 60 days in a year respectively. The Act also applies to establishments of the Government and local authorities as well.

Appropriate Government

5. The jurisdiction of the Central and State Government has been laid down by the definition of the 'Appropriate Government' in Section 2(1)(a) of the Act, as amended in 1986. The Appropriate Government, in respect of an establishment under the Contract

Labour (Regulation and Abolition) Act, 1970 is the same as that in the Industrial Disputes Act, 1947.

The Central and State Advisory Boards

6. The Central Government and State Governments are required to set up Central and State Advisory Contract Labour Boards to advise the respective Governments on matters arising out of the administration of the Act as are referred to them. The Boards are authorised to constitute Committees as deemed proper.

7. The Central Advisory Board- a tripartite Body was reconstituted on 24th June 2002 and the non-official members hold office for a term of three years. The Chairman of the Board was appointed on 10th June 2005 for a period of three years. Sixty-seven meetings of the Central Advisory Contract Labour Board (CACLB) have been held so far. The last meeting was held on 30th –31st October, 2006.

8. The existing Central Advisory Contract Labour Board has held three meetings during 2006-2007 under report and considered various issues relating to abolition of contract labour system in certain establishments. The working of the Act was also reviewed in this meeting.

Registration

9. The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour, except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules.

Facilities for Contract Labour

10. The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same.

Payment of Wages

11. The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same

wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971.

Penal Provisions

12. For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/-.

Other Provisions

13. The Act makes provisions for the appointment of Inspecting staff, for maintenance of registers and records and making of Rules for carrying out the purpose of the Act. In the central sphere, officers of the Central Industrial Relation Machinery (CIRM) have been appointed as Inspectors.

Prohibition

14. Apart from the regulatory measures provided under the Act for the benefit of contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are: -

- Conditions of work and benefits provided to the contract labour.
- Whether the work is of a perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

15. The Central Government on the recommendations of the Central Advisory Contract Labour Board, have prohibited employment of contract labour in various operations/ category of jobs in various establishments. So far 73 notifications have been issued since inception of the Act.

Exemption

16. The 'appropriate government' is empowered to grant exemption to any establishment or class of establishment or any class of contractors from applicability of the provisions of the Act or the rules made thereunder on such conditions and

restrictions as may be prescribed. Eleven notifications granting exemption to establishments in exercise of this power in the Central sphere have been issued.

Enforcement

17. In the Central sphere, the Central Industrial Relations Machinery (CIRM) has been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

18. Regular inspections are being conducted by the Field Officers of the CIRM and prosecutions are launched against the establishments, whenever violations of the Act/Rules/notifications prohibiting employment of contract labour are detected. In order to ensure compliance with the labour laws from time to time, instructions/directions have been issued to the field officers of CIRM and State Government for proper implementation of the Act.

19. A number of complaints alleging violation of contract labour Act especially the notifications prohibiting the employment of contract labour are being received. These complaints are being investigated and remedial action taken in accordance with the provisions of the law by launching prosecutions if considered necessary. References are received for regularisation of the contract labour or abolition of the contract labour system on the ground of perennial nature of work/ ordinarily done through regular workmen etc. Writ Petitions are also being filed by Union/Workers seeking absorption where the contract labour system has been abolished or pleading that the contract is sham. The requests for abolition of contract labour system are examined in consultation with the Central Advisory Contract Labour Board and notifications abolishing contract labour system in various establishments in different jobs have been issued. So far as the regularisation of the workers is concerned, no such provision, either express or implied, exists in the Act. This has also been affirmed by the Constitution Bench of the Supreme Court in the matter of Steel Authority of India Limited Versus Water Front Worker's Union on 30th August, 2001.

20. A statement indicating the number of inspections carried out, prosecutions launched, licences issued, establishments registered, and number of cases received during the last three years under rules 25(2)(v)(a)&(b) of the Contract Labour (R&A) Central Rules, 1971 relating to payment of wages is annexed (Annexure-I).

EMERGING ISSUES/PROBLEMS

21. In the context of globalisation, privatisation and liberalisation, in March 2000 a GOM was constituted to examine the proposal of the Ministry to suitably amend the provisions of the Act with a view to facilitating outsourcing of activities to specialized firms having professional experience and expertise in the relevant area and at the same time

to provide for a safety net to contract labour in such outsourced activities. Such a measure, it was felt, would generate employment growth. The GOM held a series of meetings in the years 2000, 2001 and 2003. After in-depth deliberations on the issues involved it was agreed that certain activities which form support services of an establishment be excluded from the application of Section 10 of the existing Act, which provides for prohibition of employment of contract labour in certain circumstances. However, the same could not be finalized.

22. While the trade unions have demanded that the Act should be amended to provide for automatic absorption of contract labour in the event of prohibition of employment of contract labour, the employers organizations are vehemently opposed to it. According to them such a step would lead to capital-intensive measures like mechanization, automization, etc. and fall in employment. Their view is that the employers should be given flexibility to determine the composition of the workforce for the industry to survive in the competitive environment. Further, according to them, contract labour should not be abolished in non-core activities of an establishment and should be allowed to be parcelled out to specialized agencies, which have grown rapidly, for better time management, better operational efficiency and high percentage of consumer satisfaction.

23. Some of the State Governments, in tune with the changing times, have proposed measures to liberalise the Act to spur the growth of industry, as for example, grant of exemption to Special Economic Zones and Export Oriented Units from the applicability of the Act to boost exports. The Government of Andhra Pradesh have amended the Contract Labour Act with a view to prohibiting employment of contract labour in the core activities of an establishment and to allow engagement of contract labour in none-core activities of an establishment such as watch and ward, sanitation, cleaning works, etc. The Government of Goa has introduced a bill in the legislature to abolish contract labour in core activities of an establishment.

ISSUE FOR CONSIDERATION

24. In view of the diametrically opposite views held by the trade unions and the employers' organizations, on the issue of absorption, and the present thinking of some State Governments, a view needs to be taken on amending the Act to facilitate outsourcing or prohibit employment of contract labour in core activities and to mandate automatic absorption of existing contract labour.

ENFORCEMENT OF CONTRACT LABOUR (R & A) Act, 1970

Sl. No.	Item	2003-04	2004-05	2005-06
1.	No. of Registration Certificates issued to principal employers.	720	590	675
2.	No. of Licences issued to contractors* .	6788	7277	6973
3.	No. of Inspections conducted.	4991	4540	5663
4.	No. of Irregularities detected.	71632	59301	59298
5.	No. of prosecutions launched.	3896	3356	2914
6.	No. of convictions.	2072	2018	1000
7.	No. of contract labourers covered by licences@ .	853690	968792	971570
8.	No. of Licences revoked/ cancelled.	4014	6601	7578
9.	No. of registration certificates revoked.	52	08	211

No. of cases received/disposed of during the last five years under Rule 25(2)(v)(a)&(b) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 relating to payment of wages.

Year	No. of cases received during the last three years under Rule 25(2)(v)(a)&(b)			Order issued Pending	
	B/F	Received	Total		
2003-04	33	1	34	18	16
2004-05	16	2	18	12	06
2005-06	06	-	06	04	02

PROFORMA FOR SUBMISSION OF PROPOSALS FOR EXEMPTION UNDER SECTION 31 OF THE CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970.

1. Name of the establishment and address (if the request is for exemption in respect of the establishment situated in different units and different location, separate detail may be furnished for each unit/location.
2. Details of request No. and date (Section 7) and licence numbers and date with particulars of registering authority.
3. Nature of the process or operation or other work in respect of which exemption is sought.
4. If this process/operations etc. is already covered by a prohibitory notification under Section 10 of the Contract Labour (Regulation & Abolition) Act,1970 ; if so, date and number of the notification.
5. Total number of regular employees of the establishment/contract labour engaged in such process/operation.
6. To what extent are the relevant factors listed out in clauses (a) to (d) of the sub-section 2 of Section 10 of the Act applicable to the process/operation.
7. Copies of the contract(s) entered into in respect of the process/operation (where applicable)
8. To what extent has the management satisfied itself that Rule 25(2)(v) of the Contract Labour (Regulation & Abolition) Act, 1971 is being observed.
9. What is the minimum wage (consolidated) paid to the lowest paid regular employee of the estt. And the actual minimum wage paid to the contract labour (for the month immediately preceding the month in which the request for exemption is being made).
10. What are the other benefits, if any, that are being given to the contract labour by the contractor (such as earned leave, bonus, provident fund, etc.)
11. What are the various categories of contract labour employed such as unskilled, semi-skilled, skilled, highly skilled with the appropriate designation and the number in each these categories.
12. Nature of the exemption sought, such as duration, specific provision of the Act/Rules in respect of which exemption is sought, etc.
13. Grounds on which exemption is sought with detailed justification.
14. Any other information, that is relevant to the request for exemption.
15. Whether there are any court cases pending as on date of submission, if so, details thereof along with copies of Writ Petition, Counter Affidavit filed by opposite party and directions passed by the Courts with state of case.
16. Nature of emergency, if any, warranting exemption under the Act.

(NB: The filed in proforma with the requisite enclosures may be sent to the Secretary, Central Advisory Contract Labour Board, 26, Mansingh Road, New Delhi-110011.)