THE PRECARIOUS WORKFORCE: ANALYZING THE PROTECTION GAPS IN INDIA'S CONTRACT LABOR REGIME

Dr. Komal[*]

ABSTRACT

Quite a lot of Indian corporations are significantly reliant on a temporary or outsourced workforce. Moreover the corporations with manpower and staffing services are some of India's largest private employers, in delivering or deploying contract labourers to its customers, whohave factories and commercial businesses. Labourers engaged in or in combination with the work of an enterprise "by or via a service provider, with or without the knowledge of the main employer" are referred to as temporary or outsourced workers. When the temporary or outsourced workers (Regulation and Eradication legislation) of India (CLRA) was enacted in 1970, it was intended "to govern the employment of temporary or outsourced workers in particular businesses and to extend for its abolition in specific circumstances." In both the organised and unorganised sectors, India has seen a huge increase in the number of contract labourers. As per the current data from the Annual Survey of Industries (ASI), the deployment of contract labourers engaged by a third-party service provider has increased in the organised industrial sector. Given India's labour-intensive workforce, the share of contract labourers in total employment climbed dramatically from 15.5 percent in 2000-01 to 27.9 percent in 2015-16. In the recent years, staffing agencies have reported a considerable increase in recruiting from IT organisations working in banking and financial services, among other industries. Thousands of contract labourers engaged by contractors working at Wistron Infocomm Manufacturing (India), a Taipei-based company that builds iPhones for Apple, went on strike in December 2020 for non-payment of salary and extra compensation. Moreover as perthe reports, the corporation have employed roughly 15,000 people, and around 1,400 on the payroll and the remainder working as temporary or outsourced workers through staffing agencies. This study adopts a doctrinal research methodology, which is a traditional legal research approach focused on analyzing existing legal doctrines, statutes, and judicial precedents without empirical data collection. It involves a systematic examination of primary sources such as the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), related amendments, and case laws from Indian courts, including Supreme Court judgments on labor rights. Secondary sources like scholarly articles, government reports (e.g., Annual Survey of Industries), and labor policy analyses are reviewed to identify gaps in enforcement and abolition provisions. The research employs a qualitative, desk-based method, critically evaluating legal texts through interpretation, comparison, and synthesis to propose reforms addressing exploitation of contract laborers. This non-empirical framework ensures a comprehensive theoretical exploration of labor practices, drawing on historical and contemporary legal contexts in India. The proposed theoretical research studies addressed the issues raised due to labour practices and addressed the challenges faced by the contract labourers in India.

Keywords: Contract, Compensation, Employment, Labour, Outsourced workers,

[*] Associate Professor, Department of Law, Gurugram University, Gurugram, Haryana, India

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INTRODUCTION

As per the Contractual Labour (Regulation and Abolition) legislation, 1970 governs contractual employment in India. According to the latest data gathered, India is witnessing a grave need of contractual workforce in the IT sector; there is a gradual upward trend in with ample number of opportunities. The law is applicable to any business or organization that employs more than 20 people on a contract basis. A contractual worker, according to this law, is a person who is employed for a specific period of time by a service provider rather than directly by an employer. A service provider is a person who provides the major employer with contractual labour. An employer[1] *(with reference to Section 2(g), The Contractual Labour (Regulation and Abolition)* Act, 1970) is the person in charge of a business or establishment.Due mostly to project-based work, outsourcing, and the growing need for flexible workforce models, employment arrangements in India have drastically changed in recent years. Contract labor is increasingly a major component of modern industrial and service-based enterprises, particularly those in emerging areas like information technology (IT), where businesses rely more and more on temporary and outsourced labor to meet shifting business demands. The operational flexibility and cost-effectiveness of contract employment are advantageous to employers, but there are serious problems with job security, pay protection, working conditions, and the potential for labor abuse. Studying the legal framework governing contract labor is essential to understanding how Indian labor law seeks to achieve a balance between economic needs and worker welfare. The current study is important because contract labor is becoming more common in specialized areas like information technology (IT) and is no longer limited to traditional industries like manufacturing and construction. Social security coverage, long-term employment rights, and workplace equality for employees hired under contracts may all be directly impacted by this expanding trend. The Contract Labour (Regulation and Abolition) Act, 1970's legal significance in this regard stems from its goal of regulating contract labor's working conditions and, in certain situations, abolishing the system. Thus, the main goal of this article is to analyze the extent, relevance, and efficacy of this legislation in terms of preventing exploitation and guaranteeing equitable working conditions for contract workers in modern work environments. However, despite the increasing reliance on contractual labor, there are still significant issues with regulatory compliance, major employers' and contractors' accountability, and the practical application of welfare legislation. Therefore, the purpose of this article is to analyze the Contract Labour (Regulation and Abolition) Act, 1970's regulatory framework and determine whether it adequately protects contract workers while also taking into account the operational realities of modern industries like information technology**. (Sasikumar & Sharma, 2016)**[2]

In the case of;

- a factory, it refers to the owner, occupier, or manager of the factory;
- In the case of a mine, it refers to the owner or management of that mine.

[1]Section 2(g), The Contractual Labour (Regulation and Abolition) Act, 1970

[2]S. K. Sasikumar & R. K. Sharma, "Flexibility, Employment and Labour Protection in India", (2016) 51 Indian Journal of Labour Economics 73.

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- The Government: The department or office head or an officer notified by the federal, state, or local governments.[3]

With the intention of regulating contract labourers' working conditions and ensuring that the temporary or outsourced workers system is phased out as soon as is reasonable, the Temporary or outsourced workers (Regulation and Abolition) legislation of 1970 was passed as a federal legislation. The federal and state governments were given the power to apply the law in their respective regions, and it was made applicable to all businesses operating across the nation.**(N.Sharma,2018)**[4] the law intends to lessen labour exploitation and enhance the working conditions for contract employees. The temporary or outsourced workers (Regulation and Abolition) legislation's primary objectives are to stop the exploitation of contract labourers and to do away with the temporary or outsourced workers system in the following situations:

• The task is of a long-term / perennial nature;

• It is incidental or necessary to the establishment's operation.

• The work is of such a character that it may employ a large number of full-time labourers.

• The work does not have to be completed by contract labourers; it can be completed by regular labourers.

The law applies to any business where twenty or more labourers are employed or were employed as temporary or outsourced workers on any day in the previous twelve months. the law is likewise applicable to all contractors who employ twenty or more contract labourers in any main employer's establishment.As a result, any organisation that falls under the law's purview must apply to the registration officer, who is designated by the appropriate government, to register as the major employer. It should likewise be noted that any business that does not register with the law is prohibited from using temporary or outsourced workers. In addition, all contractors that engage in the recruitment and provision of temporary or outsourced workers are required to get a licence. Such a licence is subject to certain requirements, such as work hours, salary fixation, and the provision of certain needed amenities, among others, under which the service provider mayuse contract employees[5]*as per the Occupational Safety, Health and Working Conditions Code, 2020*

In accordance with the law, the main employer is obliged to make sure that wages to temporary or outsourced workers have been paid in front of its authorised representative. The main employer is required to pay any employee's wages if the service provider neglects to do so. It should be made clear that businesses that employ seasonal labourers are exempt from the law's requirements and are not needed to register with it. Work that is performed for fewer than 120 days per year qualifies as seasonal employment (Sankaran**, (2018))**[6]

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[3]S. N. Mishra, Labour and Industrial Laws (28th edn., Central Law Publications, Allahabad).
[4]S. K. Sasikumar & R. K. Sharma, "Flexibility, Employment and Labour Protection in India", (2016) 51 Indian Journal of Labour Economics 73.

[5]The Occupational Safety, Health and Working Conditions Code, 2020
[6]Kamala Sankaran, "Contract Labour in India: Reform and Reality", (2018) 53 Economic and Political Weekly 45.

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What is the difference between contract and direct labour?

The following are some ways that a temporary or outsourced worker varies from direct labour:

• Unlike long-term job, a contractual worker's contract of employment is for a defined time period and a specific task only, and the service provider is accountable for the worker's working conditions.

• The main employer does not directly employ the worker, and the main employer has no direct contact with the labourers' employment.

Where can be Contract Labourer be employed?

Different contexts may call for the employment of contractual labour. Contract labourers are not allowed to do "core activities" that are necessary for the establishment to function. No ongoing commitment should result from the involvement. This is done to avoid forcing contract labourers to do work that would typically be done by permanent staff.

However, there are some "core activities" for which temporary or outsourced workers might be engaged, such as:

a) Cleaning (sweeping, cleaning, waste disposal)

b) Watching/Wardening Service (includes security)

c) Food services

d) Operation of loading and unloading

e) Hospitals, schools, colleges, guest houses, nightclubs, and other similar establishments

f) If the business does not need them, courier services.

g) Construction, maintenance, and civil work

h) Other things include lawn maintenance and gardening.

I) Cleaning and laundry services

j) Other transportation services and ambulance services

k) If a business's main activity is not continuous, it is not regarded as a core activity.

Duties of the service provider and a main employer

Contractual labourers are treated differently by the law than regular employees. As a result, a service provider's responsibilities differ from those of a major employer.

WAGES

The service provider is in charge of the worker, his working conditions, and wage payment. The service provider sets the wage period, which must not exceed one month. Payment is obliged to be made before the 7th day of the last day of the salary period if the establishment has fewer than 1000 employees. • If the worker's last day is June 30th, the payment is obliged

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to be made before August 7th. Payment can be made before the 10th day of the wage period's expiration if there are more than 1000 employees.

If the service provider fails to pay wages, the major employer is accountable for them and may withhold the amount from the service provider's payment. Bonuses are obliged to likewise be paid by the service provider to the contractual employees.

If the service provider fails to pay wages, the main employer has to pay, and he may deduct this amount from the amount payable to the service provider. The service provider is likewise duty-bound to pay bonuses to the contractual labourers.

MINIMUM FACILITIES FO0R THE EMPLOYEES

The service provider has a responsibility to extend essential facilities for the labourers' wellbeing, that includes canteens, restrooms, drinking water, washing facilities, latrines, urinals, and most important Medical facilities. If he or she fails to do so, the primary employer is accountable for them. In the case of Inter-State Migrants, the service provider is obliged to issue a passbook in the employee's name and secure his or her return after working. If a foreign worker is reassigned to a lower-paying role, the service provider is obliged to compensate him or her with a "displacement allowance." This will be equivalent to 75 rupees, or half of the monthly wage. In addition, the service provider is obliged to pay the worker a travel allowance.

Apart from all these, service provider is also obliged to keep the following registers for accountability:

1. Record of Persons in active Employment
2. Muster roll
3. Record of Wages,
4. Record of Damage or Loss,
5. Record of Fines,
6. Advances register,
7. Keep track of your overtime.

What does a main employer do?

The employer is obliged to:

While hiring contractual labourers, the employer has to:

The employer is obliged to:

• Register the establishment to engage contractual labourers; and

• Only hire employees from licensed contractors.

If any of these two requirements is not met, the worker engaged will not be regarded as a contractual labourer and will instead be regarded as having been directly engaged by the employer. The employer is likewise accountable for making sure the service provider abides by any applicable labour regulations.

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REQUISTE AMENITIES FOR EMPLOYEE

The Employer is having duty to ensure that the place of work should have a general health and safety policy for its employees is the primary employer's obligation. The employer is obliged to extend enough room, drinking water, restrooms, and urinals in addition to maintaining the conditions of cleanliness, ventilation, and temperature. Additionally, he or she is obliged to offer first aid, canteens, lunchrooms, creches, washing and sitting areas, and washing facilities. Similar essential facilities are provided for construction labourers by the 1996 Building and Other Construction labourers legislation. The Building and Other Construction labourers'Cess legislation of 1996 mandates that employers make contributions to the Building and Other Construction labourers' Cess Fund.

The Head employer is under obligation to maintain a register of contractors as well as registers to monitor work done, wages received, and receipts, among other things. The place and time of wage distribution, wage rate, hours worked, wage period, dates of wage payment, and date of payment of outstanding wages is obliged to all be posted by the employer. These notices likewise have to be posted in the workplace in a language that most contract labourers may comprehend.

Contractual Employee's Rights

- Working Schedule: As per the statute, a contractual employee can be employed for 48 hours per week and 9 hours per day of work. If he or she works overtime, they are entitled to a wage that is double the ordinary rate. The length of the workday is obliged to be made known to the employees. A contractual employee who has clocked 240 or more hours of work is entitled to paid annual leave, with one day off for every 20 hours worked.
- Safety and Health: Manufacturing contract employees have a right to safety and health information regarding health and safety at work, and ii) get training on workplace health and safety in accordance with the duties of the employer.
- Social Security: The Employees' State Insurance legislation of 1948 protects contract employees, and such employees are eligible for social security benefits if their monthly pay exceeds Rs. 21,000/-. The employee's insurance is the employer's responsibility, and the employer is required to register with the Employee State Insurance (ESI) corporation. The employee contributes 1.75 percent of his or her income, and the firm contributes 4.75 percent of employee salaries to the ESI plan. employees who earn less than Rs. 137 per day are exempt from making their share of the contribution. The system provides labourers with access to medical benefits, sickness benefits, maternity benefits, disability benefits, and dependent benefits. Contractual labourers in the unorganised sector are eligible for benefits under the Unorganised Labourers' Social Security legislation of 2008, including the Janani Suraksha Yojana and the Indira Gandhi National Old Age Pension Scheme. the law hasn't been put into effect, nevertheless, because registration under the law is not necessary.
- Retirement Benefits: Contractual labourers are entitled to provident fund benefits after retirement under the Employees' Provident Funds and Miscellaneous Provisions

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legislation, 1952, and to gratuity under the Payment of Gratuity legislation, 1972, if they worked for a single company for five years.

- Other Benefits**:** If a person gets hurt on the work but isn't covered by the ESI plan, he or she might seek compensation under the Workmen's Compensation legislation of 1923. Similarly, if a female contractual worker is not covered by ESI, she may use the Maternity Benefit legislation of 1961 to claim maternity leave (up to 26 weeks for the birth of the first two children) and wages (provided she worked in an establishment for not less than 80 days in a year before the date of her expected delivery).

ABOLISHMENT OF CONTRACTUAL LABOUR

As persection 10[1] of the CLRA, government can abolish contractual labour. On the other hand, if contractual labour is abolished, the employer is not obligated to hire the worker as a permanent employee. The contractual labourers will not be absorbed as employees of the establishment or company if the employment contract is genuine; but, if the employment contract is a'sham,' the contractual labourers will be absorbed as permanent employees. In comparison to a direct employee, such a policy implies that without the service provider, there is no primary connection between the main employer and the worker.

The objective of the CLRA was largely enacted to govern the hiring of contract labourers and to protect them from exploitation.

If the 'primary employer' desires to employ contract labourers over the stipulated level (currently 20), it is obliged to obtain prior authorisation from the labour authorities (in the form of a registration certificate) (50 in certain Indian states). The service provider agency is required to obtain a licence based on the major employer's registration certificate. This permits labour authorities to keep an eye on the deployment and usage of contract labourers and ensure that the parties are adhering to the CLRA's standards.

The Supreme Court of India (SC) was asked to decide whether the work performed by temporary or outsourced workers was perennial in nature and if it could have been done by the employer's permanent employees in the case of The Standard-vacuum Refining Co. of India Ltd. v. Its employees and Ors. The activity of the contract worker was determined by the Supreme Court to be ancillary to the industrial process, necessary, perennial, and required to be performed on a daily basis. Finding regular labourers for such work shouldn't be difficult because such labour was normally performed by regular employees of the company. On the other hand, the Supreme Court determined that the contract in question was legitimate and did not order the firm to take on the contract labourers.

Another significant Supreme Court decision, Steel Authority of India Ltd. and Ors. v. National Union Water Front labourers and Ors., held that if temporary or outsourced workers is employed in an establishment and temporary or outsourced workers employment is outlawed either because the industrial adjudicator or court ordered abolition of temporary or outsourced workers or because the appropriate Government issued a notification under the CLRA, there would not be an automatic absorption of temporary or outsourced workers employed in that establishment.

[1]Section 10, The Contract Labour (Regulation And Abolition) Act, 1970 talk about, Prohibition of employment of contract labour.

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Recently, the issue of whether contract labourers count as direct employees came up.

A contract labourer is a person who is employed by the main employer via a service provider to assist with an establishment's work.A major employer is the person in control of the firm, while a service provider is the organisation's source of temporary or outsourced workers. In the case Bharat Heavy Electricals Limited vs. Mahendra Prasad Jakhmola & Ors, Bharat Heavy Electronics Limited ("BHEL") and a service provider had agreed that contract labourers would be employed in the company's manufacturing in Haridwar, India. Later, the service provider's work was terminated by BHEL.When the contractual employer sought his reinstatement for the position, the Haridwar Labour Court ruled in his favour, finding that BHEL had exerted administrative control, supervision, and oversight over them. The Labour Court ruling was maintained when BHEL filed an appeal with the Uttarakhand High Court, which stated that the contract with the service provider was merely pretence and that the contract labourers performed was equivalent to the tasks performed by BHEL's regular employees. The highest court then heard an appeal from BHEL.When deciding cases, the Supreme Court applied a standard that was established in General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Others. The court based its ruling on two established criteria for determining whether contract labourers are direct employees of the major employer:

(i) Whether the main employer pays the employee's salary rather than the service provider; and

(ii) Whether the main employer oversees and controls the employee's work.

It was determined that in the current situation, the service provider paid the contract labourers' salaries rather than BHEL. Due to BHEL's limited supervision over the contract labourers, the second criterion was likewise not met. The Uttarakhand High Court's judgment as well as the award from the Labour Court was overturned by the Supreme Court.

PROPOSED CHANGES IN CONTRACT LABOUR REGULATION

The CLRA has been absorbed into the Occupational Health, Safety, and Working Conditions Code 2020 (OSH Code)[2], which has been passed but not yet implemented. Certain new definitions and revisions to existing sections relating to temporary or outsourced workers have been added to the OSH Code.

1. The OSH Code's temporary or outsourced workers regulations kick in when at least 50 contract labourers are employed in a single establishment, as compared to the CLRA's 20 contract labourers (subject to state amendments). Unlike the CLRA, the OSH Code does not need a separate registration for a major employer's establishment that employs contract labourers once the applicability threshold is satisfied. Every establishment employing at least 10 people, regardless of temporary or outsourced workers arrangements, is required to register under the OSH Code. As a result, any facility to which the OSH Code is applicable that has a valid registration in place under any

[2]The occupational safety, health and working conditions code, 2020

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existing federal legislation at the time the OSH Code takes effect will be valid for the purposes of hiring contract labourers.

2. The OSH Code specifies 'temporary or outsourced workers,' which is a more thorough version of the CLRA's definition of 'workman.' A new exclusion from the definition has been added in relation to an employee who is regularly employed by a service provider for any activity of his establishment, where such employment is governed by mutually agreed-upon standards of employment conditions (including permanent engagement) and the employee receives periodic pay increases and social security coverage as required by applicable employment laws.

3. Temporary or outsourced workers are not permitted to be used in any establishment's core activity. The OSH Code, unlike the CLRA, specifies 'core activity.' 'Core activity' refers to any activity for which the establishment is set up, as well as any activity that is essential to such activity, excluding certain activities such as sanitation, watch and ward services, canteen and catering services, housekeeping and laundry services, and so on, provided that such activities "must not be considered as essential or necessary activity, if the establishment is not set up for such activity."

4. The OSH Code likewise allows the main employer to employ contract labor through a service provider for any core activity if "a) the normal functioning of the establishment is such that the activity is ordinarily done through service provider, or b) the activities are such that they do not require full time labourers for the major portion of the working hours in a day or for longer periods, as the case can be; c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time."

5. The OSH Code imposes a specific obligation on principal employers, namely, if a main employer of an establishment employs temporary or outsourced workers through a non-licensed service provider who is required to obtain a licence under the OSH Code, such employment of temporary or outsourced workers is deemed to violate the OSH Code, and can be subject to penalties under the OSH Code's provisions.

6. The OSH Code likewise imposes new responsibilities on contractors in the area of contract labour. For example, all work orders received from major employers are obliged to be reported to the labour authorities, and temporary or outsourced workers are obliged to be issued an experience certificate detailing the task they accomplished.

7. Under the OSH Code, certain compliances relating to temporary or outsourced workers can be made electronically, such as maintaining registers electronically in prescribed forms, filing returns to the Inspector-cum-Facilitator, and informing the main employer by service provider agency electronically the amount of wages paid to temporary or outsourced workers, as opposed to the main employer's obligation under the CLRA to nominate a representative to certify that the wages are paid by the contactor.

8. Penalties for non-compliance have been significantly increased under the OSH Code, extending up to INR 300,000 (approx. US$4000) as compared to the monetary penalty of

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up to INR 1,000 (approx. US$15) under the CLRA. Luckily, there is no imprisonment for first-time offenders for non-adherence to the provisions of the OSH Code.

The central government released a draft of proposed central rules named the Occupational Safety, Health, and Working Conditions (Central) Rules, 2020 (OSH Rules) under the OSH Code on November 19, 2020. The OSH Rules include a chapter on temporary or outsourced workers, which includes provisions on the service provider's qualifications/criteria, the conditions that are obliged to be met to acquire the licence, the service provider's obligations, and the method and statutory forms for acquiring and renewing the licence.

CONCLUSION

The new labour code includes a number of rules and special provisions aimed at providing better regulations for businesses and establishments, allowing for greater flexibility in the industry. Additionally, the codification and consolidation of such laws has resulted in an increase of the scope and applicability of the laws, as well as ease of adherence, the elimination of several definitions, and the overlapping of authorities. The new set of laws will strengthen the relationship between the employer, the employee, and the governments, has a long-term good influence on the industry, and contribute to the concept of ease of doing business.

We expect the government to continue to encourage this type of worker engagement in factories and commercial offices, given that manpower and staffing services corporations are some of the largest private sector employers and work creation remains a top priority for the government. However, once the OSH Code becomes effective, these existing temporary or outsourced workers agreements will need to be re-evaluated. With the new law's definition of 'core activity,' there should be less misunderstanding and, presumably, less discretion on the part of the labour authorities. Hopefully, India's new labour rules will assistance keep the trend going in terms of creating jobs and lowering unemployment rates.

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