Globalisation and Development: Special Reference with Contract Labour[1]

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I. Introduction

Since the invention fire and wheel, the whole world change in every sphere of life. Industrial revolution is also necessary and require of comfort of human being because business or commercial activities depend on 6-m (man, material, market, management, method and machine) where man is living being and more important in any organization. So, they required more attention from or side of all issues related to human nature. Here author try to focus light on some of the development took place in the relation of employer and employee and policy level change took place at the same time judiciary also actively engage in changing environment and precedent also. How various agencies change their ideology is discussed in this paper. Starting from imperial power to various phases of globalization and formation of ILO and British India and Independent India ply the role for providing Social Justice to the workers. Mainly paper discuss in relation with The Contract Labour (Regulation and Abolition) Act, 1970 and role of various authorities.

II. First Phase of Globalisation

After the Second WW, first phase of Globalization took place. The weakening of the Imperial power the *Bretten Wood* agreement led to the concept of "**Welfare State"** in the west. Health, Education, Pension, etc., become the state responsibilities and the judiciary was made sensitive to the rights of the working people.

III. Second Phase of Globalisation

The collapse of USSR around 1988 heralded the final end the dream of millions for an exploitations free world. The age of Global Capital of Free Market and rule of WTO had started. Removal of all type of tariff and free access to all markets were to be guaranteed. Thus the last phase of globalization started

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In this phase the globalization had to be accompanied by liberalisation and Privatisation since the second phase the "socialist distortions" had to be corrected. LPG was therefore the motto which leads the complete establishment of the capitalist system all across the globe, hopefully without any further resistance to the exploitation

IV. World Commission on Aspects of Development

Our primary concerns are that globalization should benefit all countries and should raise the welfare of all people throughout the world. This simple that it should raise the rate of economics growth in poor countries and reduce world poverty, and that it should not inequalities or undermine socio economic security within countries.[3]

V. History of SEZ

Meanwhile GOI came with scheme of special economic zone (SEZ) policy. Actually we have Export Promotion Zone (EPZ) at Kandla in Gujarat since 1965, but now we follow the Chinese pattern for developmental model and setup SEZ but unfortunately we fail to take cognitions of the problem faced by China due to SEZ.

- China permitted foreign investment by non resident of Chinese from Hong Kong, Japan, Taiwan, Singapore, North America & Europe.

We welcome Foreign Direct Investment, we allocated agricultural land, relaxation in taxes, and certain law amended in favour of industries which is not only economical losses to nation, but also ecological losses.

India has become Global hub for investors

Looking to the data published by Labour Bureau clearly exibites that declined of industrial disputes from 1,825 in 1990 to 421 in 2008 and India being the third most preferred global investment destinstion. Foreign direct investment inflow to India went up to 32 billion dollr in 2011 was a 33% increase over the previous year.[4]

VI. Historical Development of Labour Law

The origin of labour law can be traced back to the remote past and the most varied parts of the world. While European writers often attach importance to the *guilds and apprenticeship systems* of the medieval world,

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[3] World commission on the social dimension of globalization (2004)

[4] World Investment Report, 2012. United National Conference on Trade and Development (UNCTAD)

some Asian Scholars have identified labour standards as far back as the law of *Hammurabi* and rules for labour-management relations in the laws of *Manu*. None of these can be registered as more than anticipations with no influence of subsequent developments. Labour law, essentially was known as the child of successive industrial revolutions from the 18th century onward

VII. Codification of Labour Legislations in the World

The first landmark of modern labour Act is British Health and Morals of Apprentices Act, 1802 (Sir Robert peel). Similar legislation for the protection of the young was adopted in Zurich in 1815, and in France 1841. By 1848, the first legal limitation of the working hours of adults was adopted by the Landsgemeinde (Citizen's Assembly) of Swiss Canton of Glarus. Sickness insurance and workman compensation were pioneered by Germany in 1883 and 1884, and compulsory arbitration in industrial disputes was introduced in New Zealand in the 1890s. The progress of the labour legislation outside Western Europe, Australia, and New Zealand was slow until after First World War. The more industrialized States of the United States began to enact such legislation towards the end of the 19th century, but the bulk of the present labour legislation of the U.S. was not adopted until after the 1929 depression. There was virtually no labour legislation in Russia prior to the October Revolution of 1917. In Japan rudimentary regulations on work in mines were introduce in 1890, but proposed Factories Act was controversial for 30 years before it was adopted in 1911, and the decisive step was the revision of this Act in 1923 to give effect to the Washington Convention. Labour legislation in Latin America began in Argentina in the early years of century, and received a powerful impetus from the Mexican Revolution which ended in 1917; but, as in the North, the trend become general only with the impact of the world depression. In Africa the progress of labour legislation become significant only from the 1940s onwards.

VIII. First Development in Working Hours

In India (British India), the hours of work of children between 7-12 years were limited to nine per day in first Factories Act, 1881, and the hours of adult males in Textile Mills to 10 per day in 1911. But, the first major advance was the Amendment of Factories Act in 1922 to give effect to Conventions adopted at the First Session of the International Labour Conference at Washington in 1919.

The legal recognition of the right of association for trade union purpose has a distinctive history. The legal prohibition of such association was repealed in the UK in 1824 and in France in 1884; there have been many subsequent changes in the law and would be further, but these were related in matters of detail rather than to fundamental principles. In the U.S.,

freedom of association of trade proposes remained precarious and subject to the unpredictable scope of the labour injection, by means of which the courts helped restrain trade union activity until the 1930s. This has certainly been the case with Germany, Italy, Spain, Japan and much of the Eastern Europe; there have been many illustrations of it, and there may be more in the developing world.

Labour Codes and the Ministries of Labour were not introduced until the 20th century. The first labour code (which like many of its successors was a consolidation rather than a condition) was projected in France in 1901 and promulgated in stages from 1910 to 1927.

IX. Extension of Benefits to Many Areas

In the early phase of development, the scope of labour law was often limited to the most development and important industries, to undertakings above a certain size, and wage earners. As a general rule, these limitations are gradually eliminated and scope of law extended to include handicrafts, rural industries, factories, agriculture, small undertaking, the self employed, and employed in office. Thus a body of law originally intended for the protection of the working class is gradually transferred into boarder welfare legislation.

X. Journey from Laissez-faire to Rights

Doctrine of laissez faire was prevailing in the market. Meaning thereby according to bargaining capacity person can dictate terms and conditions of contract. Then mighty one can always remains in winning position. Because, the poor and helpless workers have no option except accept the same. At that time, conditions of working class people were highly exploitative and worker left to the mercy of the market forces.[5]

Such practice was prohibited by the Contract Act, 1872 provide that such agreement which is contrary to law and contracting out is void according to relevant legislation. Due to intervention of Government by appointing Royal commission and the commission suggested many recommendations for enactment of various legislations, and fortunately they enacted gradually.

The general tendency in the modern development of labour law has been the strengthening of statutory requirements and collective contractual relations at the expense of individual employment relationship. How important these, latter remain depends, of course, on the degree of personnel

[5] Jetly, N.K : India Economic Reforms and Labour Policy, New Century Publication, New Delhi, Ed. 2004

freedom in a given society as well as the autonomy of both, employer and worker allowed by the actual operation of the economy. In such matters as hours of work, health and safety conditions, or labour-management relations, the statutory or collective elements may define most of the substance of the rights and obligations of individual worker, while with respect to such things as the duration of his appointment, his level and extent of responsibility, or a framework for individual agreement.

XI. The Elements of Labour Laws

The basic subject matter of labour laws can be considered under the following broad heads- (a) contract of employment, (b) employer; (c) employee, (d) wages and remuneration; (e) condition of work; (f) health, safety and welfare, (g) social security, (h) trade unions and labour-management relations, (i) the administrations of labour laws, (j) special provision for particular occupational or other groups and (k) Collective Bargaining.

XII. Concept of Social Security

In the present stage of development of labour law, social security ranges from relatively straight forward employer's liability for occupational accidents to the most comprehensive schemes of payments, including income security in the form of sickness, unemployment, old age, employment injury, maternity, paternity, invalidity and survivors' benefits and medical care. As with other aspects of labour law, a progress from the particular to the general has been characteristic of the development of social security legislation. By the time of World War-I, workmen's compensation schemes were introduced by industrialized countries. The Great Britain had been the pioneer in health and unemployment insurance. But social insurance remained a pragmatic experiment limited to a few countries advanced in both economic development and social policies.

XIII. History of Social Security Legislations

XIII.I. International Level: The concept of social security, statutorily expressed first in the United States in 1935 and in New Zealand in 1938, superseded that the social insurance. The Beaveridge Report of 1943 developed it, in even further to provide a basic income for all in need of such protection, along with the comprehensive medical care. The idea of social security is that the State shall make itself responsible for ensuring the minimum standard for material welfare to all its citizens on the basis wide enough to cover all the main contingencies of life. The social security system aims to help individuals in such times of dependency. The main risk of

insecurity, to which human life is liable, and in relation to which organized society can afford relief to helpless individual, are incidents of life occurring rights from childhood and include mainly sickness, maternity, invalidity, accident and industrial decease, unemployment, old age, death of the bread-winner, and other such emergency.

XIII.II. Labour-Management Relations: Initially, individual employees were negotiating directly with a potential employer on the wages they would receive, for the service provided. With the growth of population, however, the pace of industrialization, large numbers of people entered the labour market. This brought about several changes. Individual employers and employees did not find it convenient any more to negotiate individually, owing to the pressure of time, variance in rewards for the services rendered and significantly the ability to push for more as a group on the employees' part. Employers also found it more convenient to deal with the group rather than individuals.

XIII.III. Collective Bargaining: ILO Workers Manual defines "collective bargaining" as "it is a negotiation about working conditions and terms of employment between an employer, a group of employers or one or more employers organizations, on one hand and one or more representatives of workers' organizations on the other with a view to reaching agreement".

XIV. Journey from Master-Servant to Employer-Employee

The growth of the collective bargaining was linked with growth of trade unions of employees at first and of the employers later. It changed master - servant relationship into Employer-Employee relation, because of the industrial revolution and the changed work place environment. In some countries, the pattern and growth of "collective bargaining" began from local bargaining at plant level bargaining to region-cum-industry level and finally to the national level bargaining. This pattern gave a systematic push to employers to organize themselves and has many instances led to collective bargaining between employers' organizations and employees' organisations (Trade Unions). So healthy environment remain in industry and whole society will be benefited.

XV. Administration of Labour Law

This is an area involving the organization and functioning of administrative authorities concerned with labour problems, including labour inspection services and other organs and enforcement. Administration of law also encompasses the organization, jurisdiction, composition, and procedure

of labour courts and other bodies for the settlement of grievances arising from existing contracts of collective agreement.

XVI. Contribution of International Institutions

XVI.I. International Labour Organisation (ILO)

The ILO was established on April 19, 1919 with the object of the improvement of the conditions of the labours. India is the founder member of ILO since 1919. The membership of the ILO ensures the growth of tripartite system in the member countries. Formation of UNO in 1945, ILO becomes the Specialist Agency of the Organization under the pertinent provisions of the *Treaty of Versailles* (Arts 392, 398 and 399)

XVI.II. Function of ILO

The ILO sets standards, which covers child labour, disabled workers, discrimination, equality of treatment, freedom of association, human rights, maternity protection, pensions, and the elimination of forced labour. The organisation supervises the application of ratified conventions in national law and practice. Employers and workers organisations and member nations' governments have the right to lodge formal complaints with the ILO.

Confident that the, utilization of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full cooperation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

The Conference affirms that the principles set forth in this Declaration are fully applicable to all people everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each member, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world.

XVI.III. Decent Work

The concept of Decent Work emphasises that the quantity of employment should not be divorced from quality of work and stresses that a social and economic system should be evolved to ensure basic security and employment without compromising workers' rights and social standards in a highly competitive world.

Although India agrees that the four strategic objectives are necessary for decent work, this has no meaning unless we can provide an opportunity to work. Therefore, employment generation should be the focus of the all ILO programmes and activities. The basic requirement of Decent Work should be to first ensure work to any potential worker and then all other elements of the decent work concept will automatically follow. This stand of India was appreciated by other nations as well. India also made it clear in the meetings of the ILO that the concept of decent work has to be fixed keeping in mind the conditions of work in the social, economic and cultural context of each country. It cannot be made applicable uniformly to every country.

XVI.IV. Human Resources Development Convention, 1975

In 16th Session on 4th June 1970 Governing Body of ILO decided upon the adoption of certain proposal with regard to Human Resources Development vocational guidance and vocation training. Finally, the Convention 142 was adopted on 23rd June of 1975, which deals with Human Resources Development.

XVI.V. The Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948 (UDHR), came into force w.e.f. 10th October, 1948, which protects life, liberty, equality and dignity of human in generals and labour particular under, Art.1, Art.2, Art.4, Art.20, Art.22, Art.23(1), Art.23(2), Art.23(3), Art.23(4), Art.24, Art.25 (1), Art.25 (2).

XVI.VI. The International Covenant on Civil and Political Rights (ICCPR), 1966

The ICCPR, 1966 was adopted by the General Assembly of United Nations on 16th December, 1966, but come into force w.e.f. 23rd March, 1976. India has ratified this Covenant. This Covenant provides two important Articles 8 and 22, relating to rights of labour as follows.

According to Art.8 of the Covenant, no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude. No one shall be required to perform forced or compulsory labour.

XVI.VII. The International Covenant of Economic, Social and Cultural Rights (ICESCR), 1966

The ICESCR, 1966, was adopted by the General Assembly of United Nations on 16th December, 1966, but, comes into force w.e.f. 23rd March, 1976. India also has ratified this Covenant. Part-III of Covenant (Articles 6-10), direct the State Parties to the Covenant to follow the following directions relating to labour laws.

(a) Right to work (Art.6) (b) Right to enjoyment of just and favourable conditions of work - (Art.7) (c) Right to form or join trade unions: (Art.8) (d) Right to social security: (Art.9) (e) Right to social protection and assistance: (Art.10)

XVI.VIII. Linkage between ILO and WTO

The issue of linkage between trade and labour standards was first raised at the conclusions of the Uruguay Round at Marrakech in 1994 by the USA. India and other developing countries had taken the position that labour standards at the international levels can be appropriately addressed only in the ILO, not in the WTO. The social clause is not within the mandate of the WTO. In response, India had countered that the relationship between trade and immigration policies may also be examined in the WTO. The issue was not pursued seriously by the US for sometime thereafter.

In the Third WTO Ministerial Conference held at Seattle in 1999, the US had proposed establishment of a Working Group on Trade and Labour, which would deal with issues such as trade and employment, trade and social protection, core labour standards, forced and child labour, etc. and submits a report for consideration at the Fourth Ministerial Conference. The European Union proposed the establishment of a joint ILO-WTO Working Forum on trade, globalisation and labour issues to promote better understanding of the issues involved through a substantial dialogue between all interested parties including governments, employers, trade unions and other international organizations. There was no conclusive outcome from this Conference, which attracted much criticism and demonstrations by NGOs and other activist groups.

The Fourth Ministerial Conference of the WTO, which was held in Doha from 9th to 14th November, 2001, reaffirmed the Declaration made at the Singapore Ministerial Conference of the WTO that, ILO is the appropriate forum to set and deal with the issues of core labour standards.

XVI.IX. Codification of Labour laws in India

The conditions of the labour was vary poor in India till beginning of 20th century, India was under the British rule and provisions relating to their

health, welfare, remuneration, etc., were favourable to employers. Especially labourer were bonded or contracted to rich persons (or whatever name they called). In 20th century, long list of legislations have been enacted for the welfare, heath, social security, wages, conditions of work, etc. Here a list of presently enforceable codified labour laws in India is given, but not claiming exclusive.

XVII. International Level Principles Reflected in Municipal Laws

In India, first legislation on social security was enacted in 1923 as of Workmen's Compensation Act, but before this, long back ago in 1855 "The Fatal Accidents Act", which was providing the compensation to the workmen if injury is caused **on the default of employer**. Thereafter Employees State Insurance Act, 1948 was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. After just independence, the Employees Provident Funds and Miscellaneous Provisions Act, 1952 was enacted to save the money for the future. Under this Act three schemes are enacted namely : (i) The Employees' Provident Fund Scheme, (ii) The Employees' Pensions Fund Scheme (old name is family Pension scheme), and (iii) The Employees' Deposit-linked-insurance Fund Scheme. In 1961 another enactment in the form of Maternity Benefit Act, 1961 was passed; it is providing the maternity leave and other maternity benefits. According to this Act the woman usually gets a paid maternity leave for 12 weeks, (six weeks before delivery and six weeks immediately after the child is born). The Contract Labour (Regulation and Abolition) Act, 1970 Last, but not the least, the Payment of Gratuity Act, 1972, which have objective to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contribution to prosperity of the employer.

XVIII. Constitutional Mandate

The Constitution of India is the law of land. In India, Parliament and State Legislatures are the Authorities to enact, amend, or remit the laws, according to their jurisdiction. As the constitution of India is the supreme law of the nation, so, all other laws have to be enacted within the parameters laid down by it. Any law made contrary to the constitution, including the constitutional amendment, the Supreme Court or as the case may be High Courts of the State are empowered to hold that statute or any part thereof, as void and unconstitutional. This power has been used at numerous times by the Indian judiciary.

The constitutional provisions relating to the working people are only discussed; namely : Preamble, Fundamental Rights (Articles 14, 15, 16, 19,

21, 21A, 23, 24, and 32), Directive Principles to State Policies (Articles 38, 39, 39A, 41, 42, 43, and 45), Fundamental Duties (Articles 51A clause (g) and (k), Art.245 (seventh Schedule – List-I, List-II, List-III), and Art.323-B (constitution of separate tribunal).

XVIII.I. Legislative Jurisprudent

After 26th January, 1950 we have to be busy with constructional philosophy of welfare State. Part IV of our constitution categorically deal with welfare measure and its left as guiding principal of governance and left to prerogative of the basic pillar of democratic body i.e. Legislatures and executives to come forward to provide these measures as and when required and resources permit. Policymakers have a primary concern for development of country at initial level was industrial development. Even though many legislation enacted for welfare measures. Not only this but our constitution was also amendment and Art.43A was inserted and provides that participation of workers in management of industries.[6] Meanwhile chapter VB inserted in ID Act relating to closures, which was struck down by Supreme Court on the ground of unreasonable[7]

XVIII.II. The Law Follows the Economy

After the break of USSR and integration of nation state into a single economic system, profit, market and competition become the buzz world. Social Welfare spending, subsidies even pensioners benefits have now become wasteful expenditures. Extraction of maximum surplus has become the key to success. The law had to follow the economic compulsion of the ruling class, and immediate effects on labour and labour law.

XVIII.III. Reversing Back (Farewell to Welfare Policy)

After 1990 India adopted new economic policies and judiciary also changed its roles as a protector of the working class by reverting back to positive ideology at many instances. The Supreme Court not interfering with policy decision making process, even it is detrimental to laborers.[8] Now government decided to give liberalization a chance and hoped the trickle down.

Effect of development will take care of the working class in the form of better wages and better living condition. The alacrity which the legislations were churned out for the welfare of the labourers has now dropped. The government is even considering to amend or repeal the various Acts. The government was under pressure from the industry for libralised

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6 42nd Amendment to the Constitution

7 Excel Wear v. Union of India, 1978 lab IC 1537

8 Balco Employee's Union v. Union of India, AIR 2002 SC 350

labour policies, which would allow for easier retrenchment, hire and fire and engaging of contract labour, closure of establishment etc.[9] The State played a proactive role in pursuing the disinvestment policy, which is opposed lock stock and barrel by the labour class. Therefore one have a valid reason to believe that doctrine of laissez faire of colonial era is coming back by our democratic system itself. There are still many welfare legislations are there and judiciary still implementing the law in its letter and sprit, the working class need not wore. It is difficult to forecast that how long government will not bend to market forces and what reform provide in pursuance of liberalisation[10]

XVIII.IV. Role of Judiciary (welfare of workers)

Post Second WW period, a tremendous rise in Judicial Activism in the Capitalist country and in India which were already under the influence of the **Nehruvian Socialism** heralded the glorious phase of judicial development. We are wedded with doctrine of separation of powers and also mentioned in constitution. But few judges like Justice Gajendregadkar to Justice Krishna Iyer, Justice Chinnappa Reddy and Justice D.A. Dasai, etc., began trespassing in the pastures reserved for legislation and re-wrote the Law. The aim was social justice and grant of rights to the poor and exploited people of India. They follow the spirit of a judgment of Lord Denning LJ in the matter of, Seaford Court Estates Ltd. V. Asher[11]…

> *"…When a defect appears, a judge cannot simply fold his hands, and blame the draftsman. He must set to word on the construction task of finding the intention of parliament the written word so as to give 'force and life' to the intention of the legislature …a judge should ask himself the question: if the makers of the Act had themselves come across this ruck in the texture of it, who would they have straitened it out? He must then do as they would have done. A judge must not alter the material of which it woven, but he can and should iron out the creases"*

We found many judgment of our judiciary who rescue the downtrodden and labour class and busy with discovering new principles

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[9] Kumar, H.L, Silent feature of Recommendation of Second Labour Commission. III, Labour Law Journal p.1 (2002)

[10] Kumar, H.L, Silent feature of Recommendation of Second Labour Commission. III, Labour Law Journal p.1 (2002)

[11] [1949] 1 KB 481

while giving judgment. In the case of *Karnataka State Road Transport Corporation v. S.K. Abdul Khader*[12]-

> *"…there is always a host of new ideas galloping around the outskirt of society's thought. All of them seek admission, but each must first win its spurs; the laws at first resist, but will submit to a conqueror and become his servant. In changing society the law acts as a valve. New policies must gather strength before they can force an entry, when they are admitted and absorbed into consensus, the legal should expand to hold them as also it should contract or squeeze out old policies which have lost the consensus they once obtained.*"

Supreme Court have arrived on conclusion that legislations were in place they were not having any impact on the improvement of the working class, because positive law not yielding results. In such scenario perhaps the court saw itself as the rescuer of the oppressed, fuelled by the inclusion of the term 'Socialism' in the Preamble of the Constitution.[13]

XVIII.V. Historical Background of Contract Labour System

Contract labour system deeply rooted since centuries but, size of such labour increase in India after independence and industrialization and general and construction industry particular. Earlier time we found that and history is witness that, low status of working class, less mobility of labour, caste, religion and languages etc were major hurdles.

During British period, middleman required due to above mentioned problems, and recruitment of contract labour become nacessory.

Commission[14] found that many disadvantages suffered by the system, so it should be abolished. Finnaly Workman's Breach of Contract Act.1859 fixed criminal responsibilities in case breach of service condition of labour.

The committee also found that the system is exploitative so workers for every department of mill should be recruited and paid directly by management.[15]

Then after another committee appointed and opined that "the contractors ordinarily lack of a sense of moral obligation towards labour

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[12] AIR 1984 SC 505. This passage taken from lecture delivered by Lord Delvin on 25th June, 1975

[13] 42nd Constitutional (Amendment) Act, 1972

[14] Whitely Commission,1860

[15] The Bombay Textile Labour Enquiry Committee,1938

which the employers or managers are expected to have and, therefore, do not hesitate to exploit the helpless position of labour in their charge[16]" after six year. The Rega Committee found that the system of contract labour are very much in vogue.[17]

XVIII.VI. Identification of Contract Labour

A workman deemed to be a contract labour when he/she is hired in connection with the work or "contract for service" of an establishment by or through a contractor. They are indirect employee; person who are hire, supervised and remunerated by a contractor who, in turn is compensated by the estbilshmnet. In either form, contractor labour neither boun on pay role or muster rollor wages paid directly to the labour.[18]

XVIII.VII. Recommendations Taken into Consideration

Second Five Year Plan also stressed the need of improvement in the working condition of contract labour, and also suggested that, if abolition of contract labour is not possible than ensure continues employment to them.

XVIII.VIII. Encounter to Contract Labour System

(A) Amendments in Existing Laws:

Referring to abovementioned recommendations many Act also included contract labour in the calculation of numbers of "workers", such as Factories Act, 1948, The Mines Act, 1952 etc.[19]

(B) Judicial Pronouncement: (In absence of The Act)

(1) Supreme Court treat equally: 1951

The Court held that contract labour are also treated as an employee as Section 2(13) of Bombay Industrial Relation Act, 1946 and judgment of High Court was set-aside and declared that contract labour are also entitled for six month bonus at par with seasonal workers and award of Industrial Tribunal was upheld, and appeal was dismissed with cost.[20]

(2) Second Judicial Pronouncement: 1960

Supreme Court of India also observed that,

1. The work is perennial and must go on from day to day
2. The work is incidental to and necessary for the work of the factory;

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16 The Bihar Labour Enquiry Committee, 1941
17 Report of the National Commission on Labour', 1969
18 Supra.
19 Amended on 26-10-1976 and 31-05-1984 respectively.
20 Maharashtra Sugar Mills Ltd. V. State of Bombay AIR 1951 SC 313

3. The work is sufficient to employ considerable number of whole time workmen; and
4. The works is being done is most concerns through regular workmen[21].

(C) Legislative Approach:

Looking to above all recommendations and suggestions and observation Parliament enacted **"The Contract Labour (Regulation and Abolition) Act, 1970"** which came into force since 19th February, 1971.

The title of the Act itself suggests that WE are not interested to abolish contract labour totally, but also allow with regulations.

(D) Judicial Pronouncement: (In reference with The Act)

Supreme Court in the case of Airport Authority[22] giving right to the contract worker to become a direct workman in the case of abolition of contract labour system and judges try to plug loopholes the Act but the judgment reversed in the case of SAIL[23] by another bench of five judges. Recently Apex Court held that, workmen employed through a contractor are the employees of principal Employer and added that the judgement of SAIL has no applicable in the present case.[24]

XVIII.IX. The Reality

i. World at Large

Due to competition at global leval, to meet market condition and customer demand, industries employees contract workers at global level and they are paying them at par with permanent workers with social securities. Such countries are, Canada, Russia, Swiss, Ghana, Shri Lanka

ii. In India

Powerful organization and big trading companies floats subsidiary companies to look after peripheral and non-core activities of the organization to achieve efficiency, cost effectiveness and optimization of profits and productivity to maintain a competitive edge in the global arena. Business Process Outsourcing (BPO), Knowledge Process Outsourcing (KPO) and Staffing industries have become a common way of outsourcing work to expert agencies at lesser cost and source of hiring efficient workforce. This human resource industry has grown at a compounded annual growth rate of

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21 Standard Vacuum Refinary Company V. Their Workman, AIR 1960 SC 948
22 Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645
23 SAIL v. National Union for Waterfront Workers, AIR 2001SC 3527
24 Bhilwara Dugdh Saharkariies Ltd. V. Vinod Kumar (Dead) by LRS & Ors, AIR 2011 SC 3546

21% over past four years and is pegged to be around Rs. 22,800 crore. Out of the total manpower supplied by HR industry, 73% comprises of temporary workforce and 13% permanent staff.[25]

iii. Public and Private Sector

Almost 32% of labour force in public sectors on contract, where as private sector, appointed 30% of work force.[26]

There is no any legislation exclusively for regulating casual workers, however central government has issued a guidelines in the matter of recruitment of casual workers.[27]

iv. Committee appointed-2000

The Group of Minister constituted a committee to suitably amend the provision of the law with a view to facilitating outsourcing of activities of activities to specialized firms having professional experience and expertise in the relevant area and at the same time to provide for safety net to contract labour in such outsourced activities. The committee concluded after three years that, "certain activities which from support service 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" But any how the same could not be finalized[28].

Sr. No.	Item	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
1	Certificates-Principal Employers	752	813	930	796	734	800
2	Licence to Contractors	9280	9587	10389	10962	11275	12996
3	Inspection conducted	5965	6843	6925	9428	7129	7832
4	Irregularities detected	77422	104401	94162	94832	92951	81475
5	Procecutions	2648	3675	3573	5181	4466	4321
6	Convictions	887	1228	733	2318	1528	3634
7	Contract Labourers	1001947	1313742	1377610	1373430	1489715	1844224
8	Licence cancelled	8186	5657	7419	6017	10970	10830
9	Registration revoked	51	14	35	23	27	287

[25] Report by Executive Recruiters Association and Ernest & Young, 2012
[26] 'Contract Labour: Govt. Gains More', The Economics Times March 10, 2011
[27] 'Casual workers', Press Information Bereau, January 09, 2012
[28] The Group of Minister (Gom's) March, 2000

Here we found that year by year more and more contract labourers are employed by employer. Where as one of the objective of the act was that to restrict employer who are engaging contract labourers.[29]

Above mentioned data exposed contract labour only covered by license. Unfortunately there is no precise estimate of contract labour employed in the country, because majority of them are in unorganized sectors, but they constitute a substantial segment of the workforce.

XIX. Suggestions

There should be a amendment that, provides entitlement to contract workers at the same rate of wages, holidays, hours of work and social security those who are doing similar jobs. There should be a difference of only in terms of tenure. Contribution towards social securities should be directly deposited by principal employer.

There should not be a casual or temporary or contract labour against a permanent job for more than 2 years.[30]

XX. Conclusion

Looking to the above mention circumstances, in relation with the changing of time the Government changed it policy and judiciary also supported the same. Now where the employee can go without any difference of organized or unorganized sector for redressal. It is true that nothing is permanent but something should be remain tangible.

No law or legislation or judiciary can connect the heart but only healing touch can provide relief. Otherwise unemployed people believed in "Bad job & bad wages are better than no jobs"

[29] Ministry of Labour & Employment, GoI, annual report, 2006-2012
[30] Base on recommendations of second National commission on labour, 2002