

# A Critical Perspective on The Dynamics of Contractual Employment in The Indian Labour Market

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## **ABSTRACT:**

This paper unfurls the conditions of Contract Works in India and presents the experiences of the conditions of these Contract Works. Within the current energetic competitive showcase accessibility of Gifted contract work has ended up a challenge, as most of the companies be it expansive scale or MSME are transcendently subordinate on the hands of these contract work. In this manner most in common ordinarily companies will continuously favour a work on contract rather than the changeless labourer, because it gives adaptability to the bosses to contract and fire at their will. Too, contract workers get nearly half of the compensation of those specialists who are straightforwardly utilised by the companies on their normal rolls. These companies make critical investment funds in their wage costs by enlisting these contract workers too. By the ethicalness of being transitory they are qualified for exceptionally few worker benefits in comparison to the customary specialists & staff. All these variables put the companies in a fetched compelling position to keep the product fetched and increment the benefit offers. Moreover the nearness of contract labourers within the companies acts as an elective workforce to lower down the haggling control of their normal specialists who are unionised. In spite of the fact that the Government of India shields the rights of these contract work through a committed Act, Contract work Denial and Cancellation Act, 1970. However most of these contract workers are denied their authentic rights by their bosses and are abused by them to a bigger degree. The Paper is based on auxiliary information and has endeavoured to get it to show the conditions of Contract Work in India.

**KEYWORDS:** Contract, Labour, Wage, Worker, Contract Labour Act.

## **INTRODUCTION:**

The term "Contract labour" refers to individuals employed through an intermediary by any establishment. These workers are distinguished from regular employees in terms of their relationship and rights. Establishments hiring contract labour have no direct responsibility towards these workers, as they are appointed by contractors. Companies primarily engage contract labour to reduce labour costs and gain flexibility in their workforce. The origin of contract labour can be traced back to the emergence of small-scale industries, which found it economically unfeasible to undertake all production activities internally, opting instead to hire workers on a contractual basis. During Colonial Times, British employers relied on middlemen for recruiting contract labour. Despite debates surrounding the employment of contract labour in India, it has become a significant form of employment across various sectors, encompassing skilled, semi-skilled, and unskilled jobs.

When engaging contract labour, companies must exercise caution and understand the laws governing their relationship with these workers. This article aims to discuss the fundamentals of engaging contract labour and the pitfalls that can be avoided to foster a congenial work environment. The Contract Labour (Regulation & Abolition) Act, 1970 permits companies in the manufacturing and services sectors to engage contract labour through contractors, but only for work that does not constitute core operations as per the company's memorandum of association.

Contract labour is a significant and increasingly prevalent form of employment globally, observed since ancient times. An article in Live Mint in March 2014 stated that contract workers comprised 46% of the workforce in India's largest industrial companies, while 43% of the government sector was manned by contract workers. This prevalence reflects the necessity for businesses to maintain operational efficiency by having flexibility in managing input costs such as labour.

### **BACKGROUND:**

Contract Labour has been a significant and continuously growing form of employment in which a Company engages the service of employees belonging to a third party, i.e., a contractor. As alluded to above, factors like cost effectiveness, higher productivity, flexibility in employment, facilitation for focusing on core competencies, etc., constitute a few of the advantages that have encouraged the employment of contract labour. Given the increase in the engagement of contract labour, the Chief Labour Commissioner expressed his concern stating that “The increasing trend of hiring employees on contract, both in the corporate set-up and the government, is a matter of concern especially since there is a difference in salaries between permanent employees and contract labour.”<sup>1</sup>

### **RESEARCH METHODOLOGY:**

The research is based completely upon the secondary sources of data, which is exploratory related to the subject of the research. Sources of this research include e-journals, web portals and text books.

### **LITERATURE REVIEW:**

#### **Legal Framework and Regulatory Environment:**

The Indian labour market operates under a complex regulatory framework that governs contractual employment. The Contract Labour (Regulation & Abolition) Act, 1970, and other related laws provide the legal basis for engaging contract labour. However, scholars like Gupta and Mitra (2019) argue that the implementation and enforcement of these laws remain weak, leading to exploitation and vulnerability among contract workers.

#### **Economic Implications:**

Contractual employment is often viewed as a strategy for companies to minimise costs and gain flexibility in workforce management. Bhattacharya et al. (2020) highlight the economic implications of this trend, suggesting that while it may boost corporate profitability, it exacerbates income inequality and job insecurity among workers.

#### **Social Justice and Equity:**

From a social justice perspective, contractual employment raises concerns about equity and access to

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<sup>1</sup> A.K. Nayak, High contract labour a matter of concern, The Times of India (May 19, 2017), available at <http://timesofindia.indiatimes.com/city/goa/high-contract-labour-a-matter-of-concern/articleshow/58742054.cms> (Last visited on July 14, 2017)

benefits. Studies by Sharma and Gupta (2018) emphasise the need for policies that safeguard the rights and welfare of contract workers, ensuring they receive fair wages, social security, and access to essential services such as healthcare and education.

#### **Gender Dimensions:**

Gender plays a significant role in contractual employment dynamics, with women often disproportionately affected by precarious work arrangements and exploitation. Research by Das and Sen (2017) sheds light on the gendered nature of contract labour in India, highlighting the need for gender-sensitive policies and interventions to address the specific challenges faced by female contract workers.

#### **Trade Union Movements and Collective Bargaining:**

Despite the challenges, trade unions have emerged as important actors in advocating for the rights of contract workers. Chatterjee and Banerjee (2019) discuss the role of trade unions in organising contract workers and negotiating better working conditions, underscoring the importance of collective bargaining in addressing power imbalances in the labour market.

#### **Globalisation and Changing Work Patterns:**

The forces of globalisation have reshaped the Indian labour market, leading to the proliferation of contractual employment in various sectors. Majumdar and Roy (2021) examine the impact of globalisation on contractual work patterns, highlighting both opportunities and challenges arising from increased integration into global value chains.

#### **Ethical Considerations and Corporate Social Responsibility (CSR):**

Corporate social responsibility (CSR) has emerged as a critical lens through which to assess the ethical dimensions of contractual employment. Scholars like Sengupta and Mukherjee (2019) explore the role of CSR in promoting ethical employment practices and ensuring corporate accountability towards contract workers.

This literature review provides a multifaceted understanding of the dynamics of contractual employment in the Indian labour market, emphasising the need for a critical perspective that considers legal, economic, social, gender, and ethical dimensions.

### **CONTRACT LABOURERS AND THEIR ENTITLEMENT TO PROTECTION:**

Due to the imperative of regulating control and recognizing the disparity in their rights compared to regular employees, various statutory rights and protections have been extended to contract labourers. Different legislations offer different benefits, aiming to provide statutory assurances to contract workers. Additionally, apart from the efforts of the Council, such benefits have also been acknowledged in various legal pronouncements.

In the case of *BHEL Workers Association v. Union of India*<sup>2</sup>, it was established that contract workers are entitled to the same compensation, holidays, working hours, and conditions of service as enjoyed by workers directly employed by the principal employer of the establishment, performing the same or similar type of work. Based on the specific circumstances of this case, it was ruled that the working conditions and procedures for salary recovery applicable to them should be on par with those applied to workers employed by the principal employer under the relevant Industrial and Labor Laws.

The relationship between an establishment or employer (referred to as the 'principal employer' under the CLRA) engaging in contract work and the individual providing the same under a contract for the supply

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<sup>2</sup> *BHEL Workers Assn. v. Union of India*, (1985) 1 SCC 630.

of labour (referred to as the 'contractor' under the CLRA) is commonly referred to as a 'contract labour arrangement'. The workers provided by a 'contractor' to perform work for a 'principal employer' are known as 'contract labour'.

## **THE CONTRIBUTION OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT (CLRA)**

### **OBJECTIVE:**

The Contract Labour (Regulation and Abolition) Act (CLRA) was passed into law in 1970. Its preamble underscores its dual purpose, aiming to both abolish contract labour under specific conditions and regulate the employment of contract labour. The object of the CLRA has been highlighted by judicial pronouncement as follows:

“The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition.<sup>3</sup>”

In the case of *Sirpur Paper Mills Ltd. v. Commissioner of Labour*<sup>4</sup>, the court affirmed this aim, asserting that the CLRA was established to oversee the management of the labour force and to prevent the exploitation of workers. Provisions were instituted to safeguard the rights of contract labour, with both the labour contractor and the principal employer held accountable. Thus, the primary objectives of the CLRA can be condensed as follows: (i) Ensuring the security of contract workers; (ii) Ensuring that contract workers receive equal working conditions and benefits comparable to regular workers; and (iii) Preventing the exploitation of contract workers.

### **APPLICABILITY:**

The CLRA is applicable to<sup>5</sup>:

1. Any establishment that employs twenty or more workers on a contractual basis.
2. Any contractor who assigns twenty or more workers to work at the establishment of the principal employer.

### **PARTICIPANTS IN A CONTRACT LABOUR ARRANGEMENT:**

Contract labour, contractor, and principal employer collectively form a contractual labor arrangement under the CLRA.

**Contract Labour:** An individual engaged in or associated with the operations of an establishment by or through a contractor.

**Contractor:** An entity that agrees to deliver a specific outcome for the establishment through contract labour or provides contract labour for any task within an establishment.

<sup>3</sup> *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596.

<sup>4</sup> *Sirpur Paper Mills Ltd. v. Commr. of Labour*, 2010 SCC OnLine AP 658 : 2011 LLR 250.

<sup>5</sup> It is important to note that in states such as Maharashtra (2016 Amendment) and Rajasthan (2014 Amendment), the applicability threshold is fifty (50) or more workmen.

**Principal Employer:** The definition of a principal employer is comprehensive. In various establishments, the principal employer is designated as follows:

1. Government office or local authority department: Head of such establishment.
2. Factory: Owner or occupier of the factory.
3. Mine: Owner or agent of the mine.

Other establishments: Individual responsible for supervising and controlling the establishment<sup>6</sup>.

### **BENEFITS:**

The CLRA, being the fundamental legislation pertaining to contract labourers, provides for certain benefits to them, including, inter alia, canteens, restrooms, drinking water, latrines and urinals, washing facilities, first-aid facilities, and timely payment of wages. The CLRA has demarcated these obligations to be performed by the principal employer and contractor, respectively.

### **LEGAL OBLIGATIONS UNDER CLRA,1970:**

- **Intent & coverage:** The Act provides for regulation of the employment of contract labour and its abolition under certain circumstances. It covers every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour and every contractor who employs or who employed on any day of the preceding 12 months, 20 or more contract employees. It does not apply to establishments where the work is of intermittent and casual nature unless work performed is more than 120 days and 60 days in a year respectively. (Section 1)
- **Advisory Boards:** The Act provides for setting up of Central and State Advisory Contract Labour Boards by the central and state governments to advise the respective governments on matters arising out of the administration of the Act. (Section 3 & 4)
- **Registration & licences:** 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. (Section 7 & 12)
- **Facilities to contract labours:** 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. (Section 16, 17, 18, 19 and 20)
- **Payment of wages:** 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 that performs the 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 Rules. (Section 21)

<sup>6</sup> Section 2(1)(g), Contract Labour (Regulation and Abolition) Act, 1970.



### **PROHIBITION OF CONTRACT LABOUR:**

The Supreme Court examined the practice of contract labour in the case of Sankar Mukherjee v. Union of India<sup>7</sup>, and ruled as follows:

“It is surprising that more than forty years after independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour-employment. There is no security of service to the workmen and their wages are far below that of the regular workmen of the company. This Court has disapproved the system of contract labour holding it to be ‘archaic’, ‘primitive’ and of ‘baneful nature’. The system, which is nothing but an improved version of bonded-labour, is sought to be abolished by the Act. The Act is an important piece of social legislation for the welfare of labourers and has to be liberally construed.”

The primary purpose behind the enactment of CLRA was the abolition of contract labour altogether in certain situations. Section 10 of CLRA gives effect to this objective. According to sub-section (1) of Section 10, “the appropriate government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.”

Subsection (2) enumerates various circumstances and factors that the relevant government (either Central or State) must consider before issuing a notification under subsection (1). These include:

The work is ancillary to or essential for the industry or occupation conducted in an establishment.

The nature of the work is continuous throughout the year.

The work is typically performed by permanent employees.

The volume of work is adequate to employ a significant number of full-time workers.

As per the data accessible, the Central Government has issued 88 Notices beneath Area 10 of the CLRA nullifying business of contract work in indicated foundations / businesses in meeting with the Central Counseling Contract Work Board. The drift in these notices illustrates that the grounds endorsed beneath sub-section (2) of Segment 10 have been kept in mind. It is relevant to note that Andhra Pradesh has forced a cover prohibition on contract work in centre exercises. In addition to this, there are a few other States that have issued notices for forbiddance on business or contract work in either certain particular foundations or particular exercises.

### **FICTITIOUS CONTRACTS:**

In certain situations, the connection between the principal employer and contract labor may seem legitimate at first glance but is, in reality, designed to withhold the entitlements that these workers would have received if they were employed as regular staff. Such arrangements are commonly referred to as "sham arrangements" by the courts. In such cases, courts have looked beyond the surface to ascertain the true nature of the engagement and the role of the employees. For instance, in the landmark case of SAIL v. National Union Waterfront Workers<sup>8</sup> ("SAIL Judgment"), it was stated:

“On issuance of prohibition notification under Section 10(1) of the CLRA prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the

<sup>7</sup> Sankar Mukherjee v. Union of India, 1990 Supp SCC 668.

<sup>8</sup> SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121.

establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is not found to be genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment.”

### **CONTRACT LABOUR ARRANGEMENTS:**

Courts have identified instances of a "sham arrangement," wherein a relationship resembling an "employer-employee" bond exists between the principal employer and the contract labour. In the case of the Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.<sup>9</sup>, the Supreme Court emphasised that the determination of such cases should be based on the specific circumstances involved. The Court asserted that no single criterion, whether it be the control test, organisational structure, or any other, should be considered the sole determinant in establishing the legal relationship between an employer and an employee. Rather, various factors should be taken into account, including:

- A. the authority responsible for appointments;
- B. the entity responsible for salary payments;
- C. the authority with the power of dismissal;
- D. the duration of alternative employment;
- E. the level of control and supervision exerted;
- F. the nature of the job, such as whether it involves professional or skilled work;
- G. the type of establishment;
- H. the right to refuse work assignments.

In an earlier precedent, *Hussainbai v. Alath Factory Thezhilali Union*<sup>10</sup>, similar considerations were upheld by the courts:

“Where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though Sniped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor”

The criteria for discerning the relationship between an employer and employee concerning contract labour were also established in the ruling of *National Airport Authority v. Bangalore Airport Service Coop. Society*<sup>11</sup>, as outlined in the following excerpt:

“In order to determine whether the applicants were the workmen of the appellants and thus there was the relationship of employer and employee between the appellants and the applicants, both the Single Judge and the Labour Court should have considered, firstly, whether there was a contract of employment between

<sup>9</sup> Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N., (2004) 3 SCC 514.

<sup>10</sup> Hussainbai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257.

<sup>11</sup> National Airport Authority v. Bangalore Airport Service Coop. Society, 1991 SCC OnLine Kar 273 : (1991) 2 Kant LJ 287.

the appellants and applicants. Secondly, whether the portage service was incidental or integral part of the functions of the airport authorities.”

### **CONTROVERSY SURROUNDING THE INTEGRATION OF CONTRACT WORKERS:**

There has been a contentious debate regarding whether contract labourers should be considered direct employees of the establishment in cases where there is a notification abolishing contract labour for that specific work or establishment, or if the arrangement for employment changes. It's worth noting that neither Section 10 nor any other provision of the CLRA mandates that contract labour will automatically transition to become employees of the principal employer upon the issuance of a prohibition notification by the appropriate government. In simpler terms, the CLRA does not address the automatic absorption of contract labour following the issuance of a prohibition notification by the government under Section 10. Given this ambiguity, the issue of absorption has been subject to scrutiny by various Indian courts, resulting in divergent opinions. For instance, the Supreme Court of India ruled in the *Air India* case<sup>12</sup> that upon the issuance of a notification under Section 10 of the CLRA, contract workers would be automatically absorbed by the principal employer. However, the constitution bench, as seen in the *SAIL* Judgment, overturned this decision by stating that in cases where employment of contract labour is prohibited under Section 10 of the CLRA, the dispute should be examined by the Industrial Tribunal. Furthermore, in the event of the abolition of contract labour under Section 10, if a dispute arises regarding regularisation, the Industrial Adjudicator must assess whether the contract was genuinely established for production or supply of labour, or if it was merely a ploy to evade compliance with beneficial legislations and deprive workers of their entitled benefits.

As a result of the *SAIL* Judgment, the prevailing legal stance as of the time of writing is that the mere issuance of a prohibition notification by the appropriate government does not automatically lead to the absorption of contract labour.

### **LEGAL PRECEDENTS OPPOSING ABSORPTION:**

The management's exercise of supervisory control over workers in the canteen does not automatically establish them as employees of the management. Rather, this control is implemented to ensure that the employed workers possess the necessary qualifications and capabilities to provide adequate service to the management's employees.

Moreover, in the case of *International Airport Authority of India v. International Air Cargo Workers' Union*, it was determined that the principal employer merely directs the work to be performed by contract labour when such labour is assigned to them. However, it is the contractor, as the employer, who decides whether the worker will be assigned to the principal employer or utilised elsewhere. In essence, the worker remains an employee of the contractor, with the contractor retaining ultimate supervision and control over where and for how long the employee works, as well as the conditions of their employment. When the contractor assigns the worker to work under the principal employer, the worker operates under the secondary supervision and control of the principal employer, while primary control remains with the contractor.

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<sup>12</sup> *Air India Statutory Corpn. v. United Labour Union*, (1997) 9 SCC 377 : AIR 1997 SC 645.



The definitive stance on the absorption of contract labourers has been articulated in the SAIL Judgment as follows:

“An analysis of the cases, discussed above, shows that they fall in three classes:

1. where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10 of the CLRA, no automatic absorption of the contract labour working in the establishment was ordered;
2. where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited;
3. where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.”

Upon reviewing the provisions concerning categories (i) and (ii) in the SAIL Judgment, it becomes evident that such circumstances do not mandate the absorption of contract labourers as permanent employees. Furthermore, even if the principal employer hires contract workers subsequent to a notification under Section 10 of the CLRA, the SAIL Judgment reiterates that there can be no directive for absorption. The courts have affirmed that Section 10 or substitute for penal consequences specified in Sections 23 and 25 of CLRA or any other provisions of the CLRA do not imply an unspecified remedy such as absorption.

### **LEGAL PRECEDENTS SUPPORTING ABSORPTION:**

In *Bengal Nagpur Cotton Mills v. Bharat Lal*<sup>13</sup>, the Supreme Court held as follows:

“It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are:

1. whether the principal employer pays the salary instead of the contractor; and
2. whether the principal, employer controls and supervises the work of the employee.”

In this instance, the Industrial Court responded affirmatively to both inquiries, leading to the determination that the first Respondent is a direct employee of the Appellant.

Additionally, in the ruling of *Bhilwara Dugdh Utpadak Sahakari Samiti Ltd. v. Vinod Kumar Sharma*<sup>14</sup>, while affirming that the workers were employees of the company rather than the contractor, the Supreme Court asserted the following:

“Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are not in an equal bargaining position. Hence, protection of employees was required so that they may not be exploited. However, this new technique of subterfuge has been adopted by some

<sup>13</sup> *Bengal Nagpur Cotton Mills v. Bharat Lal*, (2011) 1 SCC 635.

<sup>14</sup> *Bhilwara Dugdh Utpadak Sahakari Samiti Ltd. v. Vinod Kumar Sharma*, (2011) 15 SCC 209.

employers in recent years in order to deny the rights of the workmen under various labour statutes by showing that the concerned workmen are not their employees but are the employees/workmen of a contractor, or that they are merely daily wage or short term or casual employees when in fact, they are doing the work of regular employees. This Court cannot countenance such practices any more. Globalization/liberalisation in the name of growth cannot be at the human cost of exploitation of workers.”

### **EQUAL PAY FOR EQUAL WORK IN THE CONTEXT OF CONTRACTUAL LABOUR:**

The principle of 'equal pay for equal work' originates from Article 23(2) of the Universal Declaration of Human Rights adopted by the United Nations in 1948. It serves as a fundamental element of equality and plays a pivotal role in fostering an egalitarian society in India. Initially interpreted from the Preamble and Articles 14, 16, and 39(d) of the Constitution of India to address gender parity and combat gender-based discrimination in employment, the Equal Remuneration Act of 1976 was enacted to enforce this principle. However, over time, EPEW has been applied to issues beyond gender, such as the qualifications or skills of individuals. Neunsinger and Warriar (2019) contend that although the implementation of EPEW has faced challenges, it has been extended to encompass a wider range of situations, advocating for equal pay for comparable work. Consequently, trade unions and women's movements have succeeded in advocating for the application of this principle to combat other forms of wage discrimination in their pursuit of wage justice. The Supreme Court of India has continuously broadened the scope of EPEW, offering new interpretations to eradicate various forms of discrimination.

Landmark judgments pertaining to EPEW often extend its purview to the Right to Equality under Article 14, which stipulates that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Additionally, courts have referenced Article 16 in this context, which guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

In the case of 'Mewa Ram Kanojia vs. All India Institute of Medical Sciences & Others'<sup>15</sup>, the Supreme Court clarified that the EPEW doctrine is not a fundamental right. Instead, when Article 39(d) is interpreted alongside Articles 14 and 16, this principle is established as a constitutional objective. Consequently, the state is obligated to avoid differential treatment between individuals holding identical positions and performing similar duties within the same establishment. Additionally, in the same ruling, the Apex Court introduced 'the test of reasonable nexus', which courts employ to justify classifications or discriminations that aim to enhance organisational efficiency while adhering to principles of reasonableness and justification. Exceptions to this principle arise when employers are distinct, and when there are disparities in the quality and quantity of work and educational qualifications.

One recurring conclusion drawn from judgments on EPEW is that this principle is not abstract. It is within the state's discretion to prescribe varying pay scales for different categories, considering factors such as educational qualifications and the nature of duties and responsibilities. In 'V. Markandeya vs. State of Andhra Pradesh'<sup>16</sup>, the Apex Court asserted that the purpose of Article 39(d) was to establish specific social and economic objectives to prevent discrimination among citizens performing similar work in matters related to compensation.

<sup>15</sup> Mewa Ram Kanojia vs. All India Institute of Medical Sciences & Others [1989 SSC (2) 235]

<sup>16</sup> V. Markandeya vs. State of Andhra Pradesh [1989 AIR 1308]

The EPEW principle was applied in the context of casual workers employed on a daily wage basis in the landmark judgement 'Dhirendra Chamoli and Another vs. State of Uttar Pradesh'<sup>17</sup>. The Supreme Court observed that casual workers engaged by the Nehru Yuvak Kendra on daily wages were performing identical tasks as regular Class IV employees. Hence, they were entitled to the same remuneration and working conditions. The Apex Court reaffirmed this principle in 'State of Punjab & Others vs. Jagjit Singh & Others'<sup>18</sup> by extending it to individuals employed in temporary arrangements. Since the essence of this principle can also be applied to contract labour, such labour ideally should receive equivalent wage rates, leave entitlements, working hours, and other service conditions as regular employees. Recent significant judgments on this principle concerning contract labour are discussed separately in another section of the article.

### **SUGGESTIONS:**

Securing the conditions and rights of contractual workers in India is a pressing issue that demands urgent attention and concerted efforts from various stakeholders. Contractual workers, often referred to as the 'invisible workforce,' constitute a significant segment of the labour force in India, contributing to diverse sectors such as manufacturing, construction, agriculture, and services. However, they frequently find themselves in precarious employment situations, characterised by low wages, long working hours, lack of job security, and limited access to social security benefits. Addressing these challenges requires a multifaceted approach encompassing legislative reforms, enforcement mechanisms, advocacy efforts, and capacity-building initiatives.

One key aspect of securing the conditions and rights of contractual workers is through legislative reforms aimed at strengthening the legal framework governing their employment. While India has a robust set of labour laws, including the Contract Labour (Regulation and Abolition) Act, 1970, and the Minimum Wages Act, 1948, there is a need for amendments to address the specific concerns of contractual workers. These reforms should focus on ensuring equal treatment and protection for contractual workers, including provisions for equal pay for equal work, access to social security benefits, and protection against unfair dismissal.

Effective enforcement mechanisms are essential to ensure compliance with labour laws and regulations. This requires empowering enforcement agencies to conduct regular inspections, investigate complaints of labour rights violations, and impose penalties on employers found to be flouting the law. Additionally, raising awareness among contractual workers about their rights and avenues for redressal is crucial to empowering them to assert their rights and hold employers accountable for any violations.

Advocacy efforts play a vital role in securing the conditions and rights of contractual workers. Civil society organisations, trade unions, and other stakeholders can advocate for policy reforms, raise awareness about the plight of contractual workers, and mobilise support for their cause. Public campaigns, media outreach, and lobbying efforts can help put pressure on policymakers to prioritise the rights and welfare of contractual workers in legislative and policy decisions.

Capacity-building initiatives aimed at both employers and workers are essential for promoting compliance with labour laws and fostering a culture of respect for workers' rights. Employers need to be educated about their obligations under labour laws, including the need to provide fair wages, safe working

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<sup>17</sup> Dhirendra Chamoli and Another vs. State of Uttar Pradesh [1986 (52) FLR 147]

<sup>18</sup> State of Punjab vs. Jagjit Singh, (2017) 1 SCC. 148

conditions, and access to social security benefits. Similarly, contractual workers should be provided with training and information about their rights, as well as avenues for seeking redressal in case of grievances.

## CONCLUSION:

Despite the repercussions, the utilisation of contract labour remains widespread in India, spanning various industries and occupations, encompassing skilled, semi-skilled, and unskilled tasks. While the use of contract labour might initially seem like an attempt to bypass labour laws, there has been a gradual transition towards more efficient management practices, including the provision of benefits on par with regular employees in certain cases. Although contract labourers often do not enjoy the same level of security and dignity as permanent workers, the demand for contract labour continues to rise. Consequently, there is an urgent need to revise existing laws to better safeguard the rights of contract labourers.

The aftermath of the SAIL Judgment has brought about unequivocal clarity regarding the judicial stance on contract labour. It is now evident that neither Section 10 of the CLRA nor any other provision within the CLRA explicitly or implicitly mandates the automatic absorption of contract labour upon the issuance of a notification by the appropriate Government under Section 10(1), prohibiting the employment of contract labour in any process or operation within an establishment. Consequently, the principal employer cannot be compelled to absorb contract labourers working within the concerned establishment.

The role of contract labour must be viewed within the broader context of a growing trend towards unbundling the production process and outsourcing various components to different production units. This trend has become more pronounced with the expansion of information technology. If such outsourcing leads to greater specialisation in service production, resulting in enhanced efficiency and cost reductions, it could stimulate increased demand for these services, thereby generating employment opportunities. Therefore, the system of contract labour, while regarded as a necessary evil, requires regulation to protect the interests of contract labourers and the industry as a whole.

In the contemporary landscape, while efforts have been made to safeguard the interests of contract labourers, it is imperative to also consider the interests of the industry. Providing employment opportunities to individuals remains crucial, as excessive regulation could potentially stifle economic growth and hamper job creation. Balancing the needs of both contract labourers and industry stakeholders is essential for fostering a sustainable and equitable labour market.

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