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An Overview of Contract Labour Related Laws in India

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The principal legislation governing the employment and regulation of contract labour in establishments is The Contract Labour (Regulation and Abolition) Act, 1970 (**"CLRA"**). Given the growing market practice of employing contract labour, especially with the advent of the information technology industry, involvement of contract labour has been a controversial subject in India. Despite the complexity revolving around the employment of contract labour in India, the arrangement has become significant and a growing form of employment across sectors / industries. This has been due to the various associated advantages, ranging from comparatively lower wages to flexibility in terminating the relationship, etc.

The present article provides an overview of the various aspects pertaining to engagement of contract labour in India. This article aims to provide

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a limited insight into the relevant laws, obligations of a contractor and/or employer, and various prominent issues that have taken the centre stage from time to time. The purpose of this article is to provide an overview regarding the contract labour regime existing in India as per the Central (Federal) laws and does not cover any State specific requirements, except as already discussed herein.

I. 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.

There has been a gradual increase in the employment of contract labourers in India, which is reflected in the following data:[1]

Year	No. of Contract Labourers
2013-14	1967747
2014-15	1903170
2015-16	2092673

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.*"[2]

II. CONTRACT LABOURERS AND PROTECTION ACCORDED TO THEM

Owing to the lack of bargaining power and the fact that their rights are not at par with regular employees, various statutory rights/comforts have

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[1] Ministry of Labour and Employment, *Press Information Bureau – Violation of Contract Labour* (April 10th, 2017, 5:43 PM), *available at* http://pib.nic.in/newsite/pmreleases.aspx?mincode=21 (Last visited on July 1, 2017).

[2] 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)

been extended to contract labourers. Different legislations accord different benefits, which aim at providing certain statutory guarantees to a contract labourer. In addition to the efforts of the Legislature, such benefits have also been recognized in various judicial pronouncements.

In *BHEL Workers Assn.* v. *Union of India*[3], it was held that contract labourers are entitled to the same wages, holidays, hours of work and conditions of service as enjoyed by workmen directly employed by the principal employer of the establishment, in the same or similar kind of work. On the particular facts of this case, it was held that the working conditions and procedure for recovery of wages applicable to them was to be at par with what applied to workers employed by the principal employer under the appropriate Industrial and Labour Laws.

The relationship between an establishment/employer (referred to as the 'principal employer' under the CLRA) who engages contract labour and the person who provides the same, under a contract for supply of manpower, (referred to as the 'contractor' under the CLRA) is generally referred to as a 'contract labour arrangement'. The workers provided by a 'contractor' to perform work of a 'principal employer' are referred to as 'contract labour'.

III. CLRA AND ITS ROLE

A. Objective

The CLRA was enacted in 1970. Its preamble highlights its twofold objective, i.e., abolition of contract labour under certain circumstances, and regulation of 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."[4]

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[3] BHEL Workers Assn. v. Union of India, (1985) 1 SCC 630.
[4] Gammon India Ltd. v. Union of India, (1974) 1 SCC 596.

In *Sirpur Paper Mills Ltd.* v. *Commr. of Labour*,[5] the court confirmed this objective, and held that the CLRA was brought into existence to regulate the supply of the labour force and to prevent the exploitation of labourers. Provisions were made for the protection of rights of contract labour and both the labour contractor and the principal employer were made responsible.

Therefore, the key purposes behind the CLRA can be summed up as:

(i) Affording security to contract workers;

(ii) Affording equal working conditions and benefits to contract workers at par with regular workers; and

(iii) Preventing the exploitation of contract workers.

B. Applicability

CLRA applies[6] to

(i) Every establishment engaging twenty or more workers on contract basis;

(ii) Every contractor deploying twenty or more workers at the principal employer's establishment.

C. Participants in a Contract Labour Arrangement

Contract labour, contractor and principal employer together constitute a contract labour arrangement under the CLRA.

- Contract Labour: A workman employed in or in connection with the work of an establishment by or through a contractor.[7]
- Contractor: A person who undertakes to produce a given result for the establishment through contract labour or who supplies contract labour for any work of an establishment.[8]
- Principal Employer: The definition of principal employer is an inclusive one. The principal employer in the following establishments is as follows:

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5 Sirpur Paper Mills Ltd. v. Commr. of Labour, 2010 SCC OnLine AP 658 : 2011 LLR 250.

6 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.

7 Section 2(1)(b), Contract Labour (Regulation and Abolition) Act, 1970.

8 Section 2(1)(c) , Contract Labour (Regulation and Abolition) Act, 1970.

(i) Office / department of the government or a local authority: Head of such establishment.

(ii) Factory: Owner or Occupier of the factory.

(iii) Mine: Owner or Agent of the mine.

Other establishment: Person responsible for the supervision and control of the establishment.[9]

D. 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.[10]

E. Illustration - Key Compliances[11]

Principal Employer	**Contractor**
Licensing	
1. Registration of establishment. 2. Issue Form V with the objective of ensuring that a contractor obtains a valid license.	1. Obtaining licence.
Payment of Wages	
1. Primary responsibility of ensuring presence of a representative while the contractor is disbursing wages to contract labour. 2. Ultimate responsibility for payment of wages to contract labour in the event of default on part of the contractor. However, the amounts can be recovered from the contractor.	1. Primary responsibility for payment of wages to contract labour employed.
Provision of Facilities	

[9] Section 2(1)(g), Contract Labour (Regulation and Abolition) Act, 1970.

[10] Chapter V (Section 16 – Section 21), Contract Labour (Regulation and Abolition) Act, 1970.

[11] *Ibid*.

1. Ultimate responsibility for provision of certain facilities (canteen, rest-rooms, first aid facilities, etc.) to contract labour, in the event of failure on part of the contractor. However, the cost towards such facilities may be recovered from the contractor.	1. Primary responsibility for provision of certain facilities (canteen, rest-rooms, first aid facilities, etc.) to contract labour.

Therefore, the CLRA puts the primary onus on the contractor for undertaking certain statutory compliances / obligations concerning the contract labour, with the rider that in case the contractor fails to do so, the obligation would fall on the principal employer.[12] This position was further confirmed by the Supreme Court in *People's Union for Democratic Rights* v. *Union of India*,[13] wherein it was held that if a contractor fails to fulfil its duties under the Act, then the principal employer shall be under an obligation to provide all amenities and benefits prescribed under the law to contract labour deployed at its establishment.

In addition to the protection extended by CLRA, benefits also accrue to contract labour from other statutes as discussed herein.

IV. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 ("EPF ACT")

Applicability: The EPF Act applies to every scheduled establishment, which is a factory, employing twenty or more workers, and such other establishments, employing twenty or more workers, which the appropriate government may, by notification, specify.[14] Further, Section 2(f)(i) of the EPF Act recognises contract workers as employees since the definition of 'employee' includes any person employed by or through a contractor in or in connection with the work of the establishment.[15]

Benefits: The EPF Act provides for certain provident fund benefits to the employees and in accordance with the EPF Scheme, the EPF Act makes it the responsibility of the principal employer to pay contributions for the contract

[12] Section 20, Contract Labour (Regulation and Abolition) Act, 1970.
[13] People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235.
[14] Section 1(3), Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
[15] Section 2(f)(i), Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

labour employed through the contractor[16] which he can subsequently recover from the contractor.[17]

V. Employees' State Insurance Act, 1948 ("ESI Act")

Applicability: The ESI Act is applicable to all factories (including factories belonging to the Government) and any other establishment to which the appropriate government may, by giving one month's notice by notification, extend the provisions of the Act.[18] Since State governments are also the appropriate governments with regard to extension of the ESI Act to establishments in their jurisdiction, notifications have been issued by almost each State government (exceptions being Manipur, Sikkim, Arunachal Pradesh and Mizoram) extending the provisions of ESI Act to other establishments in their respective States. The general trend in these notifications has been to extend the ESI Act to other establishments employing 20 or more persons. However, in states such as Delhi, Karnataka, etc., the ESI Act has been extended to notified establishments employing 10 or more persons.

Section 2(9)(iii) of the ESI Act recognises contract workers as employees as the definition of 'employee' includes a person whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.[19]

Benefits: The ESI Act makes the principal employer liable to pay contributions in respect of contract labour in the first instance,[20] which can subsequently be recovered from the immediate employer, i.e., the contractor.[21]

VI. Employees' Compensation Act, 1923 ("EC Act")

Applicability: The EC Act applies to railway servants; master, seaman or other members of the crew of a ship; a captain or other member of the crew of an aircraft; person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle; person recruited for work

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16 Section 6, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 r/w para 30 of Employees' Provident Fund Scheme.
17 Section 8A, Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
18 Sections 1(4) and 1(5), Employees' State Insurance Act, 1948.
19 Section 2(9)(iii), Employees' State Insurance Act, 1948.
20 Section 40, Employees' State Insurance Act, 1948.
21 Section 41, Employees' State Insurance Act, 1948.

abroad by a company and such persons employed in the capacity specified under Schedule II of the EC Act.[22]

Benefits: Subject to applicability of the EC Act, the liability of principal employer and the contractor for paying compensation has been fixed in the execution of the work by a contract labour.[23] The principal employer is responsible for payment of compensation, and for personal injury caused by an accident arising out of and in course of employment, to contract labour.[24] However, the principal employer is entitled to be indemnified by the contractor for such amount.[25] The above position has been upheld by various Courts in India.[26]

It is important to note that the ESI Act provides that an employee covered thereunder will not be entitled to claim benefits (compensation or damages) under the EC Act.[27]

VII. FACTORIES ACT, 1948

Applicability: The Factories Act is applicable to every factory where 10 or more workers are working with the aid of power, or 20 or more workers are working without the aid of power. Section 2(l) of the Factories Act, 1948 defines a 'worker' to include persons employed, directly or by or through any agency (including a contractor). In other words, the definition does not discriminate between person employed directly by the principal employer and a person employed by or through a contractor, provided all the conditions provided in the definition are fulfilled.

Benefits: There are several health, safety and welfare measures prescribed under the Factories Act, 1948, which must be provided by the 'occupier' (as defined under the Factories Act) to each worker employed at a factory. Also, the workers shall also be entitled to benefits relating to overtime, compensatory leave, leave with wages, etc.

Despite the benefits conferred upon the contract labour under various legislations, there are certain legislations which do not confer any obligation on the principal employer, concerning contract labour, such as Payment of Gratuity Act, 1972 and Payment of Bonus Act, 1965. Additionally, since

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[22] Section 2(dd), Employees' Compensation Act, 1923.
[23] Section 12, Employees' Compensation Act, 1923.
[24] *Ibid*.
[25] *Supra* note 23.
[26] Sarjerao Unkar Jadhav v. Gurinder Singh, 1990 SCC OnLine Bom 36 : (1991) 62 FLR 315.
[27] Section 53, Employees' State Insurance Act, 1948.

contract labour is engaged for specific period and for a particular job, the provisions of the Industrial Disputes Act (Section 25F in this case) are not attracted and do not lay any obligation on principal employer concerning contract labour.[28] However, since the contractor is the immediate employer of the contract labour, payment of retrenchment compensation to such contract labour is the responsibility of the contractor (when the contractor terminates such a person). It has been held that the contractor shall make provisions for retrenchment compensation and such other requirements that he is statutorily required to observe as applicable to workmen in the canteen/ catering establishment.[29]

The claim for regularization, in case of a sham arrangement, can also be filed against the principal employer, under the Industrial Disputes Act, 1947 by a worker who has completed 240 days of service and completes all necessary aspects relating to such a claim. This aspect has been discussed at length under the head of Chapter E.1. below and particularly in of *International Airport Authority of India* v. *International Air Cargo Workers' Union*.[30]

A. Prohibition of Contract Labour

The system of contract labour has been discussed by the Supreme Court in the decision of *Sankar Mukherjee* v. *Union of India*,[31] wherein it was held as follows:

> "It is surprising that more than forty years after the 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 than 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

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[28] Nuclear Fuel Complex v. K. Penta Reddy, 2002 SCC OnLine AP 123 : (2002) 2 ALT 553.
[29] SRF Ltd. v. Govt. of T.N., 1995 SCC OnLine Mad 48 : (1996) 73 FLR 1354.
[30] International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374.
[31] Sankar Mukherjee v. Union of India, 1990 Supp SCC 668.

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.*"[32]

Sub-section (2) contains several circumstances and factors which an appropriate government (Central or State) shall take into account before issuing a notification under sub-section (1), which include:

- work is incidental to, or necessary for the industry or occupation that is carried on in an establishment;
- work is of perennial nature;
- work is done ordinarily through regular workmen;
- work is sufficient to employ considerable number of whole-time workmen.[33]

As per the information available, the Central Government has issued 88 Notifications under Section 10 of the CLRA abolishing employment of contract labour in specified establishments / businesses in consultation with the Central Advisory Contract Labour Board.[34] The trend in these notifications demonstrates that the grounds prescribed under sub-section (2) of Section 10 have been kept in mind.

It is pertinent to note that Andhra Pradesh has imposed a blanket prohibition on employment of contract labour in core activities. In addition to this, there are several other States that have issued notifications for prohibition on employment of contract labour in either certain specific establishments or specific activities.

1. Sham Arrangements

In certain circumstances, the nature of relationship between the principal employer and contract labour is such that, *prima facie*, it may appear to be a legitimate contract labour arrangement but in fact, is merely an arrangement to deprive those workers from the benefits that they would have been entitled to, had they been appointed in the capacity of regular employees. Such an arrangement has been termed a "sham arrangement" by the Courts. In such

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[32] Section 10(1), Contract Labour (Regulation and Abolition) Act, 1970.
[33] Section 10(2), Contract Labour (Regulation and Abolition) Act, 1970.
[34] Ministry of Labour and Employment, *Annual Report*, Government of India, New Delhi, 2016-17.

circumstances, courts have pierced the veil to determine the true nature of engagement and role of employees. For example, In the landmark judgment of *SAIL* v. *National Union Waterfront Workers*,[35] (**"SAIL Judgment"**) it was held:

> "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 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 regularize the services of the contract labour in the concerned establishment."

2. Contract Labour and Nature of Relationship

Courts have found the existence of a "sham arrangement", where an "employer-employee" relationship exists between the principal employer and the contract labour. In *Workmen of Nilgiri Coop. Mktg. Society Ltd.* v. *State of T.N.*,[36] the Supreme Court held that the question in each case has to be answered having regard to the facts involved. It was held that no single test - be it the control test, be it the organization or any other test - has been held to be the determinative factor while establishing the jural relationship of an employer and employee. The Court held that several factors that would have a bearing on the issue, are:

(a) who is appointing authority;

(b) who is the pay master;

(c) who can dismiss;

(d) how long alternative service lasts;

(e) the extent of control and supervision;

(f) the nature of the job, e.g. whether, it is professional or skilled work;

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[35] SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121.

[36] Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N., (2004) 3 SCC 514.

(g) nature of establishment;

(h) the right to reject.

In an earlier case, *Hussainbhai* v. *Alath Factory Thezhilali Union*,[37] it had been held as follows:

> "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 tests for the determination of an employer and employee relationship in context of contract labour were also laid down in the decision of *National Airport Authority* v. *Bangalore Airport Service Coop. Society*,[38] the excerpt of which is as follows:

> "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 the appellants and applicants. Secondly, whether the porterage service was incidental or integral part of the functions of the airport authorities."

B. Debate on the Absorption of Contract Labourers

There has been a controversy as to whether contract labourers are to be treated as direct employees of the establishment in the event that there is any notification abolishing contract labour in respect of that work or that establishment or in case the arrangement providing for employment of contract labour is sham or not genuine, or other such circumstances.

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[37] Hussainbhai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257.

[38] National Airport Authority v. Bangalore Airport Service Coop. Society, 1991 SCC OnLine Kar 273 : (1991) 2 Kant LJ 287.

It may be relevant to mention that neither section 10 nor any other provision of the CLRA provides that the contract labour will automatically become employees of the principal employer, on issuance of prohibition notification by the appropriate government. In other words, the CLRA is silent on the aspect pertaining to automatic absorption of contract labour pursuant to issuance of prohibition notification by an appropriate government under section 10 of CLRA. In view of the foregoing, the issue of absorption has been examined by various courts in India and has been a subject matter of divergent opinions, few of which have been discussed herein below (E.1 and E.2).

The Hon'ble Supreme Court of India in *Air India*[39] held that on or after issuance of a notification under Section 10 of CLRA, the contract worker will be automatically absorbed by the principal employer. However, the constitution bench in SAIL Judgment (as briefly discussed below) set aside the judgment of *Air India* by holding that on issuance of prohibition notification under section 10 of CLRA where the employment of contract labour is prohibited, the proper authority to assess and examine the dispute would be the Industrial Tribunal. However, on abolition of contract worker under Section 10 of CLRA, if any dispute is raised by the contract labour for regularization, the Industrial Adjudicator would have to consider the question whether the contractor had been engaged either to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or it is was a mere ruse or camouflage to evade compliance of various beneficial legislations so as to deprive the workers of benefit thereunder.

Consequently, in view of the SAIL Judgment, the legal position prevailing as of date of writing is that mere issuance of prohibition notification by the appropriate government does not imply automatic absorption of the contract labour.

1. Judicial Precedents against Absorption

Following the SAIL Judgment, there have been a catena of judgments holding against the regularization of contract labourers as employees.

In *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*,[40] it was held that it has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the

[39] Air India Statutory Corpn. v. United Labour Union, (1997) 9 SCC 377 : AIR 1997 SC 645.
[40] Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd., (2005) 5 SCC 51.

workmen working in the canteen. Merely for the fact that the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management.

Further, in *International Airport Authority of India* v. *International Air Cargo Workers' Union*,[41] it was held that the principal employer only controls and directs the work to be done by contract labour, when such labour is assigned / allotted / sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned / allotted to the principal employer or used otherwise. In short, the worker is the employee of the contractor and thus, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work for and subject to what conditions, *etc*. When the contractor assigns / sends the worker to work under the principal employer the worker works under the supervision and secondary control of the principal employer. The primary control rests with the contractor.

The true position regarding absorption of contract labourers has been laid down in the SAIL Judgment[42] as below:

> "An analysis of the cases, discussed above, shows that they fall in three classes: (i) 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; (ii) 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; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the

[41] *Supra* note 30.
[42] *Supra* note 35.

> services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

From a reading of the points relating to classes (i) and (ii) (in the SAIL Judgement), it is amply clear that such cases would not mean that the contract labour should be absorbed as regular employees.

There can be no direction for absorption even in the event where the principal employer engages contract workers after a notification, under Section 10 of CLRA, has been confirmed again in the SAIL Judgment[43] where it has been held that the Courts cannot read in some unspecified remedy (i.e., absorption) in Section 10 or substitute for penal consequences specified in Sections 23 and 25 of CLRA.

2. Judicial Precedents in favour of Absorption

In *Bengal Nagpur Cotton Mills* v. *Bharat Lal*,[44] 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: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal, employer controls and supervises the work of the employee."

In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first Respondent is a direct employee of the Appellant.

Further, in the decision of *Bhilwara Dugdh Utpadak Sahakari Samiti Ltd.* v. *Vinod Kumar Sharma*,[45] while holding that the workers were employees of the company and not the contractor, the Supreme Court held as follows:

> "Labour statutes were meant to protect the employees/workmen because it was realised that the employers and the employees are

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[43] *Supra* note 35.
[44] Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635.
[45] Bhilwara Dugdh Utpadak Sahakari Samiti Ltd. v. Vinod Kumar Sharma, (2011) 15 SCC 209.

> not on 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 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/liberalization in the name of growth cannot be at the human cost of exploitation of workers."

VIII. CONCLUSION

Despite the consequences, the practice of employing contract labour is quite prevalent in India, spread across several industries, and in different occupations, including skilled, semi-skilled and unskilled work. It might appear that the institution of contract labour is an attempt to circumvent the labour laws. However, there has been a gradual shift towards efficient management of contract labour including payment of benefits at par with regular employees today (in certain circumstances). While contract labour largely may not receive the same security and dignity of labour as regular workmen, the demand for it is still growing. Therefore, in the wake of these circumstances, there is a need to bring in changes in the law which will ensure that the rights of contract labour can be better protected. The aftermath of the SAIL Judgment[46] has made the judicial stand on contract labour absolutely unambiguous. It is now clear that neither Section 10 of the CLRA nor any other provision in the CLRA expressly or by necessary implication provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10 prohibiting employment of contract labour in any process or operation or other work in any establishment. The principal employer cannot be required to absorb contract labour working in the concerned establishment.

The role of contract labour has to be seen in the context of a growing trend towards unbundling the production process into parts and outsourcing supply of the same to different producing units. This practice has mostly increased with the growth of information technology. If such outsourcing leads to a greater specialisation in the production of these services, with resulting gains in efficiency and reduced costs, it could stimulate a larger total

[46] *Supra* note 35.

demand for these services and, therefore, create employment.[47] Therefore, the system of contract labour is a necessary evil which requires to be regulated to protect the interests of such contract labourers, in particular and the industry, in general. In the current day and age, while steps have been taken to protect the interests of persons (contract labour), the interest of the industry also requires consideration. It is also important to provide opportunities of employment to people, as controlling or discouraging practices may lead to loss of employment opportunities.

[47] Raj Kapila & Uma Kapila, *Planning Commission Reports on Labour and Employment*, 204 (2002).