

CONTRACT LABOUR IN INDIA-A CONCEPTUAL ANALYSIS

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ABSTRACT

The rapid industrialization brought out the free trade in business operations to adopt the flexible labour practices in Indian economy. Especially contract labour is an important and increasing form of employment which is common in almost all industries, in agriculture and related operations and in service sector also. It is one of the forms of informal employment obtaining in both informal and formal sectors. The globalization conditions have enhanced the mobility with bargaining power vis-à-vis increased workers. Hence Contract labour system represents an exploitative system and employers also prefer the flexibility.

KEYWORDS: Contract Labour, Increasing Form of Employment

INTRODUCTION

The word 'Contract' derived from the word 'Consensus' it means having valid agreement between two or more parties, there must be consensus of mind among them and understand each other at the same level.

Why Contract Workers???: Cheaper, Easy to hire, Easy to remove, No short term / regular interval jobs, No long term commitment or cost, Lesser industrial unrest, No need for direct supervision, Speedy completion of assigned work, No need for looking after non-core things.

The various Issues in Contract Labour in contemporary Industrial Relation scenario like: Potential threat of permanent job, Favourable decisions from labour department and courts, Poor qualification, Poor Skill, Poor loyalty and no long term commitment, Extra cost of Service Tax, Service Charge to manpower supply agency, Guilt-Exploitation, Legal protection at the workplace.

Contract labour is engaged on various occupations with different the level of skills which consists of Unskilled, Semi-skilled, Skilled and High Skilled categories.

After Globalization in India, the vast changes of political, economic and social conditions have resulted the liberal global economy and international competition which led to decentralization and specialization of production process in various industries. It imposes the employers to reduce the labour cost for taking an competitive advantage in the market and started using the nonstandard work practices to engage the contract labour work force in place of skilled, permanent employees through third party agencies.

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In relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment.

Why Contract Workers???

- Cheaper
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- Easy to remove
- No short term / regular interval jobs
- No long term commitment or cost
- Lesser industrial unrest
- No need for direct supervision
- Speedy completion of assigned work
- No need for looking after non-core things

Issues in Contract Labour in Contemporary Industrial Relation Scenario

- Potential threat of permanent job.
- Favourable decisions from labour department and courts.
- Poor qualification.
- Poor Skill.
- Poor loyalty and no long term commitment.
- Extra cost of Service Tax, Service Charge to manpower supply agency.
- Guilt-Exploitation
- Legal protection at the workplace.

Effects of Contract Labour

- Deprives workers of protections under national legislation and internationally accepted labour standards.

- Denies workers of contractual rights such as overtime, sick and holiday pay.
- Prevents workers acquiring continuity of employment and building experience.
- Limit workers access to national insurances and social security benefits where available.
- Denies workers access to redundancy payments and unemployment benefits.
- Restricts worker's ability to build up any form of work related pension.
- Leaves workers with no recourse in the event of work related disease of industry training and apprenticeships.
- Lowers industry standards of skill and quality.
- Threatens workplace health and safety standards causing accident, absence and even death.
- Allows the evasion of taxes and social contributions by both workers and employers.

Contract Labour is applied to labour which is employed to perform some work through a contractor and hence no direct employment relationship exists between the ultimate employer and contractual workers. They are having contractual relationship with contractor and in turn contractor has commercial relationship with the client or Principle employer. Contractor provides the labour services to principle employer in tripartite zone which becomes the basis for legal and non-legal course of actions for trade unions.

The most of the contract labour from the unorganized sector has gone through a lot of hardship, as they are not recognized by society. The unorganized labour has not been able to organise the common objective as their limits to;

- Casual and temporary nature of employment
- Ignorance and illiteracy due to economic imbalance
- Small scale and scattered nature of establishments which operates manually and low capital investment.
- Superior strength of the employer operating individually or in combination of business partners.

The Example of Unorganized Labour is specified Below Categories Like,

- Contract labour including construction workers and Casual labour,
- Employees in shops and commercial establishments and factories,
- Labour engaged in small scale industry,
- Handloom power looms labour and Tribal labour,
- Sweepers and Scavengers,
- Bidi and cigar labour,
- Other unprotected labour.

Further, contract labour can be illustrated from the permanent workers in terms of service conditions with the establishment and the method of wages payment. Unlike the permanent workers which are born on the muster roll of an

establishment and entitled to be paid wages directly, contract labour are neither born on the pay roll nor are paid directly.

The establishment which takes the work from the contractor who does not own any direct responsibility pertaining to his labour. In several contracts, the wage rates are to be fixed, but whether payment is made on that basis or not is hardly concern by the contractor and the establishment. The main advantages to the employer for deploying contract labour through contractors;

- The cost of production is low and optimized the reduction of overhead cost and the administrative expenses of an establishment.
- Engaging contract labour without extending the fringe benefits like leave with wages, ESI or provident fund contributions, Bonus and others benefits a par with direct workers.
- The manufacture of certain components of industry is optimized by utilizing the opportunity of contracts, rather than investing huge capital and installing plants as manufacturers.

Contract Labour can Broadly be Divided into Two Categories;

- Contract labour those deployed in job contracts for specific job base.
- Contract labour deployed on supply based on the labour contracts.

Large and medium establishments are having the specific operation process where the prescribed jobs outsourced by giving the contract on lump sum payment including labour cost to the contractor who will engages his own workers. And the less skills jobs or perennial jobs are engaged on contractual roll based on the labour contracts. The practice of engaging contract labour succeeds in almost all industries and services. It is more common in mining and in the construction industry. The labour oriented establishments are deploying more contract labour especially in iron ore, cement manufacturing, manganese ore, jute pressing, Tarpaulin tents, Sails etc., Salt, Ports and Docks, Limestone, Quarries, Toy manufacturing, construction, Breweries and manufacture of Malt, Metal Rolling, Dal Mills, agricultural implements, Firebricks, Joinery and General Wood Work, Metal extracting and refining factories, metal founding, Cotton Ginning, cleaning and pressing and Rice Mills.

Contract labour is engaged on various occupations with different the level of skills which consists of Unskilled, Semi-skilled, Skilled and High Skilled categories. The Govt. of India has released the extraordinary Gazette on the variety of worker occupations and skill levels dated on 20th May 2009.

- **Unskilled Category**
- **Semi-skilled/Unskilled Supervisory Category**
- **Skilled Category**
- **Highly Skilled Category**

Generally, the unskilled categories as loader, un loader, cleaner, sweeper and khalasi to skilled employment as polisher, turner, gas cutter and riveter driller, blaster, blacksmith, carpenter and fitter in oil distribution, the mining and cement industry. The building and construction industry is consisting of a variety of workers and operations which range

from construction of dam, bridges, roads, schools, hospitals, offices, factories, and ordinary residential buildings that accommodating the huge labour. Most of the constructions are seasonal which depends on the climatic conditions that Building activities are up in winter season, and stopped in rainy season engaged more workers who are move from one place to another frequently for completing short term construction jobs.

The Railways and central & State public works departments are engage the more building workers in the agencies such as the National Buildings Construction Corporation and the National Projects Construction Corporation. These labours are engaged by big and small contractors, actually working sub-contractors under principal contractor that there was no proper control system of qualifications and other criteria for entry of persons in this industry which causes the chaotic labour conditions. Hence, the registration of Building and Other Constructions Workers (BOWC) Act is regulatory system that fighting against the resolving issue.

The evolution of contract labour has brought some of the prominent features. Such as illiteracy, lack of knowledge and upkeep, heterogeneous group, consequently lack of stability and a united front migratory nature, irregular attendance and unpunctuality, low living, lower productivity & efficiency and lack of mobility. The migratory character of the workers in Indian industry has often prevented them from joining any permanent labour unions that are alien to their traditional kinds of social affiliation. The contract labour is continuance due to the frequent absenteeism some extent and accepted due to the health of the immigrant workers and their families. Labour mobility is occurrence for the search of wages and skilled jobs that lower wages to higher wages and from unskilled work to more skilled work respectively in which resulted work long to collect the money to meet their daily needs.

Textile workers have started as casual workers and after the years they became permanent workers. Later they have taken the voluntary retirement by losing regular employment under VRS schemes as privileged workers who became casual workers lost all the protective and social security benefits. Even some of permanent workers who has taken VRS by losing the social security and joined in another industry under contract work to continue the job due to low economic conditions. Hence, the contract workers in India are facing the social and economic i.e., mental stress, physical illness, workplace accidents and injury, disability, old age and death. In Indian economy, the aforesaid conditions in unorganised sector are too worst in protecting and regulating the livelihood of workers as result of lack of legal protection, worker are not qualified to get the social security benefits especially as a child and women.

Establishments are often entering into business agreement with other companies who are the necessary skills to obtain goods and services for the reason of many specialists like plumbers, electricians and carpenters in the building industry. The contractor is performing the job to provide the tools, equipment, labour and skills essential to complete the agreed job. The business contract does not have the funds for any special legal protection beyond those laws, which hold up the contract.

After Globalization in India, the vast changes of political, economic and social conditions have resulted the liberal global economy and international competition which led to decentralization and specialization of production process in various industries. It imposes the employers to reduce the labour cost for taking a competitive advantage in the market and started using then on standard work practices to engage the contract labour work force in place of skilled, permanent employees through third party agencies. This also increase the migrate labour who are not aware of labour right. In addition to increase of the flexible work force, the employers observe that contract labour can be engaged to avoid their

obligations under the labour laws and protections. Contract labours are hardly organized in trade union which also one of causes that employers engage the contract labour to avoid the restrictions on the business units with union representation and collective bargaining. Contract labour is only option for the workers to avoid unemployment in the weaker position to negotiate terms and conditions. There are two consistent elements as per the surveys of national law and practice on the use of contract labour reveals that an agreement to perform work but the workers is not employed and another one is the aspect of organizational supervision on the worker's performance during the job.

According to annual report of the Indian ministry of labour that the index of labour productivity was highest in electricity, gas and water and others like manufacturing industries labour productivity has revealed utmost rise in aluminium manufacturing, go behind by basic metal and alloys industries, motor vehicles, leathers and fur products, iron and steel in self finished norms of forms, chemical and chemical products and for casting and forging. The labours welfare division also supervise the functioning of various welfare funds and deals specifically with the vulnerable categories of unorganized workers like contract labour, bonded labour, inter-state migrant labour, building and other construction workers, home based workers and agricultural workers. The labour market is generally characterized the negotiation between powerful employers and weak workers due to oversupply of labour and lack of skill in competition. It is very high in accumulation of labour in manufacturing industries.

Saxena describes that there is an inherent tendency in the casual or contract labour market to attach on excessive supply of job. Seekers, with the supply for tending to equal the maximum number of workers which all employers taken separately might need at any given time.

Hicks have commented that labour market is "by its nature is highly competitive" and a large surplus of unemployed labour is inevitable. The other features of the contract labour is the existence of unstable labour force, workers are vocationally and psychologically unprepared for industrial work.

The following external factors of the contract labour are indication for the present condition of contract labour. Such as

- Adverse climatic conditions.
- Migratory nature of labour.
- Low wages and standard of living.
- Less efficiency machinery and poor quality of raw materials.
- Lack of education
- Long hours of work.
- Unacceptable working conditions.
- Bad housekeeping standards.
- Often indebtedness of the labour.
- Regular absenteeism.

- Unhealthy social habits of the labour.

The contract labour in India is in extremely miserable condition that Contractor hires labour in order to getting the work done in a predetermined time without providing the necessary social security. Contract labour is influenced by wage rate, vicinity, family size and social strength due to their socio and economic Inequalities and exploitation. The main problem of contract labour is an outcome of migration that the labour is a journey to burden the unfair situation in which the inter-state migrant labour is quite worrying. According to 1991 census, 26.7 million are interstate migrant workers. Out of that the migration for employment account for 5.7 million representing 21 percent of the total migrant workers which includes inters district and interstate migration. It is movement of people in chase of better employment, better wages, and better quality of life, but migration becomes more offensive only when human insatiability and unequal nature of employers, contractors as subcontractors which may be considered by the denial of justice, equity and the human rights of certain weaker sections of the society. Migrant workers are unfamiliar to the laws and body, court procedures and unionized to fight against local customs. Many of the contract labours fall victims to mishap arising out of their unskilled and in experienced handling heavy jobs. The contract workers undergo many hardship and fall into the debt trap of landowners. Low wage is always endorsed to lower labour productivity. In other words, without a proper wage policy and strategy for enforcement of minimum wages remain unfinished and mostly worthless.

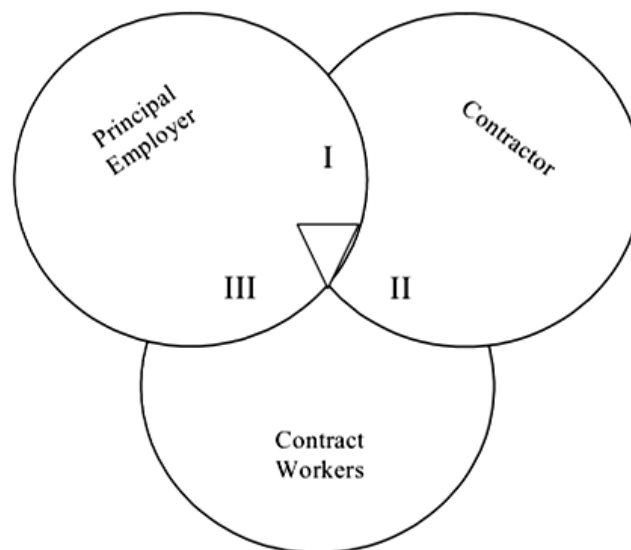


Figure 1: Tripartite Nature of Contract Labour Market

Note: Adopted from Team Lease I, II, III – Overlaps, Shaded Area – Tripartite Zone

Employer prefers use the contract workers for several reasons that mainly competitive advantage of product in the market by cost effectiveness and just in time labour when required and withdraw them when not needed. It affords flexibility and also contract labour need not necessarily mean plain unskilled labour and involve range of skill set in deploying them in noncore or peripheral activities. The labour market strategy could increase efficiency by concentrating on 'core' activities by principle employer for successful business operation with lower cost in market. It also effective in terms of money and real costs involve disciplinary action, litigation, indiscipline, union intervention etc., even the principle employers avoid fringe benefits like annual leave with wages, gratuity, bonus etc., and non-wage costs.

Generally, the principle employers engage contractors to supply labours for the following reasons:

- No direct supervision is mandatory by Principle employer as per legal statues.
- Easy hire and fire of contract labour for the completion of job within shortest time.
- Liability to pay the benefits to them is lesser than permanent employees cost.
- Employees can concentrate on core activities rather than non-core activities for taking a competitive advantage in market.

However, the engagement of contract labour has become a controversial issue and it is a key cause for industrial unrest which led to the production and financial losses to companies. It is also understood that one of the major reasons for the industrial unrest could be increasing dependence of industries on contract labour for the requirement of flexibility and cost effectiveness in business operations. But this section of workers more concern about the job security and social security, exploitation in the hands of contractors, low wages, unequal treatment by trade unions and even insulting behaviour of the permanent workers and supervisors develop revolt manner. still contract labour are managed well without paying the decent wages to them, although it is not possible to bring them at par regular employees for the reason that they are doing the different skills set and handling the various jobs.

During the early period of industrialization, the establishments were always faced the labour recruitment, low status of factory workers, lack of labour mobility, caste and religion taboo, language etc., The most of employers in general and British employers also were unable to solve these issues. Therefore, they used to depend on the middleman for handling these workers in a better manner by avoiding the aforesaid issues. These middleman or contractors were known by different names in various parts of the country which resulted as exploited section of workers due to ineffective of the workman's Breach of Contract Act, 1959 which mainly operated for the criminal responsibility in the event of a breach of contract service. Consequently, the Whitley Commission in 1860 recommended the abolition of contract labour by implication. Subsequently, the Government constituted various committees to study the socio-economic conditions of contractual workers.

Constructional Framework of Contract Labour System in India

It usually refers to contractual workers engaged through the contractor (including the sub-contractor) in establishments. These workers are millions in number and mostly belong to the unorganized sector. They have very little bargaining power, earn minimum wages, no social security, temporary employment, and engaged in dangerous occupations which impact their health and safety conditions. On the other hand, the contract labour is the irregular in nature of work, cost effectiveness and flexibility in manpower deployment to principle employer for plant operations.

By recognizing the various conditions of contractual workers in India, Contract Labour (Regulation and Abolition) Act, 1970 was enforced w.e.f 10th February 1971 and subsequently the Rules were also enforced w.e.f. 21st March 1974 to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.

The below flow chart reflects the Direct Control & Indirect / No Control level which is helpful to understand the different levels of control at a glance.

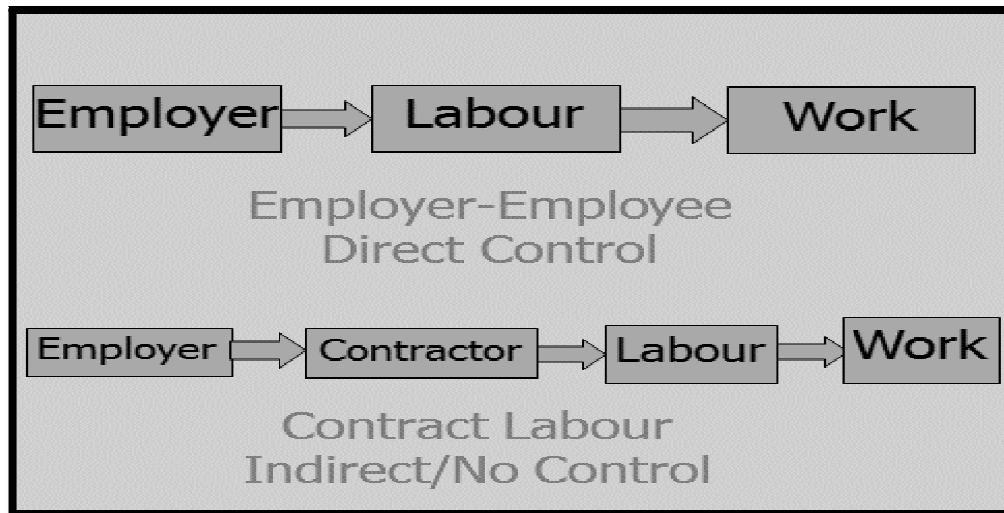


Figure 2

Source: Own designed as per the direct control by employer and employee with a work and in direct control of contract labour through contractor.

Liability of Principal Employer

- Responsibility for the payment of Wages (Section 21) Contractor to pay timely
- Principal employer to ensure disbursement of wages in the presence of its authorised representative
- Principal employer is liable for the payment of wages or unpaid balance in case contractor fails to make payment to their labour.

Facilities to be Provided to Contract Labour

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.

The following facilities should be provided to the contract labourers if the contractors do not provide it:

- Rest rooms
- Canteen
- Latrines and urinals
- Drinking water
- First aid facilities

Absorption of Contract Workers

For any employee/worker joining any service on daily basis temporarily, it is but natural that he would prefer being absorbed in regular service in the said establishment. It is more so in the case of contract workers who are employed for long period on contractual basis. With the passage of time and intensive industrialization, the issue of absorption of

contract workers has assumed great significance. As a matter of fact, contract labour remained ignored for a pretty long time. Neither the contractors nor the principal employers cared for the contract labour. Therefore, the Parliament passed Contract Labour (Regulation and Abolition) Act, 1970, to prevent exploitation of contract labour. Basic policy underlying this Act, is to prohibit the employment of contract labour and wherever this is not possible, to improve the conditions of work of contract labour i.e., the regulation of service conditions for contract labour. Thus apart from providing for prohibition of employment of contract labour, provisions are made for effective payment of their wages and to provide for better health and welfare of contract labour. In short the object of this Act is to do away with the abuses of the system of employment of contract labour. With this avowed object, the Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. Obviously the Act is not applicable to establishments performing work only of an intermittent or casual nature. The Act is applicable to every establishment employing twenty or more workmen as contract labour and to every contractor employing twenty or more workmen. On considering these factors the Central Government or a State Government can prohibit any establishment from employing contract labour for performing any work therein:

- Whether the conditions of work and benefits provided for the contract labour in the establishment are Satisfactory;
- Whether work is incidental to or necessary for the business of the establishment;
- Whether it is of perennial nature? i.e., whether said work will last for sufficient duration;
- Whether it is done ordinarily through regular workmen;
- Whether it is sufficient to employ considerable number of whole time workmen.

Contract Labour Issues and the Judiciary

The various judicial principles help in the issues of contract workers if the contract is not genuine (Sham Contract), then contract workers can raise the Industrial dispute demanding the various benefits and regularization of employment as permanent nature. Subsequently if the issue is genuine Industrial Tribunal can give the award on the industrial dispute and contract will be adjudicated. In case of prohibition of contract labour, the tribunal will consultations the Board for the abolition of contract labour. The below figure explains the multiple factors for understanding the issues of contract labour in legal route, non-legal route and partially legal course of action.

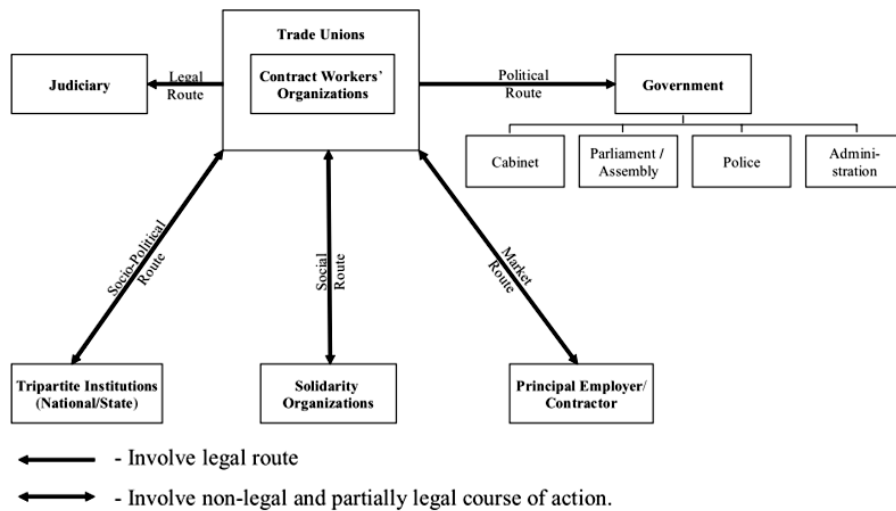


Figure 3: Multiple Institutional Focuses of Trade Unions relating to contract labour in India

Source: Contract workers: the need for ‘Community of interest’ Perspective by K.R. Shyam Sundar, published in the Indian journal of Labour Economics, Volume 50, No 4, 2007.

Applicability– Whether Workmen Are Direct Employees?

Having regard to the provisions of the Act, it is evident that (i) the principal employer should obtain a Certificate of registration u/s. 7 of the Act; and (ii) the workmen can be employed on contract labour basis only through the licensed contractor, under S. 12 of the Act. Unless both these conditions are complied with, the provisions of the Act would not be attracted. Even if one of the two conditions is not complied with the Act would not be attracted. If either of the two conditions are not complied with the workmen employed through intermediary would be deemed to have been employed by the principal employer.

Steel Authority of India v. National Union Water Front Workers, 2001 III CLR 349 (S.C)

In the same tune, it can be said on the expiry of the licence of the contractor, contractor workers cannot claim a right of absorption in the said employment may it be Railways or any factory or establishment.

Some Do’s & Don’ts for Principal Employer in Engaging Contract Labour

- Before engaging contractor, the employer should ensure that there is no such notification by the government prohibiting contract labour system in that particular industry.
- The establishment in the first instance must ensure that they have got a registration certificate from the competent authority as provided u/s. 7 of the Contract Labour (R&A) Act, 1970 before proceeding to engage the contract labour.
- The establishment must ensure that they issue certificate in Form V to the contractor for obtaining license as provided u/s. 12 of the Act *ibid*.
- It must be ensured that the contractor who is employing more than 20 persons has a valid license issued in his name by the competent authority as provided under the Act.

- The payment of wages to the employees employed by the contractor is disbursed to his employees by the contractor himself or his nominee and principal employer has to depute his representative to be present and sign the payment register in token of having disbursed the salary in his presence by the contractor.
- There should not be any supervision and control by the principal employer in respect of employees employed by the contractor to fulfil the obligation of the contract.
- The work for which contract labour is engaged is not a perennial nature.
- Discipline management of the contract labour must not be done by the principal employer but by the contractor.
- Contract should not specify the number of persons required but must quantify the work itself.
- Leave to the employees of contract must be sanctioned by the contractor and not by the principal employer.
- No advance should be paid by the principal employer to the contractor's employees directly. Only contractor must regulate the same.
- Maintenance of all type of record in respect of the employees employed by the contractor should be his own responsibility and principal employer should not intervene in such matters.
- Dictum of Supreme Court Judgment in Hussain Bhai's case must be adhered to in drafting the agreement for the contract.
- If the establishment is covered by the Employees' Provident Funds & Misc. Provisions Act and the Employees' State Insurance Act then the preference should be given to those contractors who have their own code numbers under these Acts.
- To ensure to submit annual return to the prescribed authority in the prescribed form under the Act.

When an Agreement with the Contractor Can Be Rendered Sham or Invalid

- When the agreement does not disclose the name and address of the contractor.
- When the agreement does not disclose the exact nature of job to be assigned.
- When the agreement narrates the nature of job other than actually to be performed.
- When the agreement is against the norms of judicial pronouncement/ statutory provisions.
- When the agreement is a tool or device to deprive the right of livelihood or as a tool for victimization or unfair labour practices.
- When the agreement must ensure and disclose that the obligations to pay the minimum wages or agreed wages.

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