



# OBLIGATION OF PRINCIPAL EMPLOYER AND SECURITY AGENCIES TOWARDS SECURITY GUARDS

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## Abstract

Between 2020 and 2030, there will likely be a 10% rise in the demand for security guards. This growth will be propelled by the security demands of commercial, academic, healthcare, and public sector organisations. In order to protect the public and property, security guards are obligated to deter theft, vandalism, and assault. Patrols or responding to alarms may be within their purview. Customers, vendors, and other visitors may be asked by security to provide identity. Security guards' skill sets differ depending on their line of work. People with less than a high school diploma work for some of these businesses. Maharashtra, Karnataka, Delhi, and Gujarat A number of states, including Rajasthan, Uttar Pradesh, Bihar, and Madhya Pradesh, provide security guards good job prospects. Because there is a great need for security professionals, these jurisdictions pay their employees highly. Applying these strategies could increase your chances of landing a job as a security guard. After finishing secondary school, some people choose to work as security guards; therefore, it is important to consider the risk of exploitation when looking for a job. The various laws that regulate the employment conditions of security personnel necessitate an analysis of the primary employer's and contractor's essential responsibilities under these laws.

**Key Words-** Terms of employment, Regulation, Principal Employer, Contractor, Obligation, Responsibilities

## I. Introduction

Above the average for all occupations, security guard positions are projected to increase 10% between 2020 and 2030. Demand will be driven by security needs at governments, medical institutions, universities, and businesses. To safeguard the people and their property, security experts have to stop theft, vandalism, and violence. They might sound, watch, and patrol. Security personnel can verify

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visitors, customers, and suppliers. Security guards require various abilities and knowledge. The states with the most security guards include Maharashtra, Delhi, Karnataka, Gujarat, Uttar Pradesh, Bihar, Madhya Pradesh, and Rajasthan. These states need security personnel, who are paid fairly. There are many ways for security personnel to increase their employability. Most of the security guards have not passed SSLC, hence they are exploited by the main employer and security organisations. Examining the function and duty of Principal Employer and Contractor under several laws governing security guards' job conditions would help us to understand their relationship.

## **II. Obligation of Principal Employer and the Contractor under Contract Labour (Regulation and Abolition) Act, 1970.**

The Contract Labour (Regulation and Abolition) Act, 1970 governs security personnel employment . All contractual enterprises with more than 20 employees are covered by this Act. Laws in Goa, Bihar, Gujarat, Himachal Pradesh, Tripura, and Karnataka raise the minimum staffing to 50<sup>2</sup>. The Contract Labour (Regulation and Abolition) Act defines "contract labour" as an individual hired by a contractor without the principal employer's knowledge. The Act defines a "contractor" as a person who provides contract labour for a commercial activity or accomplishes a business outcome using contract labour. Subcontractors are real contractors. The Factories Act, 1948 defines "Principal Employer" as "the head of any government or local authority"; "owner," "occupier," or "manager" of a factory; "owner," "agent," or "manager" of a mine; or any person responsible for supervision and control inside an enterprise. Any place where economic or productive activity occurs is a "establishment". Document main employers are protected. Non-registration can result in three months in prison or a Rs. 1,000 fine for primary employers. The daily penalty for an unregistered principal employer is Rs. 100. Any person in charge of the corporation's business conduct at the time of the offence is liable for prosecution and punishment unless they can prove that they were unaware of the offence or that they took reasonable precautions to prevent it.<sup>3</sup>

### **i) Mandatory obligation of Principal Employer**

The Act requires contractors to provide security guards with canteens, bathrooms, and first aid to improve their working conditions. Contractors provide these amenities. The principal employer must supply such amenities to contract workers if the contractor fails. The contractor must reimburse the principal employer for certain services provided to contract workers.<sup>4</sup> The contractor must pay contract

<sup>2</sup> Goa State Amendment to the Contract Labour Regulation and Abolition Act 1970

<sup>3</sup> <https://www.novojuris.com/thought-leadership/contract-labour-principal-employers-responsibilities.html>

<sup>4</sup> Industrial Relations and Labour Laws “ S.C. Srivastava” 8<sup>th</sup> Edition 2023, Vikas Publishig House

workers within timeframes.<sup>5</sup> An authorised representative of the principal employer must attend wage disbursement. The principal employer's representative must ensure contract workers get Act-compliant compensation. The subcontractor must have the principal employer's authorised representative present for wage disbursement.<sup>6</sup> If the contractor underpays or fails to pay, the principal employer must pay the whole amount. The principal employer may withhold future payments or classify the contractor's finances as a debt. In some cases, the principal employer may be sanctioned for violating extra labour welfare requirements. A principal employer who fails to contribute to or keep accurate provident fund records may be fined Rs. 5,000 or imprisoned for 1 year<sup>7</sup>. A contractor or principle employer who fails to maintain ESI documents may be imprisoned for one year, fined Rs. 4,000, or both.<sup>8</sup>

## ii) Contract Workers Are Not Allowed in the work which are perineal in nature

The establishment is not allowed to use contract labour for any activity for which a notification has been issued by the Central or State Government prohibiting such employment.<sup>9</sup> It is the responsibility of both the principal employer and the contractor to prevent contract workers from performing any essential duties. With the recent amendments to the Act, the state of Andhra Pradesh now defines a perineal nature of work or core activity as the primary reason for an establishment's creation, including all activities that are necessary or integral to that core activity. The concept of core activities does not include activities related to the canteen or catering, sanitation, loading and unloading, etc., unless these services or operations are the core activities of the establishment.<sup>10</sup> However, the principal employer may hire contract workers to complete a key task if it is typically assigned to contractors, doesn't require full-time employees, or experiences an unexpected increase in workload that needs to be finished quickly.

## iii) Regularization and absorption of contract Workers

One of the most difficult concerns with contract labour has always been the question of what happens to contract workers once their work is done. A three-judge bench of the Hon'ble Supreme Court ruled in *Air India Statutory Companies v United Labour Union*<sup>11</sup> that contract workers had a right to be absorbed as permanent workers on the end of contract labour. However, in *Steel Authority of India v National Union Water Front Workers and Others*<sup>12</sup>, a five-judge bench of the Hon'ble Supreme Court concluded that contract labour does not have a right to get absorbed as regular employees because nothing in this regard has been specifically indicated in the Act. The highest court in the land ruled, among other things, that contractual

Pvt. Ltd. Naoida P-761

<sup>5</sup> I Bid P-652

<sup>6</sup> Section 21 of the Contract Labour (Regulation and abolition) Act, 1970

<sup>7</sup> Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952

<sup>8</sup> Section 85 of the Employees State Insurance Act, 1948

<sup>9</sup> Section 10 of Contract Labour (Regulation and Abolition) Act, 1970

<sup>10</sup> In its Application to the State of Andhra Pradesh, Section 10 has been substituted by A.P Act 10 of 2003 with effect from 22-08-2003

<sup>11</sup> AIR 1997 SC 645

<sup>12</sup> 2001 LLR 961(SC) 283,287

workers have no right to be absorbed in the case of *Secretary, State of Karnataka v Uma Devi*<sup>13</sup> When it has been determined that major employers used contract labour with the intent to avoid providing benefits available to permanent workers, or when ultimate control remains with the principal employer, courts have compelled regularization of contract labour.

#### iv) A Contractual Relationship Between a Principal Employer and a Contractor

Typically, a principal employer and a contractor will enter into a contract for service wherein the contractor agrees to provide the principal employer with a predetermined number of contract workers on an as-needed basis. As a result of the preceding conversations, the following are some of the most crucial factors that must be taken into account as part of these agreements: Contractor's representation of having complied with, and obligation to remain in compliance with, all responsibilities and obligations of a contractor under the Act and applicable state rules; Periodic reporting and submission of records and documentary evidences pertaining to contributions made, registers maintained, etc., by the contractor to the principal. Principal employer has no say in how contract workers are managed. Separately, as good governance measures, the agreements between major employers and contractors may include provisions for conducting frequent awareness campaigns for making the contract laborers aware of their rights and privileges under the Act. The use of independent panels to whom contract workers can appeal in the event of a dispute is also possible.<sup>14</sup>

#### v) Contractor and Principal Employer Responsibilities:

Contractual employees are treated differently under the law than normal employees are. As a result, the responsibilities of an employer and a contractor are distinct.

##### a) Wages

The contractor is responsible for the contract employee, his working conditions, and his compensation. Contractor-determined wage periods cannot be longer than one month, and if there are less than a thousand workers on staff, wages must be paid no later than the seventh day of the month after the end of the wage period. The deadline for paying out a worker whose final day of work is June 30 is August 7; for companies with more than 1,000 workers, the deadline is the 10th day after the end of the pay period.<sup>15</sup> The principal employer might deduct the cost of wages owed by the contractor from any compensation owed to the contractor. The contractor must additionally compensate the contractual employees with bonuses.

##### b) Essential facilities

The contractor is responsible for ensuring the health and safety of the employees by providing amenities like food and water, as well as toilets, washing facility, and first aid kits. The principal employer is responsible for providing these if the contractor does not.<sup>16</sup> The contractor is responsible for ensuring the safe return of Interstate Migrant employees by providing them with a passbook in their name and making arrangements for

<sup>13</sup> (2006) 4 SCC 1. 379,389

<sup>14</sup> Mark Freeland "Contract of Employment" Oxford University Press 2016

<sup>15</sup> Section 5 of the Payment of Wages Act, 1936

<sup>16</sup> Section 16,17, 18 and 19 of Contract Labour (Regulation and Abolition) Act, 1970



their departure from the state when their job has ended<sup>17</sup>. The contractor must give the migrant worker a "displacement allowance" if the person is forced to choose a lower-paying employment as a result of the downsizing. This is to be set at 75 Rupees per month (or half of the monthly salary)<sup>18</sup>. A travel reimbursement must also be provided by the contractor<sup>19</sup>.

The contractor is responsible for keeping the following records for audit purposes:

- i) Registration of employees
- ii) Muster roll, payroll register
- iii) Register of deductions for damage or loss
- iv) Register of fines
- v) Register of advances
- vi) Register of advances Logbook for time worked beyond 40 hours per week.<sup>20</sup>

### c) Other Facilities

Contractors are responsible for ensuring that their employees have access to basic amenities like food and water, as well as sanitation facilities including sinks, showers, toilets, and urinals, as well as first aid kits and trained medical personnel. If the contractor does not supply these, the principal employer must do so.<sup>21</sup> Contractors employing Inter State Migrants are obligated to provide workers with a passbook and facilitate their return to their home states<sup>22</sup>. Contractors have an obligation to reimburse displaced foreign workers with a "displacement allowance" if the workers are forced to take lower-paying positions. Seventy-five rupees, or half of the monthly salary<sup>23</sup>. Moreover, the contractor is responsible for providing the employee with a travel allowance.

## III. Obligation of Principal Employer and Contractor under ESI, EPF and Gratuity Act

Benefits packages for employees in India play a significant role in providing a measure of social security for the country's sizable labour population. While these perks are great for the bottom line in the short term, a comprehensive benefits and investment package for employees is essential to the long-term success of the company since happy workers are more productive workers. Legislators have placed a premium on these kinds of investment plans and fringe benefits over the past few decades to guarantee that workers receive fair pay. Specifically, the Employees' Provident Fund ("EPF"), the Employees' State Insurance ("ESI"), and the Gratuity have all received a lot of attention and been treated as very serious matters. Although the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 ("EPF Act"), the Employees' State Insurance Act, 1948 ("ESI Act"), and the Payment of Gratuity Act, 1972 ("Gratuity Act") have each been passed to make the

<sup>17</sup> Section 12 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

<sup>18</sup> I bid section 14

<sup>19</sup> I bid Section 15

<sup>20</sup> I bid section 23

<sup>21</sup> Section 11 of Contract Labour (Regulation and Abolition) Act, 1970

<sup>22</sup> I bid Section 12

<sup>23</sup> Supra Note 21 - Section 14 and 15

payment/deduction of EPF, ESI, and Gratuity possible, the obligation to make such payments/deductions remains a source of concern and contention. To avoid responsibility for the payment or deduction, the Principal Employer would often try to place the onus on the Contractor, and vice versa. Although a series of judicial precedents and the provisions of the EPF Act, the ESI Act, and the Gratuity Act clarify the issue of liability, it is not uncommon for Principal Employers and/or Contractors to try to evade this liability through misinterpretation or ignorance of the law, which in turn causes harm to employees and delays in resolution of any resulting litigation.

#### **i) Obligation for deduction and payments to employees for their provident fund under Employees Provident Fund and Miscellaneous Provisions Act**

According to Section 2(e) of the EPF Act, "employer"<sup>24</sup> includes the owner, occupier, and/or person having ultimate authority over the organisation. Clause 2(f) further defines "employee,"<sup>25</sup> which encompasses everyone who receives pay, either directly or indirectly, from the employer and specifically includes anyone engaged by or through a "contractor." For the purposes of paragraph 30 of the EPF Plan, 1952 ("EPF Scheme"), the Contractor shall be deemed the "employer" and shall be liable for the payment of employee contributions (including Workers' Provident Fund). Consistent with the aforementioned, the Principal Employer is liable for all PF contributions, including those of the Independent Contractor's employees. However, clause 2(f) seems to imply that the Principal Employer is responsible for all statutory disbursements / deductions linked to such employees, including PF contributions, even if they are engaged under an Independent Contract. Nonetheless, established case law on the topic has helped clarify the responsibilities of both the Principal Employer and the Independent Contractor with regard to PF contributions. If a contractor is self-employed and utilizes its own PF code, the courts have generally found that the principal employer cannot be held liable for any PF deductions or payments that aren't made. The High Court of Madras stated in its ruling in *The Madurai District Central Cooperative Bank Ltd. v. EPFO*<sup>26</sup>, which dealt with a situation where an independent code was allotted to the Independent Contractor, that the obligation under paragraph 30 of the EPF Scheme would only fall on the Principal Employer in the absence of an independent code. But, if a contractor has their own code, it is their responsibility to pay into their own PF. Similarly, the High Court of Madras held that the Independent Contractor shall have the liability in relation to PF deductions and contributions made by the Principal Employer and/or the Independent Contractor where the Independent

<sup>24</sup> [(e) "employer" means-(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and (ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;]

<sup>25</sup> (f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of <sup>7</sup>[an establishment], and who gets his wages directly or indirectly from the employer, <sup>8</sup>[and includes any person-- (i) employed by or through a contractor in or in connection with the work of the establishment; (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]

<sup>26</sup> [2012 LLR 702]

Contractor had his or her own PF Code<sup>27</sup> Also, in the case *Calcutta Constructions Company v. Regional Provident Fund Commissioner and Ors.*,<sup>28</sup> determined by the High Court of Punjab and Haryana in Chandigarh. With similar logic, concluded that if an Independent Contractor has a separate code, the Independent Contractor, and not the Principal Employer, is responsible for making PF contributions.

## ii) Obligation for deduction and Payment Under Employees State Insurance Act

According to Section 2(9) of the ESI Act, everyone who is engaged through an immediate employer and who works under the control of the Principal Employer is considered to be a "employee."<sup>29</sup> It is therefore crystal clear that pursuant to the aforementioned provision, the workers of the Independent Contractor over which the Principal Employer has control and supervision would fall within the ambit of employee under the ESI Act, and that the Principal Employer would be responsible for their financial liabilities. The idea of "supervision" is critical when determining whether the Principal Employer is accountable for withholding or paying out any sums of money. The Division Bench of the Madras High Court addressed the issue of ESI disbursements/deductions by the Principal Employer and/or the Contractor in *South India Surgical Company v. The Regional Director, ESIC*<sup>30</sup>. It ruled that when the Principal Employer lacked control and supervision over the workers of the Independent Contractor, those workers did not fall within the ambit of Section 2(9) of the ESI Act and thus were not required to as a result, it is abundantly evident that the Independent Contractors are liable for making sure their workers have adequate ESI. This ruling was followed by another one from the Madras High Court, this time from a Full Bench in the case of *ESI Corporation v. Bethall Engineering Company [C.M.A. Using the South India Surgical Company Division Bench decision of the Madras High Court, the National Company Law Tribunal [National Publication No. 1765 of 1999]* determined that workers of an Independent Contractor do not qualify as "employees" under Section 2(9) of the ESI Act if their Principal Employer does not exercise "supervision" over them. This means that the Independent Contractor, rather than the Principal Employer, would be responsible for any financial liabilities arising from those workers. There was a similar ruling by the Madras High Court in *Deputy Director, Insurance No. According to C.M.A. No. 1516 of 2010 V, ESIC v. India Pistons Repco Ltd*, the Principal Employer is accountable for ESI only if it

<sup>27</sup> Brakes India Ltd. v. EPFO, 2015 (2) LLN 233 (Mad.)

<sup>28</sup> [2015 (146) FLR 579]

<sup>29</sup> "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and — (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or 3 establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment ; or (iii) 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 ; 2 [and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ; 1 [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), 2 [and includes such person engaged as apprentice whose training period is extended to any length of time] but does not include] — ] (a) any member of 3 [the Indian] naval, military or air forces ; or 4 (b) any person so employed whose wages (excluding remuneration for overtime work) exceed 5 [such wages as may be prescribed by the Central Government] : Provided that an employee whose wages (excluding remuneration for overtime work) exceed 5 [such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period ;]

<sup>30</sup> [L.P.A. No. 74/1992]



exercises control and supervision over the Independent Contractor's employees; otherwise, the Independent Contractor is deemed responsible.

### iii) Gratuity deduction and Payment pursuant to the Gratuity Act

Establishment means a business with 10 or more employees as described in Section 1(3) of the Gratuity Act. An "employer"<sup>31</sup> is defined as "any person, firm, or corporation that exercises direct and immediate control and supervision over any of its employees" under Section 2(f) of the Gratuity Act. For further clarification, according Section 2(e) of the Contract Labour (Regulation & Abolition) Act, 1970, any place where any industry, trade, business, production, or profession is practiced is considered an establishment ("Contract Labour Act"). If an employee's employment comes to an end, any severance pay they receive is considered wages for purposes of the Payment of Wages Act, 1936 ("Payment of Wages Act"), especially Section 2(vi). If the foregoing is to be believed, the Principal Employer is the one who must pay any gratuity due to the Independent Contractor's employees upon the termination of their employment, as the Principal Employer is a "establishment" and is thus responsible for paying wages upon termination, which would presumably include a gratuity. According to Section 21(4) of the Contract Labour Act, if the Independent Contractor is primarily obligated for payment of gratuity to its employees and the Independent Contractor is unable to pay, the Principal Employer is liable for the gratuity. As a result of the aforesaid, the Madras High Court handed down its ruling in *Madras Fertilizers Ltd v. The Controlling Authority, Assistant Commissioner of Labour (Gratuity), and Ors.*<sup>32</sup> If the Independent Contractor, who engaged the workmen, failed to make the required gratuity payments in accordance with Section 21(4) of the Contract Labour Regulation Act, the Principal Employer shall be liable to pay such dues and then recover the same from the Independent Contractor, according to the ruling in. Therefore, the aforementioned ruling made it very clear that the Independent Contractor, who employs the workers, should be deemed an "establishment" for the purposes of the Contract Labour Act, and that the Independent Contractor would be primarily responsible for providing gratuity payments. If the party liable for gratuity under such Independent Contract fails to make such payment, the Principal Employer must make such payment. According to a similar line of thinking led to a decision that the Principal Employer must pay for gratuity to its employees if the Independent Contractor fails to do so, with the Principal Employer recouping the costs from the Contractor. Further, the Madras High Court held that the Principal Employer shall pay the gratuity and recover the same from the Independent Contractor in the event of defaults by the Independent Contractor in *Superintendent Engineer, Mettur Thermal Power*

<sup>31</sup> Section 2(f) of The Payment of Gratuity Act "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop— (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned, (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority, (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

<sup>32</sup> [2003 (97) FLR 275].



*Station v. Appellate Authority, Joint Commissioner of Labour, Coimbatore and Another*<sup>33</sup> relying on the Madras High Court's decision in *Madras Fertilizers Limited*.

#### IV. Obligation of Employer and Contractor under Employees Compensation Act, 1923

When an employee suffers an injury or tragically loses their life while on the job, they are entitled to financial compensation under the terms of the Employees Compensation Act, 1923. Contractor employees are included in the scope of the Act's protections. If an employee sustains injuries or dies as a result of an accident that takes place:

- At the place where the contractor is working;
- While the employee is engaged in the work that the contractor has been hired to do; and
- In accordance with the Act, the contractor is responsible for compensating the employee for the injuries or death.
- During the time when the worker is directly supervised by the contractor.

If an employee is injured or died on the job, he or she may be entitled to financial compensation based on factors like as the victim's wages, the extent of the harm, and the nature of the impairment. A contractor's obligation goes over just compensating victims of accidents; they must also adopt safety measures. Taking these measures includes doing things like making sure the workplace is safe, training workers how to avoid accidents, and using risk-free tools. If a contractor is negligent and an employee suffers harm or dies as a result, the contractor could be held responsible.<sup>34</sup> A contractor has various responsibilities under the Employees Compensation Act of 1923. Important among those are, maintain a safe work environment for the benefit of all employees and to educate workers on proper safety measures. Workers should be convinced on use of only safe tools. Workers who are injured or died on the job should be compensated for their losses and the company be informed of any incidents immediately. Further contractors may be held financially responsible for compensating injured workers and/or their families if they fail to meet any of the above requirements. The principal employer or contractor is responsible for compensating the victim's heirs or dependents.<sup>35</sup>

##### i) Liability of principal employer to pay compensation arising out of and during the course of employment.

Principal employer will be liable for payment of compensation when an employee engaged by the contractor dies in an accident arising out of employment. *State of Maharashtra v. Milhadeo Krushna Waghmode*,<sup>36</sup>

<sup>33</sup> [(2012) 3 CLR 243]

<sup>34</sup> Anwarul Hoda & Durgesh K. Rai, January 2017, Labour Regulations in India: Improving the Social Security Framework, Working Paper 331, INDIAN COUNCIL FOR RESEARCH ON INTERNATIONAL ECONOMIC RELATIONS

<sup>35</sup> <https://www.mondaq.com/india/employee-benefits-compensation/979290/engaging-contract-labour-in-india--risk-and-mitigation-measures>

<sup>36</sup> 1994 LLR 950; 1994 (69) FLR 571; 1994-II CLR 238; 1994-II LLN 829 (Born HC).

The principal employer will be liable to pay compensation in an accident to the dependents of the deceased whereas the principal employer can recover from the contractor.

#### a) Employer's liability when contractor is engaged

Section 12 of the Act foresees the employer's liability in the event of contractor engagement. Employers often use contractors instead of hiring full-time workers. For the benefit of his business, he is willing to do any labour related to it. The contractor then uses the hired worker to carry out the work. If any of these workers are hurt in an incident. The company cannot be held responsible because they are not employees of the principal employer. However, Section 12(1) now makes the principle accountable for compensation to the contractor's employees under the following conditions:

- the contractor is employed to conduct work that is integral to the principal's trade or business.
- The work of his staff was integral to the operation of his business. The incident took place on or near the property where the major employer has executed or intends to conduct the work.
- The amount of remuneration shall be determined by looking at the employee's salary with his current employer. The Act states that the primary employer is responsible for compensation payments under Section 12.

The Gujarat High Court, in its judgment delivered on 9th June, 2016, in the case of '*Bil Metal Industries v. Rameshbhai Gordhanbhai Solanki & Anr*'<sup>37</sup>, has settled a key area of dispute regarding compensation of injured workers under the Employees Compensation Act, 1923 ("Act"). The Principal Employer disputed the Commissioner's award of INR 1,58,615.43 in compensation, with interest of 12% and a penalty of 25%, to be recovered jointly and severally from the Contractor and the Principal Employer.

The Principal Employer ("Appellant") argued that he had no duty to make a compensation payment under the Act because the employee in question was not technically "under the employment" of the Principal Employer or "on the payroll." Further, it claimed that the worker was injured during the repair work of the machine undertaken by the contractor on behalf of the Principal Employer, which they claimed to be outside the 'ordinary work' of the Principal Employer, citing the judgment in the R.M Tahir case<sup>38</sup>, which stated that the Contractor and not the Principal Employer shall be liable to compensate the injured worker in case the injury occurred outside the 'ordinary work' of the Principal Employer. The Gujarat High Court ruled against this viewpoint. It was determined that the Principal Employer could not avoid culpability because the repair of the machine was not outside the 'ordinary operations' of the organization. legal standing This lawsuit restates the legal standing and outlines the parameters of Section 12 of the Act. Compensation for injuries sustained by a Contractor employee while performing services for the Principal Employer is addressed in Section 12. Injured workers who are subcontractors but whose work is "ordinarily part of the principal's trade or business" are entitled to compensation under Section 12(1) from their principle employer. However, in the event that the Principal Employer is found obliged to pay compensation, he may seek reimbursement from

<sup>37</sup> First Appeal No. 1475 Of 2008, Decided on June 09, 2016

<sup>38</sup> AIR 1929 Bombay 179

the Contractor under Section 12(2) of the Act; in the absence of a contract, the Commissioner shall resolve any disputes. The Act provides that a worker who sustains an injury may file a claim for compensation against the Contractor. Only accidents that take place on the premises of the Principal Employer are covered by Section 12(4).

Paying compensation to an injured party is a Principal Employer's responsibility<sup>39</sup>, if the work is within the scope of the Principal Employer's ordinary business activities, and the Principal Employer may seek reimbursement from the Contractor.<sup>40</sup> *J.D.P Associates Chennai v/s K. Malakreddy*<sup>41</sup> it is held by the Madras High Court that, the Principal Employer will be liable to pay compensation in an accident to the dependants of the deceased whereas the Principal Employer can recover the same from the contractor. Any entitlement to indemnification is subject to the discretion of the Commissioner unless there is a written agreement between the contractor and the Commissioner providing for such indemnification.

## V. Obligation of principal employer and contractor under minimum wages act

To secure equitable remuneration for workers, advance social justice, and keep a balance between labour rights and economic growth, minimum wage compliance is an essential part of India's labour laws. The relevance of minimum wage compliance in India, the current legal framework, and the steps that businesses can take to ensure compliance will all be discussed in this article. It will also examine the obstacles that companies and workers experience when trying to maintain compliance and offer suggestions for resolving such issues. Workers in certain "**scheduled occupations**" in India are guaranteed a minimum salary by the Minimum Wages Act of 1948, which was passed by the Indian Parliament. Aside from the few businesses officially exempted by the Central Government, the Act covers every business in India. Specifically, the Minimum Wage Act mandates the following responsibilities of contractors. Employers have the responsibility to ensure that all employees are paid at least the minimum wage and ensure that all payments to employees are made in a timely manner (at least once a month); and should keep accurate records of all payments made to employees. A contractor can face criminal charges under the Act if they fail to meet any of these responsibilities. If you don't follow the rules, you could face jail time and/or a hefty fine.

In addition to the obligations under the Minimum Wages Act, employers and contractors may also be subject to other laws and regulations that govern the employment of contract labour. These laws may vary from state to state, so it is important for employers and contractors to familiarise themselves with the relevant laws in their area. Here are some additional things that employers and contractors should keep in mind: The minimum wages are set by the government and are different for different occupations and regions.

Under the Contract Labour (Regulation and Abolition) Act, 1970, as and when the contractor fails to make of the dues of the workmen, the principal employer is liable to make such payments to the workmen. However, the principal employer may recover such amounts from the contractor out of the bills of the contractor or from

<sup>39</sup> Section 12(1) of the Employees Compensation Act

<sup>40</sup> I Bid section 12 (2)

<sup>41</sup> (2001) IT LLJ 535: 2001 LLR (Sum) 1071 (Mad. HC)

the payable dues to the contractor as per terms and conditions of the contract with the contractor or otherwise.<sup>42</sup> Employers are obliged to pay wages at the right time. In order to meet the Obligations of Employer under the Minimum Wages Act, The Payment of Wages Act of 1936 was enacted. The statute is intended to provide redress for unlawful deductions made by the employer and unjustifiable salary delays. The Payment of Wages Act governs the payment of wages to employees of any manufacturing industry or railway administration, or by a person executing a specific contract with a railway administration or an industrial facility. According to this statute, an employer is required by law to pay wages within the specified time frame.

## VI. Obligations of Employer and Contractor Under Payment of Wages Act

To ensure that workers were paid fairly, the Payment of Wages Act of 1936 was passed. The statute is meant to protect workers from unauthorized deduction from the wages, and unreasonable delays in payment. An employee of a factory or the Railway Administration, or a person carrying out a specified contract with the Railway Administration or other industrial facility, is entitled to be paid in accordance with the Payment of Wages Act. This law mandates that wages be dispersed to employees within the specified time frame. This piece of legislation examines in depth the Payment of Wages Act, 1936 and the employer's responsibilities within. As per the provision of Section 3 of the Payment of Wages Act, every employer shall be responsible for the payments of wages to all persons employed under him/her.<sup>43</sup> An employer's designated payee must be designated in accordance with the Payment of Wages Act.<sup>44</sup> The employer will be fined 2,000 rupees if they have not appointed a payroll administrator to handle employee payments.<sup>45</sup>

### i) Obligation to Fix Wages Periods

The person in charge of paying wages must determine pay period lengths. A month is the maximum acceptable length for a pay period. The provision of payment of wages statute states that a worker's wage should be paid within a period of no more than one month.<sup>46</sup>

<sup>42</sup> -Indance Bottling Plant through the Manager (IR) NC. Sinha vs. Authority under Payment of Wages Act and Ors. 2017 (P&H H.C.)

<sup>43</sup> . **Responsibility for payment of wages.**—(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,— (a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948); (b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments; (c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned; (d) in the case of contractor, a person designated by such contractor who is directly under his charge; and (e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment. (2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.]

<sup>44</sup> Section 3 of the Payment of Wages Act, 1936

<sup>45</sup> Section 20 of Payment of Wages Act, 1936

<sup>46</sup> I Bid Section 4



## ii) Requirement to make wage payments by the due date

If less than one thousand people are employed by a railway, factory, industry, or other establishment, wages must be paid no later than the seventh day of earnings periods. If more than one thousand people are employed by a railway, factory, industry, or other establishment, wages must be paid no later than the tenth day of the earnings periods. If you're working on a dock, wharf, jetty, or in a mine, you have seven days from the day you finish your shift to pay any outstanding wages that were determined upon completion of the total tonnage amount of the waggons (loaded/unloaded) or ships. Any employee whose employment is terminated by the company must be paid all accrued but unpaid wages no later than the second business day after the day on which the termination of employment takes effect. Paydays for railway workers and those who receive their pay from the Central or State government as daily rated employees of the Public Works Department (PWD) should be determined in coordination with the Central Government.<sup>47</sup>

## iii) Mode of paying wages

Pay will be made in the form of current coins and notes, as well as via cheque or bank account credit. Pay checks, direct deposits, and electronic fund transfers are all acceptable methods of making wage payments to employees.

[Provided that the appropriate Government may, by notification in the Official Gazette, designate those industrial or other establishments whose employers are required to pay their employees' wages exclusively by cheque or by crediting the wages to their bank account.<sup>48</sup>

## iv) Deduction under Payment of Wages Act

Any payment made by the employees to his employer shall be deemed a deduction under this payment and wages act.

### a) Authorised Deductions

The authorised deduction under Payment of wages act is explained in detail below:

- Imposing fines on the employees
- Deduction of wages for absence from duty
- Deduction wages for payments to cooperative societies and insurance schemes
- Deduction wages for damage or loss
- Deduction of wages for house accommodation and services rendered
- Deduction of wages for recovery of loans

<sup>47</sup> Section 5 of Payment of Wages Act, 1936

<sup>48</sup> I Bid Section 6 6

- Deduction for recovery of advances<sup>49</sup>

### **b) Obligation to observe rules for imposing fines**

Any employer can impose fine on the employee, which is an authorised deduction. The obligations of the employers before imposing any fines on the employee are explained below:

- The employer can impose fines that are given in the list of acts and omissions made by them, which must identify acts and omissions from within the list already approved by the state government or the appropriate authorised authority for the entire industry.
- Notice regarding the employer's list of acts and omissions owing to which fine can be imposed on the employees should be displayed in the conspicuous part of the work premises.
- According to this act, no fines should be imposed on the employee until he/she has been provided with an opportunity of showing cause against the fine
- The total amount of fines imposed should not exceed three per cent of the employee's wages.
- No fine should be imposed on any employee below the age of 15 years.
- The fine imposed on any employee will not be recovered from him through instalments.
- The fine will not be recovered from the employee after the expiry of ninety days from the date on which it was imposed.
- All fines need to be recorded in the register maintained by the persons responsible for fixation of wages.
- Fines should be credited to the common funds and to be utilised for the benefit of the employees.

### **c) Rules for Deduction of Wages for Absence**

Any employers can deduct wages for absence from duty, which is an authorised deduction. The obligations of the employer deducting wages from employees are explained below:

- The employer can deduct some wages for the absence in the same proportions as the employee absence bears to the total time he/she was obliged to do the work.
- If ten or more workers, acting in concert, absent themselves without giving notice to the employer or without any reasonable cause, then the employer cannot make deductions more than an amount exceeding wages of 8 days.
- If the employee absence is for the period between employee's dismissal and reinstatement, then such absence cannot be deducted by the employer<sup>50</sup>

<sup>49</sup> Supra Note 47, section 7

<sup>50</sup> Section 7 (2) and Section 9 of Payment of Wages Act, 1936

**d) Deduction of Wages for Damage or Loss of Goods**

Any employer can deduct wages for damage or loss under the Payment of Wages Act.

- The employer should not deduct the wage exceeding the amount of loss or damage of goods occurred due to neglect or default of the employee
- It should be ensured that the employee had the custody of the goods which were damaged
- The employer needs to give an opportunity to the employee for showing cause before deducting any wages for damage.<sup>51</sup>

**v) The Obligation to Afford Facilities to Inspector**

Every employer will afford an Inspector all reasonable facilities for making supervision, any entry, inspection, examination or enquiry under Payment of wages act.<sup>52</sup>

**vi) Display of Abstract of the Payment of Wages Act**

The person responsible for the payment of an amount in establishments has to display a notice containing the abstracts of Payment of Wages Act and the rules made regarding the payment. The note should be in English and the language of the majority of employees in the establishment.<sup>53</sup>

**vii) Payment of Wages in case of Death of an Employee**

- If the wages of an employee could not pay because of his death, such wages should be paid to the person nominated by the employee as per the provision of the Payment of Wages Act.
- If there is no nomination has been made by the employee or for any reason such wages could not be paid to the nominee, such amount need to be deposited with the prescribed authority who is dealing the amounts in an establishments<sup>54</sup>

**viii) Obligation to Maintain Registers and Records**

As per the provision of the Payment and wages Act, every employer should maintain a register and records. The register should contain following particulars.

- Details of employees
- The work performed by the employee
- The wages paid to employees
- The deduction made from their wages

<sup>51</sup> I Bid Section 10

<sup>52</sup> Supra Note 50, section 14 A

<sup>53</sup> Supra Note 50, Section 25

<sup>54</sup> Section 25 A of Payment of Wages Act, 1936

- The receipts were given by them
- Other particulars of employment
- Every register and record maintained under this act will be presented for three years after the date of the last entries made.<sup>55</sup>

## VII. Obligation under Payment of Bonus Act 1965

Establishments with 20 or more workers are required to give employees a bonus based on profits or output or productivity and items connected thereto under the Payment of Bonus Act, 1965.<sup>56</sup> Every organisation have a responsibility to pay at least 8.33% of their employees a bonus.<sup>57</sup> Act states that an employee's bonus, including any productivity-linked bonuses, cannot be more than 20% of their basic income or wage for any given accounting year.<sup>58</sup> For the first five years after their founding, nonprofits are exempt from the act's requirements.<sup>59</sup> No matter the company's financial situation, bonus payments must be made in accordance with Sec 16-1b. Under Section 32, it does not apply to organisations like LIC, general insurance, dock yards, the Red Cross, universities, schools, social welfare agencies, hospitals, etc. Companies where workers have a written contract with management are exempt. It does not apply to businesses that have been granted an exemption by the relevant authorities, such as hospitals.<sup>60</sup>

### a) Eligibility to Receive a Bonus:

All the employees drawing less than Rs.21000 per month (basic + DA, minus other allowances). And had worked for thirty calendar days for the financial year are eligible for receiving bonus<sup>61</sup>. If an employee is terminated for dishonesty, theft, sabotage of any property of the establishment, or violent behaviour while on the job in the company's premises, they will not be eligible for the bonus.<sup>62</sup> Bonuses are paid on the greater of Rs. 7,000 or the minimum wage for scheduled job as set by the competent Government. The bonus will be awarded at a rate between 8.33% and 20%. The maximum bonus payment is Rs. 250,000.<sup>63</sup>

The principal employer shall not be liable for the implementation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, with respect to such labour engaged by the Contractor, except to the extent that the Contractor engages such labour for or on his own behalf in the course of supplying the Finished Products to the Manufacturer. When an independent contractor hires employees to do work for someone else, the client takes on the role of the job's principal employer. The Division Bench judgement of the Kerala High

<sup>55</sup> Section 13 A ) of Payment of Bonus Act, 1965

<sup>56</sup> I Bid Section 1(3) (a)

<sup>57</sup> Supra Note 55, section 10

<sup>58</sup> Supra Note 55, Section 31A

<sup>59</sup> Supra Note 55, Section 16 (1)(A)

<sup>60</sup> Section 32 ) of Payment of Bonus Act, 1965

<sup>61</sup> Supra Note 60 Section 8

<sup>62</sup> Supra Note 60, Section 60

<sup>63</sup> I Bid Section 11



Court in *Kerala State Civil Supplies Corporation vs Industrial Tribunal*,<sup>64</sup> is instructive to consider at this juncture. The issue of whether the petitioner's workers employed on contract base were entitled to a bonus was before the High Court. The petitioner argued that the workers employed for loading and unloading items at the go down on contract are not eligible to bonus under the Act since they are not its employees and the Bonus Act only provides for bonus to its employees. The court concluded that the contractor's loading and unloading workers do not qualify as employees of the petitioner under the Act after reviewing the evidence and the law. It is also important to bring up the decision of the Karnataka High Court in *Sachindra Kumar, Factory Manager, Hindustan Unilever Ltd vs. State of Karnataka*.<sup>65</sup> The case before the court was a criminal revision under Section 482 of the Criminal Procedure Code. In this case, the Company faced legal action because of allegations that it had failed to provide independent contractors with the same bonus opportunities as full-time employees. The Court stated that contract workers are not included in the definition of "employee." The Court determined that the Payment of Bonus Act does not apply to contract workers on an equal basis with regular employees for the purpose of bonus payment. Wage payment obligations are spelt forth in Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970. According to subsection (1), a contractor is liable for the payment of wages to any worker under his direct employ. If the Contractor fails to make payment of wages within the prescribed period or makes short payment, as provided in subsection (4), the Principal Employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the Contractor. Principal employers are also obligated to send a representative to witness the payment of contractor employees' salary in accordance with the law.

### **VIII. Obligation of Contractor and Principal Employer under The Private Security Agencies Regulations Act, 2005**

Businesses in the banking, IT, finance, and industrial sectors, among others, often use private security organisations to provide a range of security-related services. The Private Security Industry Regulation Act of 2005 (PSARA, 2005) was enacted to promote uniformity in industry-wide professionalism. Without a PSARA licence, an agency cannot operate legally. The security agencies not only offer employment in security services, but also provides the opportunity to receive training for a career in the security industry.

#### **i) Obligation to provide training to the Security Guards**

In order to give training to its candidates, the agencies must engage into a memorandum of understanding with a training facility with recognised training institutes. An agency that invests in its employees by offering training will attract and retain a more talented and dedicated workforce.<sup>66</sup>

<sup>64</sup> 2007 (115) FLR 569/ 2007 II LLJ 884

<sup>65</sup> 2013 (138) FLR 193/ 2013 LLR 595

<sup>66</sup> Section 11 of Private Security Agencies Regulations Act, 2005

**ii) Obligation for PSARA License**

The final step in applying for a PSARA Licence is submitting the application in Form No – I which is an application for grant of licence/ renewal of licence to engage in the business of private security agency to the appropriate state agency. In order to verify the applicant's background, Form-II must be included with the application. Which consist of entire details of members running the private security business their assets, liabilities and all. The next stage involves a verification by the police. After the Form-I has been submitted, police officials shall conduct the necessary verification. If the agency is a corporation or partnership, each of its directors will need to undergo criminal background checks. After verifying the application and supporting documents, including the police department's No Objection Certificate (NOC), the authority will decide whether to issue a PSARA Licence or reject the application.<sup>67</sup>

**iii) Obligation to appoint supervisor**

The applicant is responsible for appointing supervisors in accordance with PSARA, 2005. The managers are responsible for coordinating and directing the security guards' daily operations. The appointed supervisors must have served for at least three years in the armed forces or navy.<sup>68</sup>

**iv) Obligation to comply Conditions of licence.**

The State Government may establish rules outlining the prerequisites for receiving a licence under this Act. These prerequisites may include, but are not limited to, completing a specified amount of training, disclosing information about the individuals who make up the agency, and informing the Controlling Authority of any changes to the agency's location, management, or criminal charges.<sup>69</sup>

**v) Obligation to Exhibit licence**

Every private security agency shall exhibit its licence or copy thereof in a conspicuous place of its business.<sup>70</sup>

**Conclusion**

Employing Security Guards on contract base is widely used in India across several industries and occupations, including armed security jobs, despite the resulting consequences. The institution of contract labour may seem like an effort to bypass labour regulations. Currently, there has been a gradual transition towards effective administration of contract employment, which includes providing benefits that are equal to those given to permanent employees, under specific conditions. Although contract labourers may not receive the same level of job security and respect as regular employees, the need for their services continues to increase. Hence, given the current situation, it is imperative to enact legal reforms that would enhance the safeguarding of the rights of contract employment. The SAIL Judgment<sup>46</sup> has definitively clarified the judiciary's position on contract work. It is evident that neither Section 10 of the CLRA nor any other provision in the CLRA explicitly

<sup>67</sup> Supra Note 66, Section 4,5 and 6

<sup>68</sup> Supra Note 66, section 9

<sup>69</sup> Supra Note 66, Section 11

<sup>70</sup> Section 12 of Private Security Agency Regulation Act, 2015

or implicitly allows for the automatic absorption of contract labour upon the issuance of a notification by the appropriate Government under sub-section (1) of Section 10, which prohibits the employment of contract labour in any process, operation, or other work in any establishment. The primary employer is not obligated to assimilate contract labour employed at the relevant firm. The role of contract labour must be understood within the context of an increasing trend to break down the manufacturing process into separate components and delegate the supply of these parts to various producing units through outsourcing. This phenomenon has predominantly escalated alongside the expansion of information technology. If outsourcing results in increased specialisation in the production of certain services, leading to improved efficiency and cost reduction, it has the potential to encourage greater demand for these services and thus provide employment opportunities. 47 Hence, the system of contract work is an unavoidable negative aspect that needs to be well controlled in order to safeguard the welfare of contract labourers and the whole industry. In the present period, although measures have been implemented to safeguard the rights of individuals engaged in contract employment, it is also necessary to take into account the interests of the industry. Providing employment chances is crucial, as implementing restrictive or discouraging policies might result in a decrease in job prospects.

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