

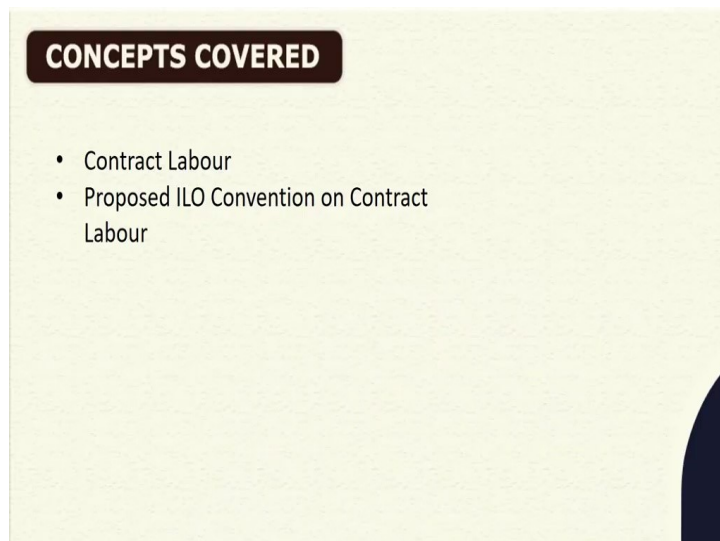
New Labour Codes of India
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Lecture 54
Contract Labour and Proposed ILO Convention

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Dear students in this class, we are going to discuss about contract labour and who are the contract labour and what are the definitions and what are the responsibilities of the contractor and what is the responsibility of the principal employer and also the proposed convention ILO convention with regard to the contract labour roles, so, we are going to discuss in this particular class.

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KEYWORDS

- Licensing of contractor
- Issue or renewal of license
- Commission or cost of worker
- Revocation, suspension and amendment of license
- Liability of principal employer
- Experience certificate
- Employment of contract labour

• Contract Labour in India



So, here we know, who is contract labour? So, for a long period of time contract labour are going on and then the Act came into existence to control and regulate contract labour in India, this is mainly because of the exploitation of employees in a particular sector. So, there is no particular working time and there are no specific wages and there is no wage with holidays etc.

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- **Concept of Contract Labour under The Contract Labour (Regulation and Abolition) Act, 1970 - Repealed**

So, contract Labour has been abolished actually or regulated, I would say that it is not abolished, it is regulated. So, the Contract Labour Regulation and Abolition Act 1970 is repealed through the present Occupational Health and Safety Code. So, the concept of contract Labour has not been changed. So, it is not abolished as such, but contract Labour has been regulated through the 1970 Act also and through the new code as well.

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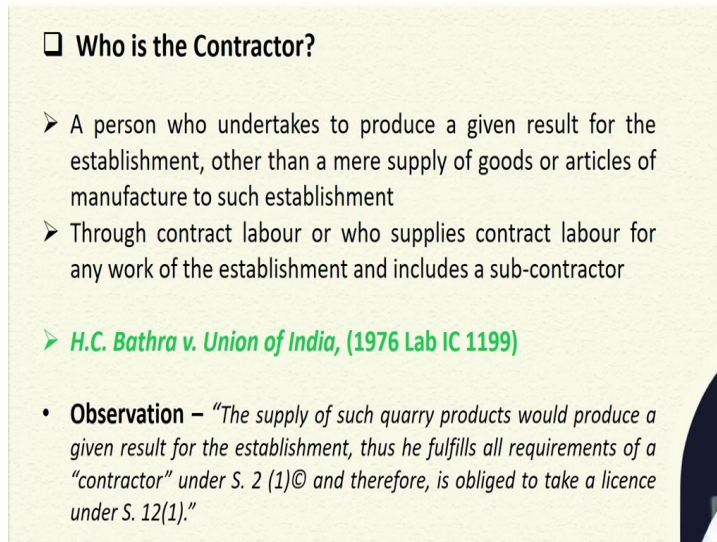
□ Who is Contract Labour?

- A workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer.

So, the concept of contract labour, so, we know that they are used as employed as a contract labour connection with a particular work and he is hired or he may be doing such particular kind of work through a contractor. So, maybe with or without the knowledge of the principal employer, he is, basically perceived to be contract labour. So, basically a worker who is

working through a contractor is contract labour. This is the general perception of contract labour.

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Who is the Contractor?

- 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 and includes a sub-contractor

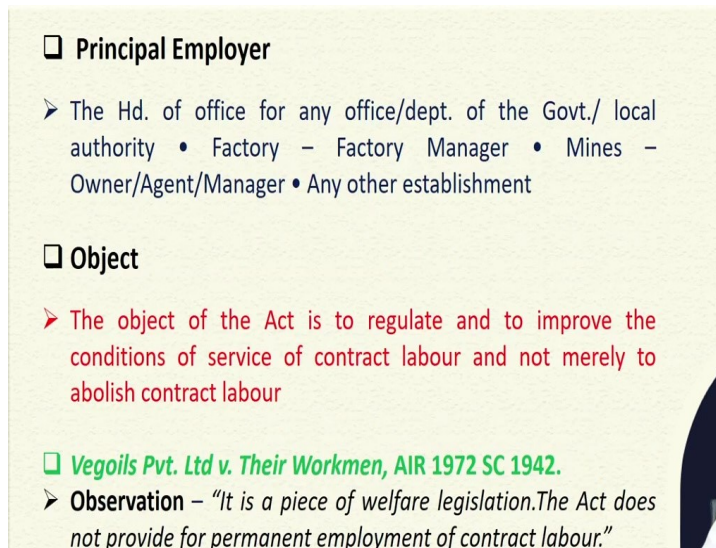
➤ **H.C. Bathra v. Union of India, (1976 Lab IC 1199)**

- **Observation** – *“The supply of such quarry products would produce a given result for the establishment, thus he fulfills all requirements of a “contractor” under S. 2 (1)© and therefore, is obliged to take a licence under S. 12(1).”*

And then the contractor. So, who is the contractor? A contractor is a person who is undertaking to produce a given result. So, the contractor may be a contractor of a building. So, he is constructing a bridge, he may be constructing a road, he may be constructing, any other things. So, who is producing a particular result for a particular payment? So, this is not just a supply of goods or articles or a manufacturing establishment. So, he is doing it through contract labour and also who supplies contract labour for any work of the establishment that means, including a subcontractor.

So, in H. C. Bathra vs Union of India 1976 case, the court observed that the supply of such quality products would produce a given result for the establishment. Thus, he fulfils all the requirements of a contractor under Section 2(1)(c), and therefore, is obliged to take a licence under Section 12(1). So, if somebody is supplying quarry products, the quarry products include, metals or powders, stone, crushing powders, etc ,he is a contractor, so, he has to take a licence under this particular legislation.

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- ❑ **Principal Employer**
 - The Hd. of office for any office/dept. of the Govt./ local authority • Factory – Factory Manager • Mines – Owner/Agent/Manager • Any other establishment
- ❑ **Object**
 - The object of the Act is to regulate and to improve the conditions of service of contract labour and not merely to abolish contract labour
- ❑ **Vegoils Pvt. Ltd v. Their Workmen, AIR 1972 SC 1942.**
 - **Observation** – “It is a piece of welfare legislation. The Act does not provide for permanent employment of contract labour.”

So, the contractor is the intermediary between the worker and the principal employer. So, in the case of central government or state government departments it's the head of the department, in the case of the factory it is the manager, in the case of the mines manager, agent or owner or any other particular person. So, in all cases, it is the managers.

So, the objective of this particular Act at that point of time was very clear to regulate and improve the conditions of service of contract labour and not merely to abolish contract labour. So, even though there is a misrepresentation of abolishing them in the title, it is basically for the regulation of contract labour.

In Vegoils Private Limited versus Their workmen in 1972, the Supreme Court observed that it is a piece of welfare legislation. The Act does not provide for permanent employment of contract labour, because the contractor is a person who is there to work to complete a particular task. So, once the work is over, so, the worker may be to shift from one place to the other place, and the contractor to shift from one place to another place. So, there is no question of permanent employment in contract labour. So, the Supreme Court very clearly said that who is or what is the nature of contract labour. Contract labour is temporary in nature.

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□ Applicability

The Act is applicable to:

- every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour;
- every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen

□ Non – Applicability

- The Act is not applicable on any establishment in which work only of an **intermittent or casual nature is performed.**
- Any work performed shall not be deemed to be of intermittent nature.
- Work performed in an establishment shall not be deemed to be of casual nature if:
 - i. The work was performed for **more than 120 days in the preceding 12 months or;**
 - ii. It is of a **seasonal character and is performed for more than 60 days in a year.**
- The respective Government may prohibit employment of contract labour in any establishment after reviewing the working conditions and benefit extended.

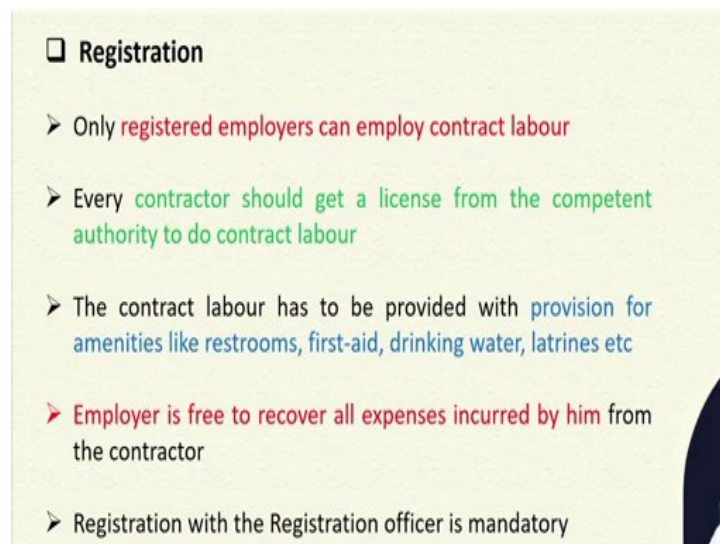
And this is applicable to 20 or more workmen employed in any year and every contractor who employs or who is employed on any day 20 or more workmen. So, for any establishment that uses 20 or more workmen, for every contractor who employs 20 or more workmen this Act is applicable.

And certain non-applicability of the Act also there. The Act is not applicable to establishments in which work only of an intermittent casual in nature is performed. So, if we know that it is intermittent or very casual nature, then this Act is not applicable and it is work performed in an establishment shall not be deemed to be of casual nature. If the work is done for more than 120 days, so, you cannot say that somebody who is working is a casual worker.

So, if any 12 months period, if somebody is working for more than 120 days, it cannot be considered as intermittent or casual in nature. And also, nobody can claim that it is even though it is seasonal in character and it is more than 60 days in a year. So, even though a particular work is casual in nature or seasonal in character, he works for more than 60 days, you cannot tell that it is intermittent or casual in nature.

So, the state government and central government prohibit the employment of contract labour in any establishment after reviewing the working conditions and benefits extended. So, I do not think any government is going to prohibit contract labour. So, the objective of the new code is also to regulate.

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And registration of the Labour contractors is mandatory. So, contractors should get a licence from the competent authority to do contract labour. So, that means, if he wants to keep the labour he should get a licence, should do registration, registration must be mandatory.

And the provision for amenities the contract labour should be provided with amenities like restrooms, first-aid, drinking water, latrines, etc. And the employer is free to recover all expenses incurred by him from the contractor if he is spending. So, registration of the Labour contractors is mandatory under the provisions of this particular Act.

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❑ Sub – Contractor

- The state and Central government can prohibit contract labour. S.10.
- Sub-contractor also come within the definition of “contractor.” s.2(c).
- In violation of the provisions of Act will attract penal punishments.

❑ Liability and Responsibilities of Principal Employer

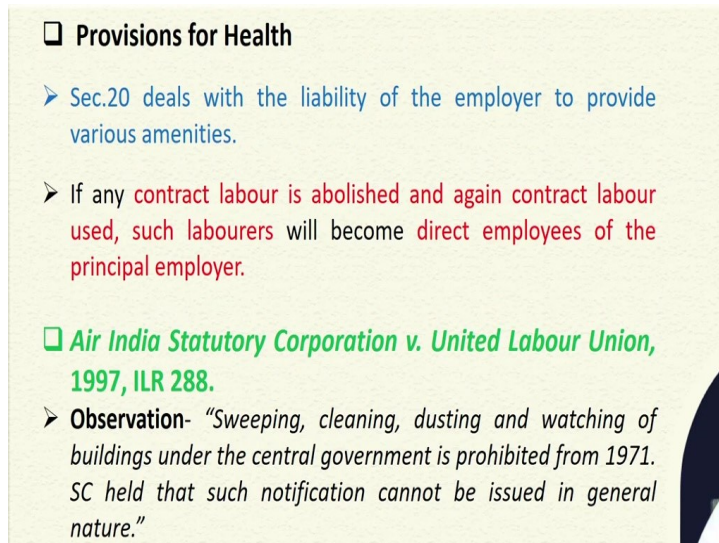
- The Principal Employer shall provide the essential amenities like Canteen (above 100 contract labours), rest rooms, drinking water facilities and first aid facilities if the same is not provided by the Contractor (Sec 16 to 19).
- The expenses incurred on amenities by the Principal employer may be recovered from the contractor either by deduction of any amount payable to the contractor under any contract or as a debt payable by the contractor (Section 20).

Even subcontractors will come up with a definition of the contractor. So, the penal punishments apply to subcontractors as well which we saw in the last class. So, the liability and responsibilities of the principal employer cannot go away, even though he appoints a contractor.

So, the principal employer should provide the basic amenities like a canteen for above 100 contract labours are employed. So, there must be restrooms to be provided. Drinking water facilities are to be provided. First Aid facilities to be provided. If the contractor is failed to do this. So, that means ultimately it is the duty of the principal employer to provide the basic amenities.

So, the expenses incurred on amenities by the principal employer may be recovered from the contractor either by deduction of a particular amount payable to the contractor or as a debt payable by the contractor under Section 20. So, this provision is very clear, it is the duty of the employer to provide basic amenities if the contractor fails to provide these basic amenities.

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❑ Provisions for Health

- Sec.20 deals with the liability of the employer to provide various amenities.
- If any contract labour is abolished and again contract labour used, such labourers will become direct employees of the principal employer.

❑ Air India Statutory Corporation v. United Labour Union, 1997, ILR 288.

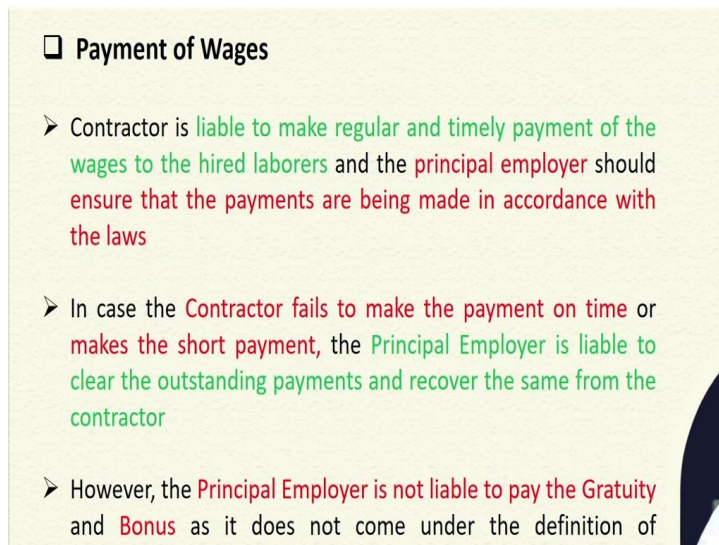
- **Observation-** "Sweeping, cleaning, dusting and watching of buildings under the central government is prohibited from 1971. SC held that such notification cannot be issued in general nature."

And there must be provisions for health. So, the liability of the employer to provide various amenities. So, when if any contract labour is abolished, and again contract labour is used, such labour will become direct employees of the principal employer. So, once the contract is over if again the employees are used by the principal employer, they will become permanent employees of the principal employer.

So, in Air India Statutory Corporation versus United Labour Union, 1997 the court said that sweeping, cleaning, dusting and watching buildings under the central government is prohibited from 1971. And the Supreme Court held that such notifications cannot be issued in general nature.

So, sweeping or cleaning cannot be prohibited. So, it is to be now we know that almost all government offices are contracted. These contractors are used for these particular purposes. So, Supreme Court said that there cannot be a general prohibition general notification. So, it is very clear these contractors can be used for these particular purposes.

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❑ **Payment of Wages**

- Contractor is liable to make regular and timely payment of the wages to the hired laborers and the principal employer should ensure that the payments are being made in accordance with the laws
- In case the Contractor fails to make the payment on time or makes the short payment, the Principal Employer is liable to clear the outstanding payments and recover the same from the contractor
- However, the Principal Employer is not liable to pay the Gratuity and Bonus as it does not come under the definition of

And whose responsibility is to pay wages to the contract workers? So, the basic liability is with the contractor to make regular payments or timely payments to the contract labours. But it is the duty of the principal employer to ensure that the payments are being made in accordance with the laws. If the contractor fails to make the payment on time or makes short payments, the principal employer is liable to clear the outstanding payments and he can definitely recover it from the contractor.

But, in the case of gratuity and bonus, it is the duty of the principal employer to pay gratuity and bonus, gratuity and the bonus are not going to come within the definition of wages. So, the payment of wages is basically with the contractor. And if the contractor fails to pay the wages, then it is the duty of the principal employer to pay the wages.

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❑ **Benefits**

- Contract Employees are eligible for ESI and EPF benefits as defined under the respective Act.
- The provisions of:
 - i. Factory Act;
 - ii. Payment of Wages;
 - iii. Minimum Wages Act;
 - iv. Industrial Disputes Act; and
 - v. Workmen's Compensation Act

is duly applicable to Contract Labourers under the Contract Labour Act.

And contract employees are eligible for different benefits under the Social Security Code also, like ESI, and Employees Provident Fund benefits apply to them as well. And especially provisions of Factories Act are also applicable, Payment of Wages Act, Minimum Wages Act, Industrial Disputes Act, Workmen Compensation Act, all these Acts are applicable to contract labours as well.

So, payment of wages, minimum wages, and industry disputes are common and contract labours are eligible for workman's compensation. And Social Security, ESI and PF are also that they are eligible to get.

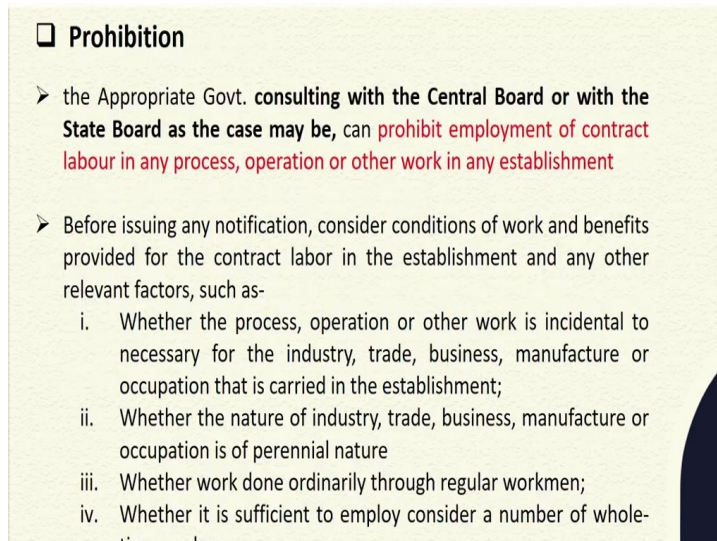
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❑ **Principal Employer**

- The Principal employer must ensure the disbursement of wages through the Contractor within the expiry of the prescribed period by nominating a representative.
- If the Contractor fails to make a payment or makes a short payment then, the principal employer shall be liable to make payment of wages in full or the unpaid balance and recover the amount so paid from the Contractor u/s. 21

And it is the duty of the principal employer to see that the disbursement of wages is made by the contractor or his representative. If the contractor fails to make a payment or makes a lesser payment, it is the complete responsibility is going with the principal employer. So, the principal employer is, have to pay the wages.

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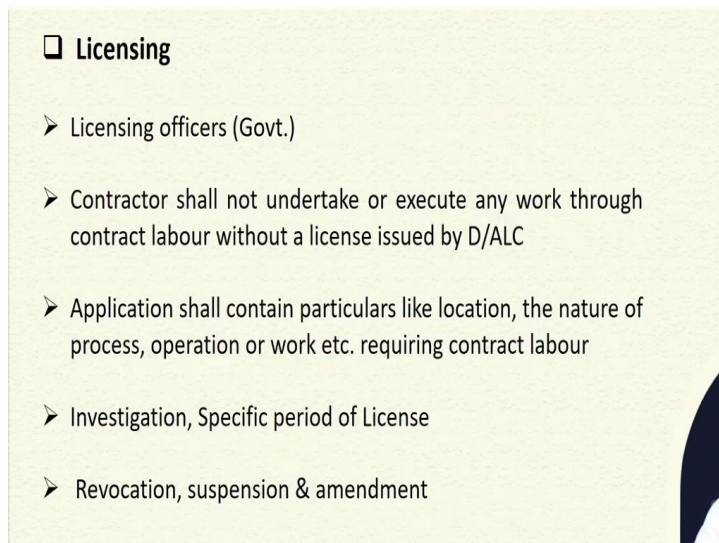
❑ Prohibition

- the Appropriate Govt. **consulting with the Central Board or with the State Board as the case may be**, can **prohibit employment of contract labour in any process, operation or other work in any establishment**
- Before issuing any notification, consider conditions of work and benefits provided for the contract labor in the establishment and any other relevant factors, such as-
 - i. Whether the process, operation or other work is incidental to necessary for the industry, trade, business, manufacture or occupation that is carried in the establishment;
 - ii. Whether the nature of industry, trade, business, manufacture or occupation is of perennial nature
 - iii. Whether work done ordinarily through regular workmen;
 - iv. Whether it is sufficient to employ consider a number of whole-time workmen

And here, there are some prohibitions. So, the governments can prohibit consulting with the central board or with the state boards, and prohibit employment of contract labour in any process a particular operation or other work in an establishment.

So, before such prohibition the appropriate government to look into certain matters like whether the process operation or other work is incidental to or necessary for the industry, particular business or manufacturer or occupation that is carried in the establishment. Whether the nature of the industry, trade, business, manufacturer, or occupation is perennial in nature. Whether work is done ordinarily through regular workmen. Whether it is sufficient to employ consider a number of whole-time workmen. So, all these are some of the grounds to be taken into consideration before prohibition by the appropriate governments.

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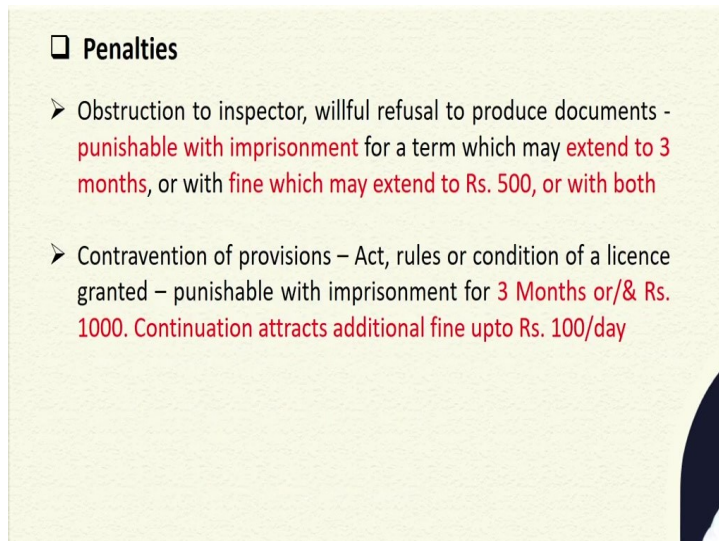


❑ Licensing

- Licensing officers (Govt.)
- Contractor shall not undertake or execute any work through contract labour without a license issued by D/ALC
- Application shall contain particulars like location, the nature of process, operation or work etc. requiring contract labour
- Investigation, Specific period of License
- Revocation, suspension & amendment

And in licensing, we said that licensing of the contractor is mandatory. So, without a contract, without a licence, the contractor should not undertake any contract labour. So, the obligation, there is a required specific application. So, the contractor has to apply through this particular application then the authorities will investigate this particular application. And then the licence is granted or the licence may not also be granted.

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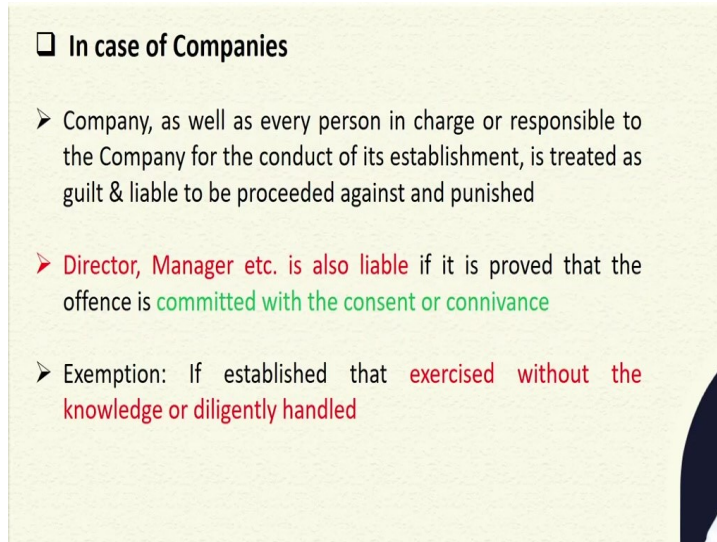
❑ Penalties

- Obstruction to inspector, willful refusal to produce documents - punishable with imprisonment for a term which may extend to 3 months, or with fine which may extend to Rs. 500, or with both
- Contravention of provisions – Act, rules or condition of a licence granted – punishable with imprisonment for 3 Months or/ & Rs. 1000. Continuation attracts additional fine upto Rs. 100/day

There are penalties, for example, the case of obstruction to the inspector, or willful refusal to produce documents all these are punishable with imprisonment extending to 3 months or with a fine which may extend to 500 rupees or both. These are, what we are discussing now about

the old law. So, in the new law, these punishments are very high. So, it was old it is very interesting to note that it was only 3 months punishment or 500 rupees fine or both.

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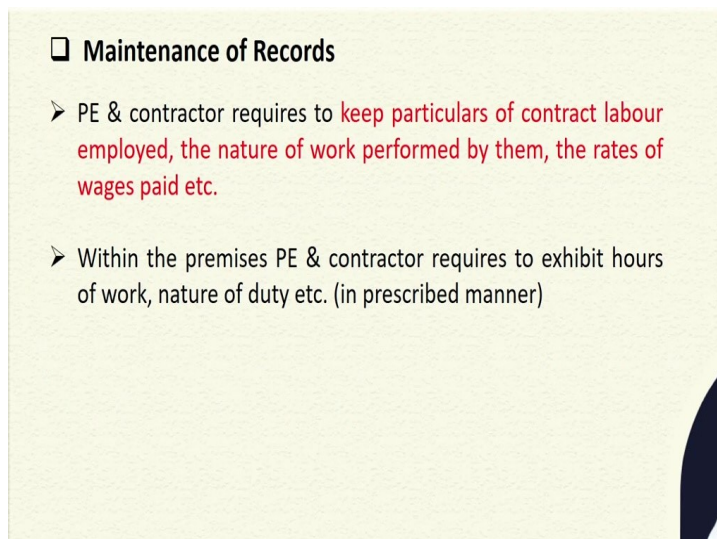


❑ In case of Companies

- Company, as well as every person in charge or responsible to the Company for the conduct of its establishment, is treated as guilt & liable to be proceeded against and punished
- **Director, Manager etc. is also liable** if it is proved that the offence is **committed with the consent or connivance**
- Exemption: If established that **exercised without the knowledge or diligently handled**

In the case of companies who are going to be responsible for the violation of any of the provisions. So, it is the director, manager or is liable and if it is usually in the case of companies, it is who is in control of the affairs of the company who is responsible, it can be the director it can be manager etc. So, the only exception is if they can prove that it is exercised without the knowledge or identity or diligently handled without their knowledge if they have done. So, in the case of companies also the liability is very clear with the managers or with the directors.

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❑ Maintenance of Records

- PE & contractor requires to **keep particulars of contract labour employed, the nature of work performed by them, the rates of wages paid etc.**
- Within the premises PE & contractor requires to exhibit hours of work, nature of duty etc. (in prescribed manner)

And in a very the contractor Licensed under this particular Act has to keep particulars of contract labour and nature of work performed and the rate of wages paid etc. So, that means maintenance of records is very important with regard to the payment of wages.

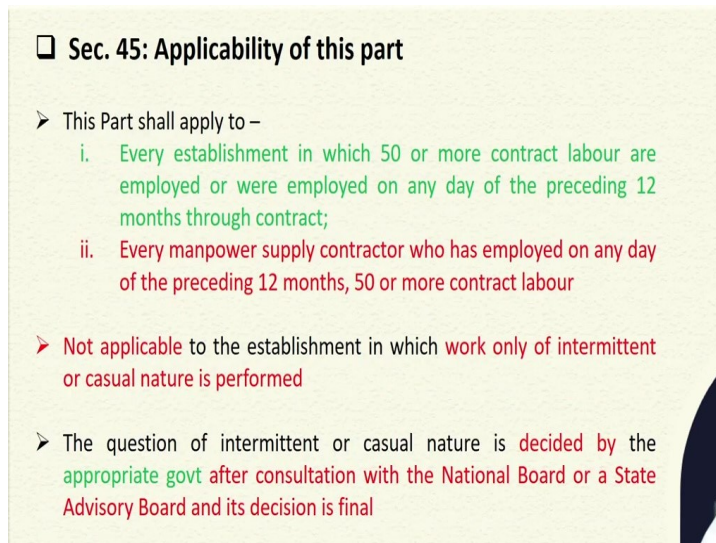
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- **Contract Labour under The Occupational Safety, Health and Working Conditions, Code, 2020**

- ❑ **Chapter-XI: Part-I: Contract Labour**
 - Sec. 45: Applicability of this Part
 - Sec. 46: Appointment of designated authority
 - Sec. 47: Licensing of contractors
 - Sec. 48: Procedure for issue or renewal of license
 - Sec. 49: No fees or commission or any cost to workers
 - Sec. 50: Information regarding work order to be given to the appropriate govt
 - Sec. 51: Revocation, suspension and amendment of license
 - Sec. 52: Appeal
 - Sec. 53: Liability of Principal employer for welfare facilities
 - Sec. 54: Effect of employing contract labour from a non – licensed contractor
 - Sec. 55: Responsibility for payment of wages
 - Sec. 56: Experience certificate
 - Sec. 57: Prohibition of employment of contract labour

Now, we will come to the Occupational Safety Health and Working Conditions Code 2020. And we will see what are the new provisions included by the code 2020 code with regard to contract labour? So, we can find some of the provisions are added to the new code. Otherwise, it is all the earlier provisions which we saw are included in this new code as well.

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❑ **Sec. 45: Applicability of this part**

- This Part shall apply to –
 - i. Every establishment in which 50 or more contract labour are employed or were employed on any day of the preceding 12 months through contract;
 - ii. Every manpower supply contractor who has employed on any day of the preceding 12 months, 50 or more contract labour
- Not applicable to the establishment in which work only of intermittent or casual nature is performed
- The question of intermittent or casual nature is decided by the appropriate govt after consultation with the National Board or a State Advisory Board and its decision is final

So, it is now so now, you can see that applicability. The number has been increased to 50 or more contract labour. So, it is not 10 or not 20, it is 50 or more. It means that the new provisions are not going to be applicable to many of the establishments in India. It is only going to be applicable to larger organizations those who are employing 50 or more contract labour. So, it means 50 or more contract labour is supplied in a particular period of 1 year then only it is applicable. So, if somebody is utilizing 50 or less 50, then this code is not going to be applicable.

So, in this case, we already said that this Act is not going to be applicable to intermittent or casual nature, but what is intermittent or casual nature will depend upon facts and law. So, in every case to be determined by appropriate authorities from time to time and the decision taken by the national board or state boards are final. So, whether it is intermittent or casual nature will be determined by the respective boards. So, then the decision taken by these boards are final.

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□ Sec. 46: Appointment of the designated authority

- The **appropriate govt**, by an order, **appoint such persons**, as it thinks fit to be designated as an authority and specifies the limits of their jurisdiction and vest with such powers and duties including dealing with issuance and revocation of licenses, electronically as may be specified

Then there is the appointment of designated authorities dealing with contract labours in case of issuing of licenses, then, revocation of licenses and it must be all applications should be electronically done, so, so that the databases can be saved. So, all the application issuance of certificates, revocation application or revocation certificates and everything is done electronically in the new regime.

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□ Sec. 47: Licensing of contractors

- No contractor to whom this Part applies shall –
 - Supply or engage contract labour in any establishment; or**
 - Undertake or execute the work through contract labour**Except under and in accordance with a license to him by the authority satisfying that the **contractor fulfills such requisite qualifications or criteria, as prescribed by the Central govt**
- Where the **Contractor is desirous of obtaining license for supplying or engaging contract labour or executing the contract work in more than 1 State or whole India**, then, he may obtain license from the authority designated by the Central govt

And licensing, so, it is very clearly said that no contractor should supply manpower without a licence or supply labour to any establishment or he should not undertake to execute any work through contract labour. So, such authorities should be licensee can be given to such kind of authorities.

So, if the contractor wants to take a licence for more than one state or all of India, he may obtain a licence or authority designated by the central government, if you want to work in more than one state. So, you have to take your licence from the authority which is mentioned by the central government. So, that you do not have to go to each and every state from time to time.

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❑ **Sec. 48: Procedure for issue or renewal of license**

- It provides **procedure for issue and renewal of the license**. It provides that form of the application for issuing license and the manner and other particulars, thereof shall be provided by the appropriate govt
- It provides other details of procedure **regarding the issuing of license and the period of validity of license for 5 years**

❑ **Sec. 49: No fees or commission or any cost to worker**

- The **contractor shall not charge directly or indirectly**, in whole or in part, any fee or commission from the contract labour

❑ **Sec. 50: Information regarding work order to be given to the appropriate govt**

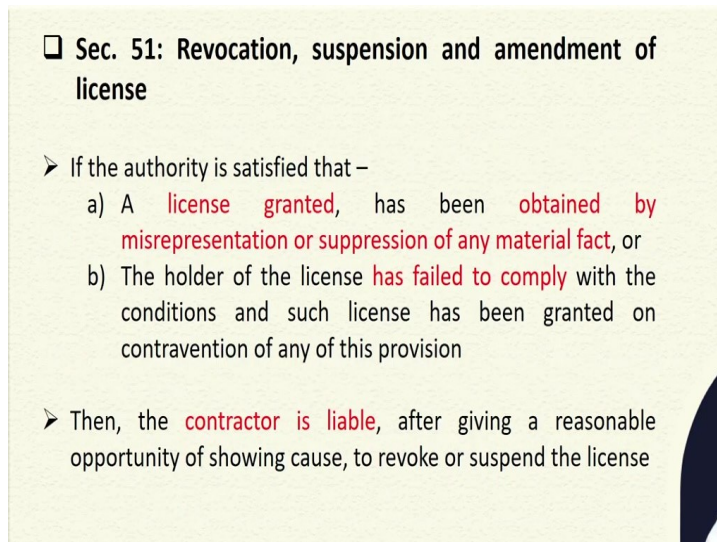
- The **contractor shall inform about the work order received from the establishment to the authority** in accordance with the procedure as specified in this section and **in case of failure the license may be suspended or cancelled as prescribed by the appropriate govt**

And the renewal of the license is also done electronically. So, the issue of licenses and validity is only for 5 years. And every 5 years the contractor should renew the licenses issued by the authorities from time to time.

And no fees or commissions are to be charged to the worker. The contractor shall not charge anything directly or indirectly from the worker and also all information regarding the work order is to be given to the appropriate government.

So, if a work order is given from a particular establishment, he should inform the appropriate authorities. So, failure to inform the authorities may be in violation of the provisions, his licence can be suspended or even cancelled by the appropriate government in non-implementation of this particular provision. So, that means not giving information about any work order to the appropriate authorities.

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□ **Sec. 51: Revocation, suspension and amendment of license**

- If the authority is satisfied that –
 - a) A license granted, has been obtained by misrepresentation or suppression of any material fact, or
 - b) The holder of the license has failed to comply with the conditions and such license has been granted on contravention of any of this provision
- Then, the contractor is liable, after giving a reasonable opportunity of showing cause, to revoke or suspend the license

And the licenses once granted. So, we already said that it is valid for 5 years, but if the authorities found that in between if the licence is obtained by misrepresentation or suppression of facts or suppression of any material facts or fails to comply with any of the conditions put in the license.

Then, the contractor is liable and definitely, they are going to get a notice and the reasonable opportunity of being heard is given to show cause notice, and suspending or revoking the licence, before suspending or revoking the licence. So, misrepresentation or suppression of material fact is one of the grounds for revoking or suspension of the licenses.

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□ Sec. 52: Appeal

- Any person aggrieved by an order of issuance of license to contractor, revocation, suspension or amendment of license, may prefer an appeal within 30 days to an appellate authority prescribed by the appropriate govt
- The appellate authority entertain the appeal after expiry of 30 days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time
- The appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal within 30 days from the date on which the appeal is preferred

An appeal, if the person aggrieved by an order of issuance of any licence to a contractor, revocation, suspension or amendment of the licence may prefer an appeal within 30 days to the appellate authority prescribed by the appropriate governments.

So, the appellate authority entertains the appeal after the expiry of 30 days. So, if there is no reply given to them after the appellant, the appellate authority should give an opportunity to be heard to the appellant, and dispose of the appeal within another 30 days. So, a short time is prescribed for the appeal period. So, 30 days is prescribed.

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□ Sec. 53: Liability of Principal employer for welfare facilities

- Welfare facilities shall be provided by the principal employer of the establishment to the contract labour who are employed therein
- The welfare facilities including canteen, rest rooms, drinking water and first aid shall be provided to contract labour

□ Sec. 54: Effect of employing contract labour from a non – licensed contractor

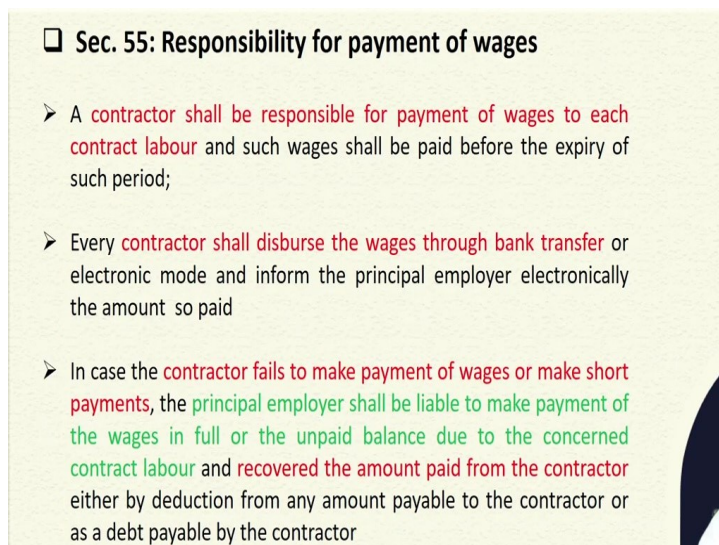
- Where principal employer is employing contract labour through contractor, who supposed to have license under this code but he has not obtained such license, then the employment shall be deemed to be contravened the provision of this Code.

And so, you can see that it is the liability of the principal employer in certain providing certain welfare facilities. So, it is the duty of the principal employer to provide welfare facilities. So, earlier, it is the duty of the contractor to provide restrooms, drinking water and first aid under the new code. Now, it is the duty of the principal employer to provide a canteen, restrooms, drinking water, and first aid.

So, the contract labour if you want to employ contract labour, you the basic facilities to be provided by the principal employer. So, if anybody is employing, employees from contract labour if he does not have a licence, he is a non-licensed contractor.

Then, in that particular case, he has not obtained a particular licence, then the employment shall be deemed to contravene the provisions of the particular Code. So, if any principal employer gives contract work to a user for contract labour, willfully knowing that he does not have a licence, then the employer is going to be liable under this particular code.

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□ Sec. 55: Responsibility for payment of wages

- A contractor shall be responsible for payment of wages to each contract labour and such wages shall be paid before the expiry of such period;
- Every contractor shall disburse the wages through bank transfer or electronic mode and inform the principal employer electronically the amount so paid
- In case the contractor fails to make payment of wages or make short payments, the principal employer shall be liable to make payment of the wages in full or the unpaid balance due to the concerned contract labour and recovered the amount paid from the contractor either by deduction from any amount payable to the contractor or as a debt payable by the contractor

And the responsibility of payment of wages, we already saw that responsibility of wages is the basic primary duty of the contractor and if the contractor is not going to pay, it is the duty of the principal employer.

If the contractor fails the payment of wages or short payments, then the principal employer shall be liable to make payments of the wages in full or the unpaid balance due to the concerned contract labour and the amount paid. So, he can recover always from the contractor according to the terms of the contracts, as a debt. So, the payment of wages is

primarily the duty of the contractor and the ultimate responsibility is with the principal employer.

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❑ Sec. 56: Experience Certificate

- Every **concerned contractor**, on-demand, shall **issue experience certificate**, in such form as prescribed by the appropriate govt, to the **contract labour** giving details of the work performed by such contract labour

❑ Sec. 57: Prohibition of employment of contract labour

- It provides prohibition of employment of contract labour **in core activities with certain exceptions**.
- The principal employer engage contract labour through a contractor to any core activity, if –
 - i. The **normal functioning of the establishment** is such that the activity is done ordinarily through contractor; or
 - ii. The activities that do **not require full time workers for the major portion of the working hours in a day** or for long period; or
 - iii. Any **sudden increase of volume of work in the core activity** which needs to be accomplished
- The appropriate govt, appoint a designated authority to advise that govt on the question of whether any activity is a core activity
- The appropriate govt refers any such question *suo motu* on the basis of

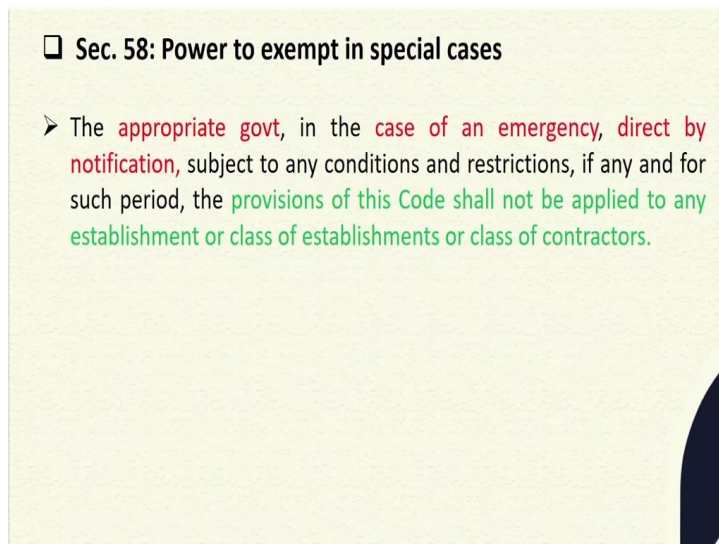
So, every concerned contractor on demand shall issue an experience certificate on contract labour. So, you can detail work performance. So, that there the detailed work performed by him in that experience certificate, experienced certificate should be issued.

And also, even though section 57 talks about the prohibition of employment of contract labour in core activities. So, the prohibition is only in the case of the core activities of a particular factory or a company or an establishment. So, what is the core activity? The core activity is the normal functioning of the establishment. You cannot use contract labour for the

normal functioning of the establishment and then the activities that do not require full-time workers for the major portion of the working hours in a day or longer period.

Any sudden increase in the volume of work in the core activity. So, who is going to decide this what is the core activity of this particular establishment? It is the appropriate government. So, the appropriate government to decide in accordance with the facts and circumstances of each case. So, prohibition is only with regard to the core activities. So, if an employer is employing contract labour in core activities, it is going to be a violation of the provisions of this particular Act.


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Any appropriate government, central government or state governments can exempt in case of emergency as directed by notification. So, these provisions of the code shall not be applicable to a particular establishment or a class of establishments or a class of contractors, it may depend upon what nature of work they are undertaking. So, what is the nature of the work order? So, it will be according to that particular document state governments can exempt.

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- **Proposed ILO Convention on Contract labour**



International
Labour
Organization

- ❑ **Proposed Convention on Contract Labour**
- Adopted – 19th June, 1998 by International Labour Conference
- **Article 1** – the definition of “contract labour” adopted by the Committee, refers to the work that is performed personally by the worker and the definition adopted by both bilateral (direct) and trilateral (indirect) relationship
- **A direct bilateral relationship between an individual worker and a user enterprise, without a mutually expressed intention to establish an employment relationship; and**

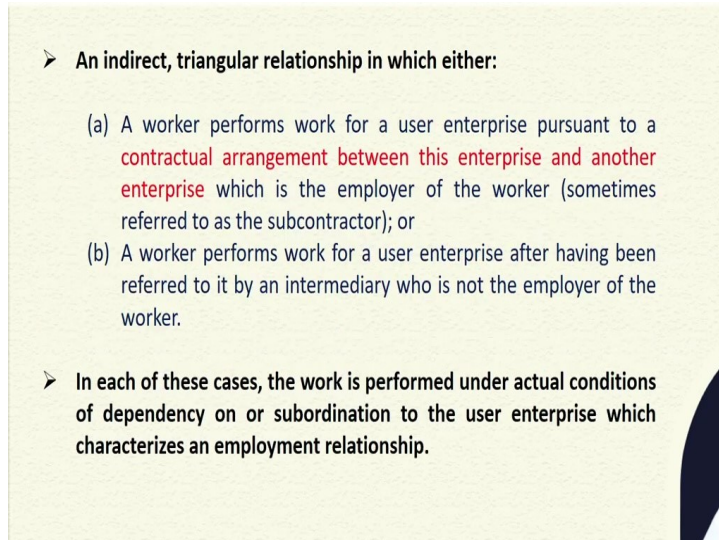
Now, the contract labour provisions which we saw in the old Act and new Act and International Labour Organization has proposed a convention on contract labour. So, this convention has been, proposed and adopted by the Labour Conference International Labour Conference in 1998.

So, this convention talks about contract labour, so, the definition says that work is performed personally by the worker and the definition is adopted by both bilateral direct and trilateral indirect relationships. A direct bilateral relationship between an individual worker and a user enterprise without a mutually expressed intention to establish an employment relationship.

So, here the employment relationship is with the contractor. So, there is no employer-employee relationship between the employee and the principal employer, and no intention to

establish an employer-employee relationship. So, the Labour Law, the ILO Convention says that contract labour means a person who does not have an employer-employee relationship with the principal employer and him.

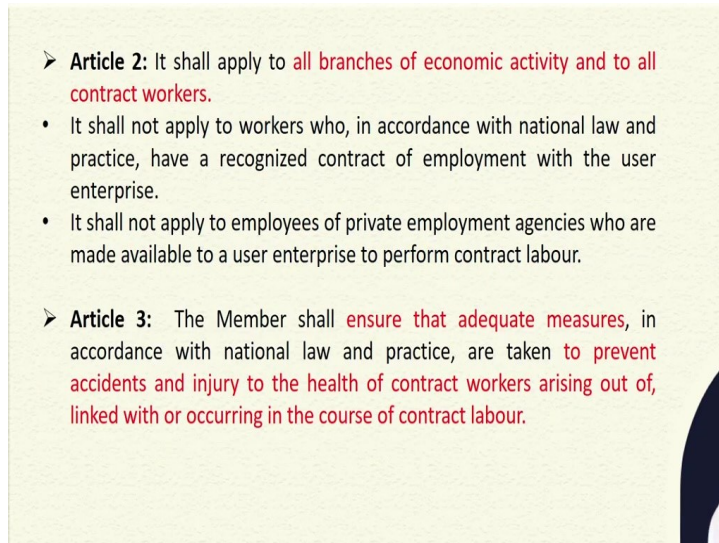
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And it is an indirect triangular relationship. So, there is contract labour, a contractor and the principal employer a triangular relationship. So, here the worker performs work for any enterprise pursuant to or in accordance with any contractual arrangement between the enterprises. And here, the employer employs another enterprise for providing contract labour.

So, the other enterprise can give it to another enterprise which is a subcontractor. So, in each case, the actual conditions of dependency subordination between the employee and the principal employer should be assessed. Employment relations should be assessed. In the proper contract labour, there is no employer-employee relationship between the employee and the principal employer and in between, there is a contractor. So, the indirect triangular relationship is very clear in contract labour.

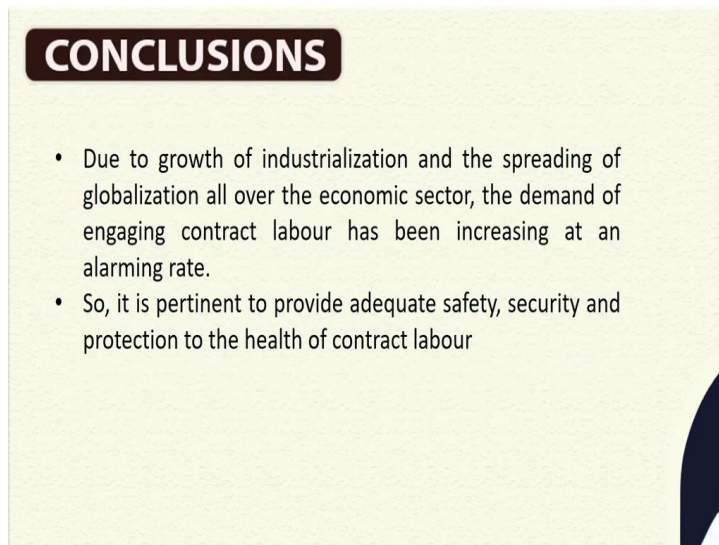
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And then, Article 2 says it shall apply to all branches of economic activity and all contract workers. So, it shall not apply to workers who in accordance with the national law and practice have a recognized contract of employment with the user enterprise. The ILO Convention again says that it will be in accordance with domestic law, in accordance with national law and shall be applicable to employees of private employment agencies who are made available to user enterprise to perform contract labour.

So, Article 3 says that the member shall ensure that adequate measures in accordance with the national law and practice are to prevent accidents and injury to the health of contract workers arising out of link with the occurring and the course of contract labour. So, out of and linked with the course of contract labour. So, this is applicable to all contract workers.

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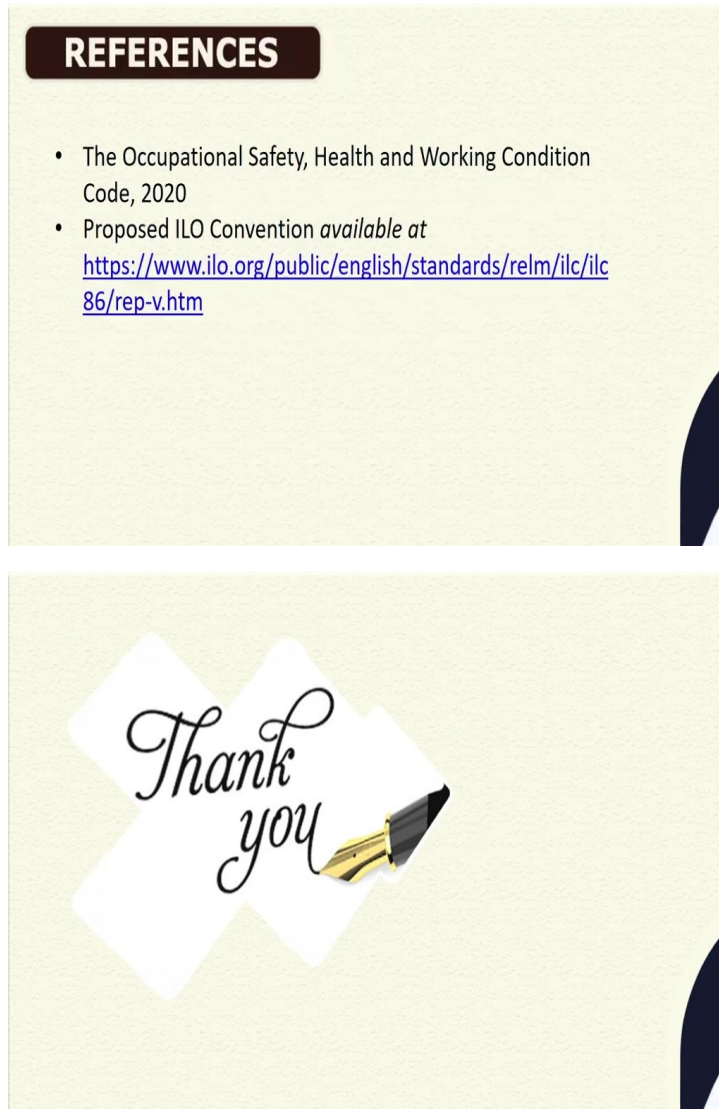


So, in conclusion, we can say that the contract labour situation under the old law and new law has not been much changed. But there are some more conditions are put in for the registration and also the further processing of contract labours.

At the same time contract labour is becoming the order of the day in India as well. So, this contract labouring engaging contract labour is going to be at a very peak for example, in the states of southern states. So, in the next class, we are going to deal with migrant workers. So, these contract labours are mostly migrant workers.

So, it is the duty of every contractor to provide basic amenities and basic facilities. Safety, security and protection of the health of the contract labourers must be with the contract labour contractor. If the contractor licence contractor fails to do this, the responsibility should be with the principal employer.

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So, we hope that these provisions are going to help all employees in service or all those who are doing contract work or all contractors. It is going to be more strict in India in the coming future. Thank you.