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# A Study on Contractual Employment in India: With special reference to U.K.

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## ABSTRACT

*Contractual employment, a prevalent practice globally, involves engaging workers through contractors for temporary or fixed-term projects. This paper provides a comprehensive analysis of contractual employment in India, with a special focus on its comparison with the United Kingdom (U.K.). In India, contractual employment has gained significance due to factors like globalization and technological advancements, prompting the enactment of the Contract Labour (Regulation & Abolition) Act, 1970. Landmark cases such as Standard Vacuum Refining Co. of India Ltd v. Workmen have shaped the regulatory framework, aiming to address issues of exploitation and inadequate working conditions. Conversely, the UK's contractual employment landscape has evolved through common law principles and statutes like the Employment Rights Act 1996, with significant influences from EU directives. Notable cases like Uber BV v. Aslam have redefined worker classification, particularly in the gig economy. The paper conducts a comparative analysis of contractual employment regulation in India and the UK, highlighting similarities and differences in areas such as registration, licensing, health and welfare provisions, payment of wages, and worker classification. While both jurisdictions prioritize minimum wage standards and basic working conditions, India's centralized statutory framework contrasts with the UK's reliance on common law principles and individual complaints mechanisms for enforcement. This study underscores the importance of adaptive regulatory frameworks to address the evolving needs and challenges of contractual employment, fostering a fair and equitable labor environment for all workers.*

**Keywords:** *contractual employment, India, United Kingdom, labor regulation, comparative analysis.*

## I. INTRODUCTION

“Contract laborers” are workers who have been employed in connection with work in an establishment through a “contractor”. On the other hand, a contractor is a person who has agreed to provide labor for an establishment as well as a person who undertakes any work in an establishment to achieve an intended result with assistance of contract labor. Contractual

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employment is a prevalent practice in labor markets worldwide, involving the hiring of workers on a temporary or fixed-term basis, often characterized by specific project durations or seasonal work arrangements.<sup>3</sup> This type of employment is characterized by temporary or short-term engagements, as opposed to the traditional model of permanent employment. The concept of contractual employment in India has gained significance in recent years due to various factors such as globalization, technological advancements, and changes in the nature of work. This form of employment provides flexibility to employers in managing workforce needs, allowing for the engagement of specialized skills for short-term projects or to address fluctuating demands. Employees that are hired, managed, and paid by a contractor who is paid by the establishment are known as contract laborers, or indirect employees. Contract labor must be used for particular tasks that have a set length. Poor economic conditions, a casual work environment, inferior labor status, and a lack of job security are the main traits of contract labor. While economic concerns such as cost effectiveness might favor the use of contract labor, issues related to social justice need its eradication or restriction.

In the Indian context, the landscape of contractual employment has witnessed significant growth, particularly in sectors like IT, where the demand for skilled professionals on short-term projects has surged. The prevalence of short-term contracts has implications for job security, wage differentials, and overall labor market stability. According to the Indian Contract Act, 1872, contractual employment is governed by the principles of contract law.<sup>4</sup> The Act defines a contract as an agreement between two or more parties that is enforceable by law and creates legal obligations.<sup>5</sup> The primary legislation governing contractual employment in India is the Industrial Disputes Act, 1947.<sup>6</sup> This Act encompasses provisions related to the terms and conditions of employment, including termination, notice periods, and dispute resolution mechanisms. Additionally, the Contract Labour Act, 1970<sup>7</sup> is another important legislation that regulates the employment of contract labor in India. This Act imposes certain obligations on employers using contract labor, such as ensuring minimum wages, social security benefits, and appropriate working conditions. Furthermore, the introduction of the Model Standing Orders Act, 1946<sup>8</sup> by the government of India has provided a framework for establishing and regulating employment conditions for contractual employees.

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<sup>3</sup> Cambridge University Press, "Short-term contracts and their effect on wages in Indian regular wage employment," *The Economic and Labour Relations Review*, Volume 30, Issue 1, March 2019, pp. 142-164

<sup>4</sup> The Indian Contract Act, 1872, Act No.9 of 1872

<sup>5</sup> Indian Contract Act, 1872, S. 10.

<sup>6</sup> Industrial Disputes Act, 1947, No. 14 of 1947, INDIA CODE (1993), vol. 13.

<sup>7</sup> Contract Labour (Regulation and Abolition) Act, 1970, Act No. 37.

<sup>8</sup> The Industrial Employment (Standing Orders) Act, 1946 Act No. 20 of 1946

The United Kingdom, like India, also has a legal framework that governs contractual employment. The Employment Rights Act 1996<sup>9</sup> in the United Kingdom outlines the rights and responsibilities of employees, including those on contract. It is important to note that while there may be similarities in the legal frameworks of contractual employment in India and the United Kingdom, there are also notable differences between the two systems.

Contractual employment is of significant importance in both India and the U.K. for various reasons. In India, contractual employment has become increasingly prevalent due to the need for workforce flexibility, especially in industries such as information technology, manufacturing, and services. In the U.K., contractual employment has also been on the rise, with employers using this type of arrangement to manage fluctuations in demand and maintain cost efficiency.

One significant difference is the level of statutory protection afforded to contractual employees. While India has specific legislations like the Industrial Disputes Act<sup>10</sup> and the Contract Labour Act to protect the rights of contractual employees, the United Kingdom provides a more comprehensive framework of employment rights through the Employment Rights Act 1996. This disparity in statutory protection can lead to differences in the treatment and rights of contractual employees in the two countries.

## II. CONTRACTUAL EMPLOYMENT IN INDIA

The practice of employing contract labor, where workers are engaged through contractors rather than directly by the establishment, was prevalent in India. This system aimed to circumvent a direct employer-employee relationship, allowing factory owners to distance themselves from labor regulations and wage obligations. Entire factories were outsourced to contractors who used the owner's machinery to produce goods subsequently branded under the employer's name. This resulted in significant wage disparity, with contract workers receiving considerably less than what they would have earned under direct employment. This exploitative system led to widespread labor unrest, with tribunals receiving numerous demands for the abolition of contract labor. These demands were often upheld, with tribunals granting workers' claims. In a landmark case of *Standard Vacuum Refining Co. of India Ltd. vs. Workmen*<sup>11</sup>, the Supreme Court recognized the right of workers to seek the abolition of the contract labor system on behalf of contractor-employed workers, outlining specific circumstances under which such abolition could be mandated. These developments, coupled with growing worker agitation and union

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<sup>9</sup> Employment Rights Act 1996 (1996 c 18)

<sup>10</sup> Id at 5.

<sup>11</sup> *Standard Vacuum Refining Co. of India Ltd. vs. Workmen* (1960) LLJ II.

demands, particularly in sectors requiring regulation of service conditions for contract labor, culminated in the enactment of the Contract Labour (Regulation & Abolition) Act, 1970 by the Indian Parliament. The Act came into force in September 1970.

The Contract Labour (Regulation and Abolition) Act, 1970 provides a comprehensive framework for regulating the employment of contract labour in India, with Section 2(b) serving as a pivotal point of reference. According to this provision, a workman is deemed to be employed as “contract labour” in or in connection with the work of an establishment when engaged by or through a contractor, regardless of the principal employer’s awareness of such engagement.<sup>12</sup> This definition underscores the centrality of engagement through a contractor as the defining characteristic of contract labour employment, irrespective of the principal employer’s direct involvement. The Act clarifies that the phrase “employed in or in connection with the work of the establishment” does not mandate that the assigned task must be integral or incidental to the principal employer’s operations. Rather, any engagement linked to the establishment’s activities, whether directly aligned with its core functions or not, falls within the purview of contract labour under the Act. Additionally, the Act provides exceptions to the classification of certain workers as contract labourers. Individuals employed by a licensee for the licensee’s own benefit are expressly excluded from the ambit of contract labour under the Act.<sup>13</sup> Furthermore, permanent employees of the contractor, who may be deployed across various assignments, are not categorized as contract labourers under the Act. Through these statutory provisions, the Act seeks to ensure regulatory oversight and protection of the rights of contract labourers in India.<sup>14</sup>

In India, various Commissions and Committees like the Labour Bureau, Ministry of Labour analysed the condition of contractual employment before independence and after independence.<sup>15</sup>

### **III. CONTRACTUAL EMPLOYMENT IN THE U.K.**

The evolution of contractual employment in the U.K. has been a dynamic process, with significant changes occurring over the centuries. The origins of labor law in the U.K. can be traced back to the Statute of Laborers in 1349, which set conditions for hiring workers and

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<sup>12</sup> Contract Labour (Regulation and Abolition) Act, 1970, S. 2(b).

<sup>13</sup> *Ibid.*

<sup>14</sup> Maroof, Prof. M.A., Study of Contractual Labour in India, *International Journal of Trend in Scientific Research and Development*, Vol. II, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4319750](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4319750).

<sup>15</sup> D.C. MATHUR, *CONTRACT LABOUR IN INDIA*, (1st ed. 1989).

regulated wages.<sup>16</sup> The Elizabethan Statute of Laborers in 1562<sup>17</sup> further consolidated measures for setting wages and conditions of hire for workmen, laborers, and servants. During the Industrial Revolution, legislation continued to evolve, with provisions against trucks and for payment of wages in current coin becoming necessary. The face of industrial England was altered by steady concentration of capital in the hands of employers, expansion of trade, and development of machinery and application of power to its use. In the 19th century, labor law in the U.K. began to shift from status-based regulation to contract-based regulation, with the Master and Servant Act 1867<sup>18</sup> and the Employers and Workmen Act 1875 providing a framework for labor relations. The Trade Disputes Act 1906 further solidified this shift by exempting trade unions from liability for damages caused during strikes.

The 20th century saw significant developments in labor law, with the establishment of the International Labour Organization (ILO) in 1919 and the enactment of the Trade Union and Labour Relations Act 1974, which recognized the right to strike and picket. The Employment Rights Act 1996 consolidated and updated previous employment legislation, providing a comprehensive framework for employment rights and obligations.

The U.K.'s membership in the European Union (EU) has also had a profound impact on contractual employment, with the EU contributing to the evolution of employment law in the search for social inclusion, competitiveness, and citizenship.<sup>19</sup> The EU has influenced the integration of "family-friendly" policies, equal pay law, and discrimination law into U.K. legislation. The evolution of contractual employment in the U.K. has been shaped by both political aspirations and the rise of trade unions, with employers' associations adapting their roles to provide employment relation guidance and counselling. The state's role in shaping employment relationships has evolved as well, with the liberal-pluralism approach giving way to the neo-liberal perspective, which emphasizes free choice for employers and employees.<sup>20</sup> In recent years, the gig economy and the rise of self-employment have posed new challenges to contractual employment in the U.K.<sup>21</sup> The Employment Rights Act 1996 has been amended to ensure that workers, including those in zero-hours contracts or employed through an agency, are entitled to a Section 1 statement on the first day of work, regardless of the duration of their

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<sup>16</sup> S. Deakin, "*The Contract Of Employment: A Study In Legal Evolution*", ESRC Centre for Business Research, University of Cambridge, available at <https://www.jbs.cam.ac.uk/wp-content/uploads/2023/05/cbrwp203.pdf>.

<sup>17</sup> The Artificers and Apprentices Act 1562 (5 Eliz. 1. c. 4).

<sup>18</sup> Master and Servant Act 1867 (30 & 31 Vict. c. 141).

<sup>19</sup> Frank Wilkinson, "*The Origins of the Contract of Employment*", Oxford Academic, available at <https://academic.oup.com/book/10806/chapter-abstract/158956322?redirectedFrom=fulltext>.

<sup>20</sup> Ibid.

<sup>21</sup> "*Evolution of Employment*", British Association of Landscape Industries, available at <https://www.bali.org.uk/help-and-advice/contracts-law-and-regulations/evolution-of-employment/>.

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#### IV. JUDICIAL INTERPRETATIONS OF CONTRACTUAL EMPLOYMENT IN INDIA AND U.K.

Contractual employment, where workers are engaged through contractors rather than directly by the establishment, presents a complex legal landscape in both India and the UK.

##### (A) The “Control Test” and its Nuances

**India-** While not explicitly codified, the “control test” has been adopted by courts to differentiate between employees and independent contractors. The case of *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*<sup>22</sup>, involved workers engaged by a contractor to load and unload chemical products at the company’s factory. The key issue was whether they were employees of the chemical company or simply the contractor’s workers. The Supreme Court of India applied a multi-factorial test, focusing on the extent of control exercised by the company. Here, the company provided tools and materials, supervised the workers, and held the power to hire and fire them. This level of control, coupled with the nature of the work being integral to the company’s operations, led the court to classify the workers as “employees” entitled to benefits under labor laws.

**U.K.-** The “control test” plays a central role in the UK’s common law approach. The case of *Ready Mix Concrete Ltd v. Minister of Pensions and National Insurance*<sup>23</sup> established the “control test” as a key factor in differentiating employees from self-employed individuals in the UK. Here, a concrete delivery driver owned his vehicle but had to follow strict schedules and work procedures dictated by the company. The court ruled him an employee due to the significant control exercised over his work, even though he technically owned the means of production (his truck).

##### (B) Beyond Control: The Rise of Broader Considerations

**India-** Recognizing the limitations of the sole “control test”, Indian courts have embraced a more holistic approach. The case of *Air India Statutory Corporation vs United Labour Union & Ors*<sup>24</sup>, concerned catering staff who were initially directly employed by Air India but later engaged through a contractor. The question was whether they retained their employee status despite the change in engagement. The court looked beyond just control. It considered how integral the catering service was to Air India’s core business and the regularity with which the

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<sup>22</sup> *Dharangadhra Chemical Works Ltd. v. State of Saurashtra* 1957 AIR 264.

<sup>23</sup> *Ready Mix Concrete Ltd v. Minister of Pensions and National Insurance*, [1968] 2 QB 497 (Eng).

<sup>24</sup> *Air India Statutory Corporation v. United Labour Union & Ors*, [1996] 3 SCC 49.

workers performed their duties. Based on these factors, the court ruled that the catering staff remained “employees” of Air India and entitled to employee benefits.

The case of *Bangalore Water Supply & Sewerage Board v. Rajappa & Ors.*<sup>25</sup> involved sanitation workers engaged through contractors for the Bangalore Water Supply Board. The challenge was to distinguish between these contractual workers and direct employees of the Board. The court highlighted the difficulty in applying a rigid “control test”. It emphasized the nature of the work performed, that is sanitation being essential for public health and its integration into the Board’s core functions (providing water supply). The court ultimately remanded the case for further examination of these factors to determine the workers’ employment status.

**U.K.-** The UK legal system has also shown a similar trajectory. The case of *Uber BV v Aslam & Ors.*<sup>26</sup> is a more recent example that highlights the evolving legal landscape of contractual employment in the UK. Here, Uber drivers challenged their classification as independent contractors, arguing they were entitled to worker status and associated rights like minimum wage and holiday pay. The Supreme Court of the UK ruled in favor of the drivers, considering factors like the control Uber exercised over fares, working hours, and driver conduct. This case demonstrates a shift beyond just the traditional “control test” and a focus on the broader economic reality of the work arrangement.

Thus, cases in both India and the UK demonstrate a move beyond the sole reliance on the “control test” in contractual employment. Courts are considering broader factors, ensuring a more nuanced assessment of worker status and facilitating fairer application of labor protections.

## V. COMPARATIVE ANALYSIS OF CONTRACTUAL EMPLOYMENT IN INDIA AND U.K.

Contractual employment, where workers are engaged through contractors rather than directly by the establishment, presents a complex scenario in both India and the UK. This section compares the two jurisdictions on key aspects of contract labor regulation, highlighting similarities and divergences.

### (A) Applicability

**India:** The Contract Labour (Regulation & Abolition) Act, 1970 (CLRA) applies to establishments employing fifty or more workers in certain scheduled activities. States can

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<sup>25</sup> Bangalore Water Supply & Sewerage Board v. Rajappa & Ors., AIR 2002 SC 699.

<sup>26</sup> Uber BV v. Aslam & Ors. [2021] UKSC 51 (UK).



modify this threshold through notifications.<sup>27</sup>

**UK:** There's no single statute governing contractual employment. The distinction between employees and self-employed individuals is crucial, with employment rights primarily stemming from the Employment Rights Act 1996<sup>28</sup>, which applies to employees.

### **(B) Registration and Licensing**

**India:** The CLRA mandates registration of establishments employing 20 or more contract workers. Licensing of contractors is required in specified circumstances.<sup>29</sup>

**UK:** No mandatory registration or licensing system exists for establishments or contractors.

### **(C) Health and Welfare**

**India:** The CLRA imposes a duty on the principal employer to ensure basic amenities (canteen, restrooms) for contract labor to the extent feasible. Specific health and safety regulations might apply depending on the industry.

**UK:** The Health and Safety at Work Act 1974 places a general duty on employers to ensure the health, safety, and welfare of all workers, including those engaged through contractors.<sup>30</sup>

### **(D) Payment of Wages**

**India:** The CLRA guarantees minimum wages and timely payment to contract labor, with the principal employer ultimately responsible in case of default by the contractor.

**UK:** The National Minimum Wage Act 1998 sets minimum wage floors for all workers, including those engaged through contracts. Enforcement mechanisms involve penalties for employers who underpay.

### **(E) Classification**

**India:** The CLRA offers some guidance on distinguishing between employees and independent contractors, but judicial pronouncements such as *Dharangadhra Chemical Works Ltd. v. State of Saurashtra* often play a vital role in classification.<sup>31</sup>

**UK:** The distinction between employees and self-employed individuals hinges on the control test established through case law *Ready Mix Concrete Ltd v Minister of Pensions and National Insurance (1968)* and the concept of mutuality of obligation in *Uber BV v Aslam & Ors*.

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<sup>27</sup> "Principles/Rules of The Contract Labour Regulation & Abolition Act, 1970" Chief Labour Commissioner (Central), available at [https://labour.gov.in/sites/default/files/thecontractlabourregulationabolition\\_act.pdf](https://labour.gov.in/sites/default/files/thecontractlabourregulationabolition_act.pdf).

<sup>28</sup> Employment Rights Act 1996 c. 18.

<sup>29</sup> Id at 26.

<sup>30</sup> Health and Safety at Work etc. Act 1974 c.37.

<sup>31</sup> Id at 21.

## (F) Enforcement

**India:** The CLRA designates government officers as Inspectors to enforce its provisions. However, challenges include limited resources and a vast informal sector.

**UK:** Enforcement of employment rights for contract workers often relies on individual complaints to tribunals or HMRC<sup>32</sup> which is a tax authority. The Conduct Regulations 2013 aim to prevent misclassification of employees as independent contractors.

India and the UK exhibit both similarities and differences in their approach to contract labor regulation. India has a more centralized statutory framework, while the UK relies heavily on common law principles. Both jurisdictions emphasize minimum wages and basic working conditions. However, India mandates registration and licensing, while the UK focuses on enforcement through individual complaints and regulations like The Conduct Regulations. Further research is needed to explore the effectiveness of enforcement mechanisms in both countries.

## VI. CONCLUSION

The study of contractual employment in India with special reference to the UK reveals significant insights into the regulatory frameworks, judicial interpretations, and practical implications of this prevalent labor practice in both jurisdictions. The examination of landmark cases, legislative enactments, and evolving labor market dynamics underscores the complexities and nuances inherent in contractual employment arrangements. Both countries prioritize minimum wages and basic working conditions for contract workers. Additionally, both legal systems grapple with classifying workers and are moving towards a more holistic approach beyond just control.

In India, contractual employment has emerged as a vital component of the labor market, driven by factors such as globalization, technological advancements, and changing employer preferences for workforce flexibility. The enactment of the Contract Labour (Regulation & Abolition) Act, 1970, and subsequent judicial interpretations have sought to address the challenges associated with contract labor, including issues of exploitation, inadequate working conditions, and lack of job security. Landmark cases like *Standard Vacuum Refining Co. of India Ltd v. Workmen* have paved the way for recognizing the rights of contract workers and establishing regulatory mechanisms to ensure their welfare.

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<sup>32</sup> *His Majesty's Revenue & Customs*, Government of U.K., available at <https://www.gov.uk/government/organisations/hm-revenue-customs>.

Similarly, the UK's legal framework governing contractual employment, primarily guided by common law principles and statutory enactments like the Employment Rights Act 1996, reflects a commitment to balancing employer flexibility with worker protections. Landmark cases such as *Uber BV v. Aslam* has reshaped the legal landscape by clarifying the distinction between employees and independent contractors, thereby safeguarding the rights of workers in the gig economy.

Comparative analysis between India and the UK highlights both similarities and differences in their approaches to contractual employment regulation. While both jurisdictions prioritize minimum wage standards, health and safety regulations, and basic working conditions, they diverge in areas such as registration and licensing requirements, enforcement mechanisms, and the classification of workers. India's centralized statutory framework contrasts with the UK's reliance on common law principles and individual complaints mechanisms for enforcement.

Comparative analysis between India and the UK highlights both similarities and differences in their approaches to contractual employment regulation. While both jurisdictions prioritize minimum wage standards, health and safety regulations, and basic working conditions, they diverge in areas such as registration and licensing requirements, enforcement mechanisms, and the classification of workers. India's centralized statutory framework contrasts with the UK's reliance on common law principles and individual complaints mechanisms for enforcement.

Overall, the study underscores the importance of a comprehensive and adaptive regulatory framework that addresses the evolving needs and challenges of contractual employment in both India and the UK. By balancing flexibility with worker protections, policymakers and stakeholders can strive towards fostering a fair and equitable labor environment that upholds the rights and dignity of all workers, irrespective of their employment status.

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