Contract Labour Clarification

Neither the "perennial" nor the "permanent" term has defined under the Act. The word "perennial" has been used under Sec.10(2)(b) where it is said that if the job exists for sufficient duration will be considered as of "perennial" nature.

The Act nowhere prohibits engagement of contract labour on any job or activity or service unless it is prohibited by the Appropriate Govt. under the provisions of the Act.

AP State Govt. has amended the Act in 2003 and clarified the jobs / activities on which contract labour can be deployed, but no other state has moved in this direction to bring clarity on this point.

At present contract labour can be engaged on any permanent nature of job in strict legal sense but yes, it should be avoided as this may become a basis for the State Govt. to prohibit employment of contract labour on that particular job / activity / service in the industries.

There is no such rule, contract labour will be considered as a contract employee as exclusively mentioned in the contract. However, if there is any clause about the contract employee being absorbed on company's payroll then the subject would be different. And at the same time, make sure to renew that contract on its expiry on timely basis to avoid any audit hassles.

The same labour are being used continuously for the last 4 to 5 years for the same principal employer's work through the same contractor, without having any stipulated date of cessation of contract. Even then the law says - it is not permanent and perennial nature of job and they are not entitled to be the employees of principal employer. Is it not mockery of law and infringement of fundamental rights of the citizen and violation of directive principles? If the poor contract workers succeed before the contract labour advisory board that the job is permanent and perennial in nature, the courts say that the very contract labour need not be enrolled as permanent employees. The principal employer can, in bulk, terminate them. The job is permanent and perennial and ideally, contract labour system should not be there. On the other hand, the contract is also a sham to deprive the poor contract labour of permanent employment with the principal employer. As the law is giving sanction to these illegalities, let us say that the principal employer and contractor are correct in law to get the work done by contract system as long as they desire.

Refer Sec.10 of the Act and ensure that the contract labour are not engaged in the areas works which fall under this provision. It has to be decided based on the nature of activity in which the establishment is involved. Also each state and also central Government has specifically issued GOs prohibiting engagement of contract labour in certain areas. If these are not taken care, the Government Authorities may direct you not to engage contract labour in these areas and may prosecute for engaging contract labour in prohibited areas. If any contract labour is working continuously for 4 to 5 years and is engaged in the activities which fall under Sec.10 of the Act, it is the state government to decide and pass order on the contravention of this provision. However, there is no regulation or obligation on the part of the Principal Employer that the contract labour so engaged in the prohibited employment to be taken in the rolls of the principal employer. There is no legal obligation on the part of principal employer to absorb any one who has completed 180 days of service or so.

Also to ensure that:
1. There is no sham contract. There must be a legal contractor who is having separate entity i.e., a Registration under Shops & Establishments Act, PF & ESI code etc. and it is always better we engage a contractor who works for more than one establishment so that he can manage to rotate the contract Labour frequently from one company to another.
2. Equal work to equal pay to be always kept in mind. For ex. a security guard in principal employer's rolls and a security guard in contractor roll performing same and similar duties at same works etc.