



A Comparison Of The Industrial Employment Standing Orders, The Industrial Relations Code 2020 And The ILO On Fixed-Term Employment

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ABSTRACT

Employment generally means a paid work mutually agreed between the employer and the employee. In other words, this term is applied for an individual who is hired for salary to perform the tasks of the organization. The growth of industrialization has had a great impact on various countries. There are many industries which do not function continuously for a year (like leather, textile, etc). Sometimes the demand may decrease and in other times demand may increase drastically. In these circumstances, the employers look for quality services from the employees for a short period of time. Hence, the term Fixed-Term Employment. There is a need for regulations to govern this kind of employment as there is risk of unjust practices followed by the employer like default of payments, etc. The main focus of this study is to compare the concept of fixed term employment under the Industrial Standing Orders, Industrial Relations Code, International Labour Organization and with different countries. This paper also contains the flaws in each of the regulation. This paper will assist us in determining which regulations will satisfy both employers and employees and what changes can be made to meet a given requirement.

Keywords: Fixed term employment, Industrial Employment Standing Orders, Industrial Relations Code, International Labour Organization, International comparison

INTRODUCTION

In India there are excessive laws relating to labour and employment. There are workmen and non-workmen in India where the former is defined under the Industrial Disputes Act, 1947. India is a welfare state where it is making efforts to provide employment for people who prefer permanent employment. But in reality, there are several establishments and jobs which are temporary or seasonal. The emphasis is on finding work for those who are unemployed during the times when they are available. There are industries where they do not function on a regular basis, but rather when there is a need for a temporary employee with the essential skill for a short period of time. That is why fixed-term employment is important, as it helps people find positions that match their skills, as well as employers because they are proficient in their ability and knowledge that is required for that particular job, and it can also help with cost cutting.

REVIEW OF LITERATURE

This paper has been written taking into consideration of the current scenario in the economy. This paper has been influenced by some of the works of certain authors. Some of the works are: Psychological consequences of fixed-term employment and perceived job insecurity among health care staff by Saija Mauno

(2007)¹- This paper is an empirical study which throws light on the roles of fixed term employment and job security in relation to job attitudes and well-being of employees. They have analysed 2 situations where there is high job insecurity and a permanent job or high job insecurity and fixed term job. They have collected data from 736 employees of Finnish health care district. They have observed that when there are high job insecurity permanent employees had low level of job satisfaction and work engagement and high job exhaustion compared to fixed term employees. When there is low level of job insecurity there was no difference between permanent and fixed term employees. It was stated that permanent employees with job insecurity showed negative job attitudes and well-being and fixed term employees showed positive job attitude and well-being. In the paper the effects of fixed-term employment on wages: theory and evidence from Spain- Toharia, Luis and Jimeno (1993)²- This paper analyses the effects of fixed term employment on wages when both permanent and fixed term employees are hired where the former is given severance pay during dismissal when the latter does not receive any of that kind. It was observed on the basis that since wage rates are determined based on collective bargaining and since the permanent employees have more of that compared to fixed term employees. So, when fixed term contracts are used it may produce high bargained wages. There may also be discrimination based on wages against the fixed term employees so they receive low earnings. This paper produces empirical evidence from Spain showing that wage rates increase when there are more fixed term employees and they earn low wages than permanent employees. In the paper Temporary employment contracts: Short term blessings or long-term traps? - Mooi Reci and Ronald Dekker (2009)³- This is empirical research of the Dutch workers in Netherlands from 1980-2000 where they had examined how previously held fixed term contract job influenced both likelihood and duration of future unemployment. They analysed that Dutch fixed term contract workers had high risk of future unemployment than regular contract workers. It also showed that men had swift employment opportunities because of their job search efforts and also partially invalidates that fixed term workers have employment security by reducing the duration of unemployment. It suggested that fixed term contracts are a short-term boon that can end in repeated underemployment trap. In the paper Employment Effects of Restricting Fixed Term Contracts: Theory and Evidence- Pierre Cahuc, Pauline Carry, Franck Malherbet and Pedro S. Martins (2022)⁴- In this paper, they analysed labour laws executed during the year 2009 in Portugal where fixed term contracts are restricted in order to reduce labour market segmentation. It analysed that the laws were a success which reduced fixed term jobs but did not increase permanent contracts and employment in large firms decreased. The laws reduced total employment and also had negative impacts on welfare of employees. After analysing these papers, this research paper focuses on the different laws of FTE in India and also about the laws internationally and its benefits and drawbacks which will help to find out laws which are efficient and effective.

OBJECTIVE AND SCOPE OF THE STUDY

This paper aims to study the contrasting views and different regulations regarding fixed term employment in India and also in other countries. It also aims to analyse which of the regulations are beneficial for the employers and employees. It contains suggestions and recommendations which can be considered to improve the situation in India. This paper also talks about the flaws in the current regulations which can also be reviewed properly.

WHAT IS FIXED TERM EMPLOYMENT?

A fixed-term employment is one in which the employer and employee both sign a contract with a start and end date and agree to specific terms and conditions. This type of employment is used when there is a demand for competent employees for short-term projects or to replace employees who have been absent from work for an extended period of time. This is more cost-effective and appropriate for seasonal labour.

¹ Mauno, S., Kinnunen, U., Mäkikangas, A. and Nätti, J., 2005. Psychological consequences of fixed-term employment and perceived job insecurity among health care staff. *European Journal of work and organizational psychology*, 14(3), pp.209-237.

² Toharia, L. and Jimeno, J.F., 1993. The effects of fixed-term employment on wages: theory and evidence from Spain. *Investigaciones económicas*, 17(3), pp.475-494.

³ Mooi-Reci, I. & Dekker, Ronald. (2009). Temporary employment contracts: Short-term blessings or long-term traps? *Bijdragen*.

⁴ Cahuc, P., Carry, P., Malherbet, F. and Martins, P.S., 2022. Employment Effects of Restricting Fixed-Term Contracts: Theory and Evidence.

DIFFERENCE BETWEEN CASUAL CONTRACTUAL EMPLOYMENT AND FIXED TERM EMPLOYMENT

Often the terms casual contract and fixed term employment are used interchangeably, but the concepts are not the same. In casual contract employment, the employer and the employee enter into a contract, but the nature of work and the duration of employment will not be fixed. The employees do not have to commit themselves to a set amount of work and it is not necessary for them to take up all the jobs or tasks offered by the employer. Compared to permanent or fixed term employees, these employees get less benefits.

In fixed term employment, the nature of work and the duration of the work will be fixed, and the employees have to commit themselves to the jobs or tasks offered by the employer if not, it will amount to breach of the contract which will ultimately affect the employees. They also get benefits at par with the permanent employees which will be discussed later in this paper.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT 1946

This legislation was enacted to ensure that workers had an adequate quality of living by requiring enterprises to declare the terms and conditions of employment. Prior to this act, employees' working conditions were chaotic, and their employers abused them by providing them confusing terms and conditions. This legislation seeks to address these issues uniformly across all establishments. This legislation applies to the industrial establishments which has 100 or more employees or whenever the appropriate government deems fit, it can add any industrial establishments which have less than 100 employees with not less than 2 months' notice.⁵

FIXED TERM EMPLOYMENT BEFORE AMENDMENT OF THE ACT

Prior to the amendment of this act, the fixed term employees were not deemed equal to permanent employees and were thus denied the same privileges. Most establishments chose fixed term employment just to cut costs because they do not require the same level of attention as permanent employees. Moreover, fixed term employment was allowed only in apparel (clothing) manufacturing sector. Employers were performing the act of converting permanent employees to fixed-term employees during this time in order to reduce costs. Since the employees were no longer receiving the perks as previously, this had a serious impact on their interests. Furthermore, retrenchment benefits for a worker in an industry will not apply to fixed-term workers since they are exempt from the definition of retrenchment in the Industrial Disputes Act.

FIXED TERM EMPLOYMENT AFTER AMENDMENT OF THE ACT

The Act was amended in 2018 and certain provisions were added in the rules, after which fixed term employment was widely known among the employers and it was also recognized in all industries. The employers have been prohibited from transforming employees working for a permanent term to employees working for a fixed period as this will affect the interests of the employees and many will lose their jobs.⁶

The rules also stated that there should not be any difference between permanent and fixed term employees hence, provided for equal hours of work, wages, allowances, and other benefits as that of a permanent employee in proportion to the period of service accomplished.⁷

On termination of the fixed term employees by reason of non-renewal of the contract or on cessation of the contract, they are not granted any notice or pay for the same. There is an exception to this. If the fixed term employee has worked for 3 months continuously and their termination is not done in accordance with the terms of the contract, then a 2-weeks' notice is to be given to the employee. On the other hand, if the employee has not completed the said continuous service of 3 months and the contract is terminated prior to the fixed term of employment, the employer should provide a written notice of the reasons for such termination.⁸

⁵ Industrial Employment (Standing Orders) Act, 1946, Section 1(3)

⁶ Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, Rule 3 A

⁷ Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, Rule 3 B Schedule 1 (h)

⁸ Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, Rule 3 (d) Schedule 1A (ii)

DOWNSIDE OF THE AMENDMENT

But these amendments had certain flaws during the year. The shift to fixed term employment had made the companies easy to layoff the permanent employees as this was advantageous to the companies and this increased job creation in India. The unification of the 44 central labour laws into 4 codes were also pending in the government and also the trade unions opposed the idea of introducing fixed term employment in all sectors as this would create more fixed term jobs and there was a fear that eventually the permanent employees would disappear from the industrial sectors.

INDUSTRIAL RELATIONS CODE 2020

Labour comes under the concurrent list of the constitution which means both the Central and the State government can make laws relating to the same. The central government had analysed that there are various legislations that are governing different aspects of labour like industrial disputes, working conditions, social security, wages etc. The 2nd National Commission on Labour stated that the current legislations are complex and contained outdated and inconsistent provisions. To improve the situation and to ensure uniformity in the laws, the commission commended for the consolidation of the central labour laws into 4 major Codes:

- Wages Code
- Industrial Relations Code
- Social Security Code
- Occupational Safety, Health and Working Conditions

The bills regarding these codes have been passed by the Parliament in 2020. This paper will focus on the provisions of fixed-term employment introduced in the Industrial Relations Code. This Code includes 3 main laws which relate to labour dispute settlement and collective bargaining agreements:

- Industrial Disputes Act 1947
- The Trade Unions Act 1926
- Industrial Employment (Standing Orders) Act 1946

The Industrial Relations Code 2020 states that the Standing Orders provisions will apply to industrial establishments which have 300 or more employees and the employer should prepare a draft standing order consisting of the matters listed in the Schedule I of the Code which include classification of workers, manner of informing the employees about working hours, holidays, pay days and wage rates, termination of employment, grievance redressal mechanism for the employees, etc.

CONCEPT OF FIXED TERM EMPLOYMENT IN THE CODE

As per the definition given in the Code under Section 2(o), fixed term employment means when an employer engages a worker through a contract. The section also contains a proviso according to which the wages, hours of work or any allowance and other benefits given to a permanent employee must also be given to the fixed term employee. The proviso also states that any gratuity and statutory benefit given to a permanent employee must also be given to a fixed term employee irrespective of his period of service. The gratuity given for a fixed term employee is when he/she had completed 1 year of continuous service under the contract whereas for a permanent employee is when he/she had completed 4 years and 8 months.

Previously the term Fixed Term Employment had been introduced through various state government notifications and judgements. Generally, employers enter into contracts with the employees for a specific period of time, but they were not properly regulated. The Code has set quite a standard for the term. They are not to be considered as a substitute or offer jobs which will replace the permanent employees or offer them jobs which are permanent in nature. This is advantageous to the employees as they will be receiving the same benefits as a permanent employee. The employers should consider the statutory benefits given to the fixed term employment as it will add on to the financial burdens of the establishments.

According to the Code, the employers have the liberty to engage the employees for any duration of time and nature of work. It makes no mention of the length of time an employee may be employed on a fixed-term basis or the types of work that they may or may not perform. Moreover, the employers can choose to replace contract labourers with fixed term employees as they can be hired directly rather than through contractors so that they can save the expenses charged by the contractor.

These employees will not come under retrenchment compensation as it is excluded in the definition of 'retrenchment' under the Code. As mentioned before in the Standing Orders, when an employee is terminated, no notice of termination or payment for notice is required because the contract will automatically expire at the end of the stipulated period unless renewed by the employer but there is no exception to this provision as given in the Standing Orders.

DRAWBACKS OF THE CODE

As the Code has not mentioned the number of times the contract can be renewed or the maximum time period for the contract, the rate of permanent employees in the establishments may deteriorate. Often, this employment was viewed as the ways and means for a permanent position in the establishment. But it is feared that the employers will hire hardly any permanent employees which will gravely affect them and their families and also have an impact on the country's unemployment rate. This is the reason why some countries like China, Vietnam, Indonesia, etc, have policies relating to the number of times a contract can be renewed. This also ensures job security for the employees.

Under the Code, the employers may offer fixed term contractual employment to the permanent employees working for them. Prior to this Code, there was a restriction on the employers not to convert permanent employees into fixed term employees. This form of conversion has grown more common as it proves to be more of an advantage to the employers than hiring both permanent and fixed term employees. The employer will have to bear financial burdens as a result of the laws being framed in such a manner which ensures both types of employees will avail the same benefits.

So, by transforming permanent employees into fixed term employees the employer can cut costs. This will affect the interests of the employees as it will rob them of the position they have acquired in the establishment through years of hard labour. If they are converted into fixed term employees, they can be removed from the establishment when the period of the contract expires after which they will either continue to be a fixed term employee if the contract is renewed by the employer or they will look for other jobs based on their skills and experience which is a waste of time as they have to start over. Furthermore, the employees might be assigned any form of work by the employer because there is no mention about any particular type of labour for the employee to engage or not engage in. Employees morale will be affected as a result of having skills that differ from those required for the job offered by the employer.

ILO: INTERNATIONAL LABOUR ORGANIZATION

It is an organization developed to promote social justice and human and labour rights that are recognized internationally. Its aim is to achieve prosperity through labour peace. It contributes to the growth of decent working and economic standards, which benefit both employees and employers in their pursuit of peace, prosperity, and progress.

The organization was founded in 1919 to attain international peace by social justice. In 1946, it became a distinctive body in the United States which followed a tripartite structure where there was an equal representation and opportunity to be heard for all the three parties: the employers, employees and the government which provides decent work for both men and women.

There are four significant objectives behind the formation of this organization. They are:

- To promote elemental rights and principles at work
- To increase men's and women's access to better job opportunities and income
- To improve the efficacy and coverage of social security
- To build up tripartism and social discourse

The ILO also provide with the knowledge and expertise about work for decent works, livelihoods and dignity. It also considers the society as a whole along with the three parties which are a part of the same.

CONCEPT OF FIXED TERM EMPLOYMENT UNDER THE ILO

According to the organization fixed term employment affects the protection available to the employees with respect to the termination of the contracts because the employers need not provide with justification for the same as the time for its end is mentioned in the contract and no severance pay is given to them.

The International Labour Organization's Convention No. 158 governs employment termination. It is a convention where the termination of the employment will be initiated by the employer. It is stated that certain groups of employees may be exempt from all or portion of the rules of this Convention:

- a) Fixed-term employees for a certain time period or a specific task;
- b) Probation (Training) period served by the workers or a qualifying employment period, fixed in advance with appropriate duration;
- c) Casual employees for a short time period.⁹

Article 3 of the Convention states that adequate safeguards shall be provided against recourse to fixed term contracts for a specified time period to avoid the protection resulting from this Convention.¹⁰

Convention No. 166 is a guideline for certain adequate safeguards to be executed. It may provide for provisions like:

- a) To limit the recourse of fixed term contracts either due to the nature of work or the situations under which it is affected or the interests of the workers, the employment cannot be for an undetermined period of time.
- b) To state the fixed term contracts other than those mentioned in (a) as contracts of undetermined duration.
- c) To state the fixed term contracts, when it is renewed one or more times, other than those mentioned in (a) as contracts of undetermined duration.

Some nations do not encourage this concept of fixed term employment, but other nations consider these safeguards by listing the establishments which allow fixed term employment, limiting the maximum times the contracts can be renewed with the same worker or limiting the duration of the renewed contracts. As per the ILO, if a worker is employed for a continuous period of 2 years over a 5-year period, then the worker is considered as a permanent employee.

In the opinion of the International Labour Organization, fixed term contracts allow employers to respond to changes in demand, such as seasonal fluctuations, replace temporarily absent employees, or evaluate freshly acquired personnel before providing them an open-ended contract. However, some of them have come to rely extensively on these contracts, engaging individuals on these contracts on a regular basis for permanent company tasks. Fixed term employment may present challenges for these employers, such as how to manage people in different types of arrangements but performing identical duties; it may also lead to inadequate financial expenditure in training and innovation, and hence reduces productivity.

DRAWBACKS IN THE ILO CONVENTIONS

The organization addresses about the overall conception of fixed term employment but doesn't give any conventions or provisions regarding the same. The above-mentioned conventions are about termination of employment and does not deal with other aspects of the conception which are also essential for both the employers and workers. It doesn't give guidelines or provisions for the process and system of hiring a fixed term hand, their working conditions, benefits available to the workers, etc. The organization does not give any protection to the fixed term workers. Since they have given the birth, recommendation and guidelines for the employment, the transnational and indigenous sources of regulation should be executed by the ILO member countries. Both the Conventions give the fundamental principles according to which the countries have framed their own labour laws. This doesn't conform to uniformity and if it's executed, the ILO cannot overlook each and every state for the same.

⁹ Termination of Employment Convention No. 158 Article 2

¹⁰ Termination of Employment Convention No. 158 Article 3

CONCEPT OF FIXED TERM EMPLOYMENT INTERNATIONALLY**UK**

In UK, if the following 2 conditions are satisfied, then the employees are under fixed term employment:

1. If they have a contract of employment with the organization they work
2. If their contracts expire on a specific date or on completion of a work

Employees are regarded as fixed term employees if they are a:

1. Casual or seasonal employee up to 6 months during peak season
2. Skilled employee for a project
3. Employee covering for someone who is on a maternity leave.

Employees are not regarded as fixed term employees if they:

1. Have contracts with an agency and not with the organization they work for
2. Are a student or a trainee for work experience or placement
3. Are employed under contract of apprenticeship (a combination of practical training and study)
4. Are members of armed forces

They have been following objective justification, that is, the employers should treat the fixed term employees equally with that of the permanent employees who are doing the same or similar nature of work. Even if they do not treat them equally, they should provide with a proper justification. It is also ensured that both the types of employees must get equal pay and benefits, details about permanent positions in the organizations and immunity against dismissal. The fixed term employees are ensured same rights as the permanent employees only if they are working for the same employer. Fixed term employees will have the same redundancy rights as permanent employees if they have worked for a continuous period of 2 years for the same employer. If the fixed term employees have concerns regarding their work or any concerns will be first discussed with their manager and if they are not satisfied, they can approach the employer or file a complaint under the employer's grievance procedure or they can approach the employment tribunal as a last resort.¹¹

US

Under the US laws, there are no necessities for employment contracts as they are assumed to be contracts 'at-will,' that is, the contracts can be terminated by either parties to it with or without notice. Mostly, the employees are hired on the basis of this contract without an employment contract in writing. An employment contract in writing will contain the terms and conditions of the job. People with high skills and compensated employees will be hired through contract of employment. These contracts will specify their position, responsibilities, pay, incentives, stock options and the reason for termination along with the severance pay. Here, they do not limit the time period for fixed term contracts and they also do not have any legal provisions regarding the same. Furthermore, there is no provision for notice period for terminating an employee as they are hired on the basis of 'at will' where either party can terminate the contract with or without notice. If there is no contract of employment, then the employment relation is assumed to be 'at will.'¹²

South Korea

After the IMF financial crisis in 1997, they have overused the irregular workers due to which non-regular workers became a problem. To limit the use of non-regular workers and also to encourage them for full time jobs, the Act on Protection of Fixed Term and Part Time workers was implemented. Fixed term Workers Act was implemented in 2007 to protect the irregular workers. The Act states that fixed term workers shall be used for a maximum period of 2 years after which they are considered as non-fixed term worker. This was executed to reduce the use of fixed term workers and to provide employment security by renewing of the fixed term contract if they have worked for more than 2 years.¹³

¹¹ [Fixed-term employment contracts: What counts as a fixed-term contract - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/fixed-term-employment-contracts)

¹² [02. Employment Contracts - L&E Global \(leglobal.com\)](https://www.leglobal.com/employment-contracts)

¹³ [Korean Labor Law: The Right of Fixed-term Workers to Expect Renewal of their Employment Contract \(indrastra.com\)](https://www.indrastra.com/korean-labor-law-the-right-of-fixed-term-workers-to-expect-renewal-of-their-employment-contract)

FINDINGS/RECOMMENDATIONS/SUGGESTIONS

- The rules regarding fixed term employment are both rigid and flexible which benefits both the employers and employees. Many establishments may not be executing the provisions under the Standing Orders because of the introduction of the Codes in India.
- In comparing the Standing Orders and the Code, the former has certain strict and absolute provisions that can be advantageous to the employers and employees as a whole. Since the Code was introduced and as it includes the Standing Orders certain important provisions under it was exempted from the Code which will ultimately affect the interest of the employees at the end.
- When compared internationally, India has got potential to develop the labour laws more efficiently but the regulations should be more consistent and not ambiguous. If India considers provisions under UK, then it may benefit more to both of them as UK contains more stringent rules regarding FTE.
- Since the implementation of the Code, the rules regarding conversion have been out of the question because of which several establishments had made it a routine to convert the permanent employees to fixed term employees without consideration. This can be avoided if provisions regarding the same were implemented in the Code.
- Provisions regarding the minimum and maximum period for contracts, renewal and period for successive contracts of the same employee can be introduced to reduce the ambiguity in the Code so that the employers' exploitation of the employees can be eliminated.

CONCLUSION

In fixed term employment, the workers have an issue that the pay and working conditions are poor. The fixed term employment provides an agreement between endless employment and contract jobs. Because of high demand of skilled workers, they're benefitted by Fixed term employment. But this would provide injustice on the part of unskilled and semiskilled workers who are vulnerable to illegal practices by the employer. The government should contemplate about them. They should provide effective laws regarding fixed term employment so that the employees are not exploited by the employees to the point that their employment opportunities are seized. There is equal number of advantages and disadvantages in this concept but if there are proper implementation of laws, they can be balanced so that one can benefit from the other.

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