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Fixed Term Employment Arrangements under Industrial Relation Code 2020: Examining Legal Frameworks and Implications

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ABSTRACT

This paper explores the recently introduced concept 'fixed-term employment' under the Industrial Relations Code, 2020, focusing on its nuances, intricacies and rationale behind insertion of this provision.

Keywords: Fixed Term, Employment, Industrial Relation Code.

I. INTRODUCTION

Recently the Parliament consolidated different labour Laws into four Codes. One of the important code which deals with the industrial relations, encompassing the Trade Union Act, of 1926, Industrial Disputes Act, of 1947, and Employment Standing Order Act, 1946. The Code of Industrial Relations provides for 'Fixed Term Employment'. Similarly, the Code of Social Security, 2020, provides that 'fixed-term employees' are entitled to gratuity benefits on a pro-rata basis. This provision enables employers to engage workers for a specific duration through written contracts.

The Industrial Relations Code of 2020 in India has ushered in a significant change with the introduction of 'Fixed-Term Employment Contracts' (hereinafter referred as FTEC). This provision reflects a nuanced approach to the employer-employee relationship, aiming to provide businesses with flexibility while ensuring workers receive benefits akin to permanent positions. FTEC allows employers to engage workers for specific durations through written contracts, departing from traditional permanent employment structures.² FTEC involves hiring for a predetermined period, often one to two years, with employees not considered part of the permanent payroll. Legislative intent emphasizes equal benefits for FTEC workers compared to their permanent counterparts, including eligibility for gratuity tied to a minimum one-year

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² C.S. Venkata Ratnam, Globalization and Labour-Management Relations: Dynamics of Change, 332 (New Delhi: Response Books, 2001)

service. Historically, the employment landscape shifted from exploitative contracts to regulatory frameworks, with key amendments in 1984 under Industrial Disputes (Amendment) Act, of 1984 facilitating engagement for fixed periods.

In this evolving landscape, FTEC under the Industrial Relations Code 2020 represents a transformative step, shaping the dynamics of employment relations in India. It seeks to strike a delicate balance between the evolving needs of businesses and the protection of workers' rights, acknowledging the diverse nature of employment arrangements in the contemporary world. The ensuing discourse surrounding FTEC will likely influence future labour practices and contribute to the ongoing dialogue on fair and equitable employment in the country.

II. UNDERSTANDING ‘FTEC’: DEFINITION AND SIGNIFICANCE

FTEC means the hiring of an employee by a company or enterprise for a predetermined period, often ranging from one to two years or for mutually agreed tenure. In this arrangement time or tenure is an important deciding factor. Notably, such employees are not included in the permanent payroll of the company. The remuneration for FTEC is predetermined and remains unchanged throughout the contractual term. Broadly speaking, such arrangements are reserved for positions of a temporary or seasonal nature, excluding core job roles.³

In a legal context, FTEC refers to a work arrangement wherein ‘an employee is engaged for a specific duration, culminating in a predetermined end date’. This employment model is prevalent in industries marked by fluctuating workloads or specific project requirements. While providing flexibility to management or employers to meet short-term needs without long-term commitments, it automatically terminates the employment relationship at the conclusion of the agreed-upon term. Legal recognition stipulates defined roles, responsibilities, and conditions during the specified period.

The Code of Industrial Relations 2020 and the Code on Social Security, 2020 incorporated the definition of fixed-term employment, it states that ‘fixed term employment’ means ‘the engagement of a worker on the basis of a written contract of employment for a fixed period.’⁴ The legislative wisdom and rationale behind inclusion of this term is evident in the proviso, which mandates that FTEC employees are entitled to all statutory benefits on par with permanent workers engaged in similar work. Moreover, eligibility for gratuity is contingent

³ Praveen R, Regulation Of Fixed Term Employment Contracts In India 10 (Labour Law Reforms, 2021 Available

<<https://nludelhi.ac.in/download/Labour%20Law%20Reforms%20Book%20NLU%20Delhi%202021.pdf>>

⁴S. 2(o) Industrial Relations Code, 2020; S. 2 (34) Code on Social Security, 2020 (under this legislation the term “employee” has been used in place of “worker”).

upon a minimum one-year service under the FTEC. Recently, the amendment to the Industrial Employment (Standing Orders) Amendment Act, of 2018, was introduced to facilitate ease of business operations, aligning with industry needs and employment availability. Acknowledging the volatile nature of the contemporary business environment post liberalization of economic activities in India the provision relating to FTEC under Code of Industrial Relations Code, 2020, empowers employers to engage workers for fixed terms as necessitated by business exigencies.

III. LEGAL FRAMEWORK: REGULATIONS GOVERNING FIXED-TERM EMPLOYMENT CONTRACTS

FTEC in India are governed by various legal provisions, which have evolved over time to address the imbalances in the employer-employee relationship. The roots of employment contracts lie in the Indian Contract Act, 1872, subjecting them to its general principles. Historically, employers exploited their social and economic power during the 18th and 19th centuries, as there were no statutory obligations to document the terms of employment, resulting in unilateral and often exploitative contracts.⁵

Before the advent of labour legislation, the common law governed master-servant relationships, with contracts being largely unilateral. The laissez-faire approach prevailed, and employers had the freedom to suspend contracts only if explicitly stated. The statutory intervention was initially made through Industrial Employment (Standing Orders) Act, 1946, emerged as a response to this laissez-faire rule, mandating employers to define employment conditions clearly, promoting uniformity and ensuring workmen were aware of their terms before accepting employment.

The Act aimed to transition from unequal contractual relationships to conferring 'status' on workmen through statutory conditions imposed on employers. Post the enactment of the Constitution of India, labour laws played a crucial role in balancing rights between employers and workers, preventing the misuse of employer power. Industrial adjudication, as affirmed by the various High Courts and Supreme Court, does not strictly adhere to the master-servant legal framework and give primacy to liberal interpretation of the labour laws.

Employers in India historically had the freedom to engage workers through contract without legislative restrictions till mid-1980s. However, significant changes were introduced in 1984 through amendments to the Industrial Disputes Act, 1947. These changes included the insertion of provisions on unfair labour practices and modifying the definition of 'retrenchment' given

⁵ Paul Davies and Mark Freedland, *Kahn-Freund's Labour and the Law* 18 (Stevens, 1983).

under Industrial Disputes Act, of 1947.⁶ Prior to the amendment, discharge on completion of a fixed-term was considered retrenchment, providing workmen with more rights and restrictions on the employer's right to hire and fire the worker as per his sweet will. For instance, the Apex Court in *S.M. Nilajkar & Ors Vs. Telecom District Manager, Karnataka*,⁷ while acknowledged the role of FTEC in government schemes and short-lived projects aimed at generating employment opportunities. Further, observed that the introduction of sub-clause (bb) to section 2(oo) in 1984, through amendments to the Industrial Disputes Act, of 1947, was a legislative response to prevent undue liabilities on the employer-State, thereby maintaining a balance between welfare initiatives and labour laws. However, the courts, while permitting FTEC arrangements, have laid down specific guidelines to prevent abuse of this provision. These guidelines necessitate that the work is of a temporary nature, the contract specifies termination upon project or scheme completion, and the "employees are apprised of these terms at the commencement of their employment."

The Industrial Employment (Standing Orders) Act, 1946, mandates employers in industrial establishments with 100 or more employees to define employment conditions through certified standing orders. This legislation does not apply universally, making contracts in smaller establishments a matter of free will between parties. To curb potential abuse, the Central Government, in 2018, amended the Industrial Employment (Standing Orders) Central Rules, making FTEC applicable to all establishments governed by the Act. This amendment replaced the words "fixed term employment workmen in apparel manufacturing sector,"⁸ with the words "fixed term employment" in item 1 of Schedule 1 (Model Standing Orders). In the substituted sub-paragraph (h) of Item 2 of Schedule defines a "fixed term employment workman" as "a workman who has been engaged on the basis of a written contract of employment for a fixed period". Hence making "fixed term employment" applicable to all the Industrial Establishment governed by the Industrial Employment (Standing Orders) Act, 1946.

The amendment redefined FTEC and specified that their conditions, including hours of work, wages, allowances, and benefits, should not be inferior to permanent workmen. Additionally, FTEC employees are entitled to statutory benefits proportionate to their service period, even if it does not meet the qualifying period for permanent employment. It is to be noted that Rule 3-A to the Act, prohibits employers from converting permanent posts into FTEC posts after the

⁶ The Industrial Disputes (Amendment) Act, 1982 (46 of 1982) (w.e.f. 21-8-1984) added Chapter V-C along with the Fifth Schedule to the Industrial Disputes Act, 1947.

⁷ *S.M. Nilajkar v. Telecom District Manager* (2003) 4 SCC 27 at 36

⁸ Notification No. G.S.R. 235(E) dated 16.3.2018 available at <https://labour.gov.in/sites/default/files/FTE%20Final%20Notification.pdf>

amendment's commencement to prevent the abuse of this beneficial provision for workers⁹. However, the amendment does not specify the limit on the number of workmen under FTEC, it implies that FTEC can be used for positions not of a perennial nature. Therefore, the regulation of FTEC is confined to establishments covered by the Industrial Employment (Standing Orders) Act, 1946, providing employers in other establishments more flexibility in employing workmen under FTEC. The legal provisions governing FTEC in India have evolved to rectify historical imbalances and promote fairness in the employer-employee relationship. The Act, plays a crucial role in defining employment conditions, recent amendments have extended the scope of FTEC regulation. It is worth to be noted that the distinction in applicability between establishments covered by the Act and those exempted allows for varying degrees of freedom for employers in employing workmen under FTEC.

IV. JUDICIAL INSIGHTS INTO FTEC ARRANGEMENTS

In the realm of employment law, the profound impact of judicial decisions in shaping and moulding the contours of employment contracts cannot be overstated. Mark Freed land's assertion that judges have played a pivotal role in the development of employment contract law rings true.¹⁰ The brief survey of some landmark judgments that have left an impeccable mark on the landscape of employment relations in India.

In *D.N. Banerjee v. P.R. Mukherjee*¹¹, the Apex Court's Constitution Bench articulated a significant shift in perspective. The court held that conflicts between capital and labour should be approached more from the standpoint of 'status' than the traditional lens of a 'contractual agreement'. Recognizing the need for such a paradigm shift, the court acknowledged that addressing industrial disputes necessitates a focus on social and economic justice. Similarly, in *R.B. Diwan Badri Dass v. Industrial Tribunal*¹² emphasized that the doctrine of absolute freedom of contract cannot supersede the imperative of social justice. The Court underscored that industrial adjudication doesn't endorse unbridled employer rights; rather, it imposes limits to safeguard the "rights of employees and ensure job security".

In *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*¹³ reiterated the court's authority to scrutinize terminations, even when masked as 'termination simpliciter.' This

⁹ V Janardhan, *Industrial Relations in India* 64 (New Delhi: Orient Blackswan, 2016).

¹⁰ Supra 7 at 20. See Supurna Banerjee and Zaad Mahmood, *Judicial Intervention and Industrial Relations: Exploring Industrial Disputes Cases in West Bengal*, 46 (3) *Industrial Law Journal* 366,370-378 (2017) on role of judicial intervention in industrial relations in India

¹¹ *D.N. Banerjee v. P.R. Mukherjee*, AIR 1953 SC 58

¹² *R.B. Diwan Badri Dass v. Industrial Tribunal* AIR 1963 SC 630

¹³ *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593 at 615.

reflects the court's awareness that linguistic engineering can be employed to conceal the true motives behind seemingly innocuous termination orders. In *Jarnail Singh v. State of Punjab*¹⁴ further clarified the court's stance by emphasizing that the form of a termination order is insufficient for determination; instead, the substance, circumstances, and basis must be considered. This progressive trend in interpretation extended to the expansive reading of the definition of 'retrenchment' under the Industrial Disputes Act, 1947.

To address potential issues arising from this broad interpretation, Parliament intervened in 1984 to amend the definition of 'retrenchment', by insertion of clause (bb) in the definition to facilitate the tenure engagement of workers for fixed period. While interpreting the clause (bb) of section 2(oo) of the Industrial Disputes (Amendment) Act of 1984, In *S.M. Nilaja v. Telecom District Manager*¹⁵, the Supreme Court explained that this amendment aimed to alleviate the financial burden on State welfare activities, ensuring that short-term employment in government schemes did not disproportionately impact the state. Similar was held in *M. Venugopal v. Divisional Manager, LIC, and Escorts Ltd. v. Presiding Officer*¹⁶ that the Court exhibited a liberal interpretation, deeming terminations in line with contractual terms as not constituting retrenchment. However, a noticeable shift in the Court's approach is discernible in case like *Municipal Council, Samrala v. Raj Kumar*. Departing¹⁷ from its earlier stance, the court held that terminations based on contractual clauses fell under Section 2(oo)(bb) of the Industrial Disputes Act. This evolving landscape raises pertinent questions about the delicate balance between contractual rights and the pursuit of social and economic justice in labour disputes. As we navigate this nuanced terrain, the interplay between judicial decisions and employment contracts continues to shape the ever-evolving narrative of Employers and labour relations in India.

V. CONCLUDING REMARKS

Despite the benefits, certain challenges and concerns arise in relation to FTEC. One significant issue is the potential abuse of this provision by employers, who may hire workers on FTEC instead of providing regular employment. This can lead to an erosion of permanent jobs and undermine job security for workers. Moreover, the absence of specific safeguards, such as minimum/maximum tenure and limitations on contract renewals, raises concerns about the continuous reliance on FTEC without offering the possibility of permanent absorption. Cost

¹⁴*Jarnail Singh v. State of Punjab*(1986)3 SCC277at291.

¹⁵*S.M. Nilajkar v. Telecom District Manager*(2003)4SCC27at36

¹⁶*M. Venugopal v. Divisional Manager, LIC* (1994)2 SCC 323

¹⁷*Municipal Council, Samrala v. Raj Kumar* (2006)3 SCC81

considerations for employers and the shifting of legal compliance and litigation costs to contractors can also impact the preference for contract workers over FTEC.¹⁸

To strike a balance between job security and business flexibility, it is essential to introduce specific safeguards within the regulatory framework. These measures may include defining minimum/maximum tenure for fixed-term contracts, limitations on contract renewals, and restrictions on the use of contract workers in core activities. Strengthening compliance mechanisms, enhancing legal remedies for workers, and fostering dialogue between stakeholders are also critical steps towards promoting fair employment practices and addressing the challenges associated with contract employment.¹⁹

FTEC provisions in India offer benefits such as flexibility for employers and employment opportunities for workers. However, challenges related to potential abuses, the preference for contract workers, and the absence of safeguards require careful consideration. By implementing appropriate policy and regulatory measures, India can strike a balance that promotes job security, protects worker rights, and facilitates business needs. Addressing the conflicting provisions within labour codes and encouraging the responsible use of FTEC will contribute to a fair and inclusive labour market.

¹⁸ S. Sethuram, Fixed Term Employment in India: An Analysis of Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, 7(8) *International Journal of Business and Management Invention* 10, 12 (2018).

¹⁹ *Tata Chemicals Ltd. vs Kailash C. Adhvaryu* AIR 1964 Guj 265 (para. 18).