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Equal Pay for a Temporary Self? Fixed-Term Employment under the Industrial Relations Code, 2020

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Abstract

The Industrial Relations Code, 2020 has transformed fixed-term employment from a mere trial by the executive into a part and parcel of Indian labour law. The following is a very interesting promise in the definition of section 2(o) of the Code: hours of work, wages, allowances and other benefits not less than those of another worker employed in the same or similar occupation on a permanent basis, and proportionate statutory benefits. On its own, the clause would seem to provide the long-sought-after legal soil for the constitutional principle of equal pay for equal work. This article suggests the promise exists but is not firm. But the Code guarantees equality throughout the contract, with the contract itself largely unregulated. There is no limitation on length of service or renewals, the fixed term is not limited to temporary requirements, there is no automatic conversion to permanent service and there is no automatic removal of the end of a fixed term from the definition of retrenchment. The article relies on the jurisprudence of the Supreme Court on equal pay, the case law under the Industrial Disputes Act, 1947, and a comparative study of European models to argue that parity without safeguards ensures that the employee will turn into a dispensable at the end of the contract period. It concludes with moderate proposals for allowing flexibility and fairness to coexist.

Keywords: Fixed-term employment; Industrial Relations Code, 2020; equal pay for equal work; retrenchment; non-renewal; labour flexibility

1. Introduction

All labour law systems must determine the value of a temporary worker. India has always responded with a stuttering response. Temporary, casual, daily-rated and contract workers have come to make up a considerable portion of the formal sector, but the law was designed to tolerate this group as an exception rather than as a group that requires regulation. A lot of the litigation that made it to the High Courts and Supreme Court in the past 40 years has been essentially the worker claiming that they had been working permanently for years and asking to be treated as permanent, and the employers saying that that's what it says on the label.

With the introduction of fixed-term, it was intended to be a solution to another issue. But industry, particularly in the export and seasonal industries, said the inflexibility in terms of hiring and firing put employers in the position of having to employ contract workers through intermediaries, which ultimately affected all parties. A contract directly to the employer for a fixed-term would enable the employer to hire on for a specific purpose without the worker being on the employer's rolls. That is the deal that was made. The

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four Labour Codes were brought into force on 21 November 2025[1] and the Central Rules were notified on 8 May 2026;[2] thus, the bargain has become law in the sectors.

The question this article poses is: Does the deal ring true? Perhaps the most worker-friendly sentence in the definition clause is contained in section 2(o) of the Industrial Relations Code, 2020,[3] which guarantees workers the same rights as those who have indefinite employment contracts. However, the same Code also provides the employer with the ability to come to an end of the relationship by letting time run out, giving no notice, paying no compensation, and without obligation to explain.[4] So much for the title of this article, which sums up the tension in one word. The fixed-term worker could be another permanent worker, but only temporarily. The parity is time-constrained and the employer sets the time.

2. From Executive Notification to Statutory Category

The Code was not the first to have introduced fixed-term contracts. It was first introduced in 2003 with the change in the Central Government's Industrial Employment (Standing Orders) Central Rules, 1946 and incorporation of a category of fixed-term workmen on the model standing orders.[5] The amendment was opposed by the trade unions as a stealth move to end security of tenure and was withdrawn in 2007.[6] The idea resurfaced in 2016, initially for the apparel industry alone, which in that year was the focus of a special package for the creation of jobs and exports.[7] Fixed term employment was further extended to all parts of the central sphere in 2018 by an additional amendment to the Central Rules.[8]

There are two features of this history that are important. The first, and most important point is that the model was introduced via subordinate legislation relating to standing orders and not by a debate on the nature of employment in Parliament. It had, therefore, only a limited basis for action and it was subject to the efficacy of the Standing Orders Act. Second, even the 2018 notification embraced the fundamental concept embodied in the Code which stipulated that a fixed-term workman was to be treated as being on a permanent contract and provided with the same hours, wages, allowances and benefits as a permanent workman and statutory benefits in proportion to service.[9]

This is carried over into the parent legislation by the Industrial Relations Code, 2020. Fixed-term employment is defined in section 2(o)[10] as a written contract of employment that specifies a fixed term of employment, unless there are two exceptions. These are the parity guarantee and the fixed basis. The second provides the worker with all the statutory benefits available to a permanent worker, based on the length of service,

[1] The Code on Wages, 2019 (29 of 2019); the Industrial Relations Code, 2020 (35 of 2020); the Code on Social Security, 2020 (36 of 2020); and the Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020) were brought into force with effect from 21 November 2025 by notifications of the Ministry of Labour and Employment, Government of India.

[2] Industrial Relations (Central) Rules, 2026, G.S.R. 342(E) (8 May 2026); Code on Wages (Central) Rules, 2026, G.S.R. 343(E) (8 May 2026); Social Security (Central) Rules, 2026 and Occupational Safety, Health and Working Conditions (Central) Rules, 2026 (8 May 2026). See also the Model Standing Orders, 2026, notified under s. 29 of the Industrial Relations Code, 2020.

[3] Industrial Relations Code, 2020 (35 of 2020), s. 2(o).

[4] *Id.*, s. 2(zh).

[5] Industrial Employment (Standing Orders) Central (Amendment) Rules, 2003, framed under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

[6] Industrial Employment (Standing Orders) Central (Amendment) Rules, 2007.

[7] Industrial Employment (Standing Orders) Central (Amendment) Rules, 2016 (October 2016), confined to the apparel manufacturing sector.

[8] Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, G.S.R. 235(E) (16 March 2018).

[9] Supra note 8.

[10] Supra note 3.

although the service may be less than the usual period of service for benefit eligibility. The second proviso is included in the second most visible, Gratuity, of the Code on Social Security, 2020.[11] A fixed-term employee has the right to receive gratuity after one year of employment as opposed to five for others and the Ministry of Labour and Employment has since confirmed that the benefit does not extend to the contract labour provided by a contractor.[12]

The situation is better on paper now for the fixed term worker than it ever has been. The Code acknowledges the category in the definition clause, and links a parity promise directly to the definition; and achieves a speeding up of one of the most desirable terminal benefits. The challenges are around this definition.

3. Reading the Parity Clause

It is important to read the parity clause closely, as much depends upon it. It includes 4 aspects which are hours of work, wages, allowances and other benefits. There is no limitation of scope to be read into the word "other" when used in this context, and leave, bonus, medical facilities, access to the canteen and similar forms of benefit are ample to fit within the meaning of the term. The comparator is a permanent worker who is doing "the same work or work of a similar nature". This is a familiar recipe. It encompasses the provisions of the Equal Remuneration Act, 1976 (now incorporated in the Code on Wages, 2019) and is a principle that has been long known to courts.[13]

There are three gaps that become evident rather fast. The first one is the missing comparison problem. The clause works only where there is a permanent worker doing the same or similar work. If the entire function, for example packing, warehousing or field sales, have been converted into fixed term work, then there may be no permanent worker working it. There is no hypothetical alternative or mention of the terms that would have been in effect if the post had had a permanent nature. This means that an employer may be able to avoid having to commit to fixed-term contracts without being in breach of the clause if it transfers entire departments to fixed-term contracts.

The second gap lies with enforcement. No one is explicitly named in the Code for who must prove work is similar, and the Code doesn't require the employer to give details of the pay structure for permanent staff. If in practice, a fixed term worker suspects that they are being treated differently, they will be left with only two options: either to raise an industrial dispute or to approach the authority under the wage law, and they will have to do this whilst they are still working, and presumably hoping for renewal. It is clear that there is an incentive to keep quiet.

The third gap is proportionality. Statutory benefits are to be granted proportionately according to the period of service. That is fair for benefits that accrue over time. It is less clear for benefits that are triggered by an event, such as maternity benefit or compensation for an employment injury,[14] where a proportionate reduction would make little sense. The Code is silent, and the matter will have to be settled by rules, guidance or litigation.

[11] Code on Social Security, 2020 (36 of 2020), s. 53(1), provisos.
[12] Ministry of Labour and Employment, Government of India, Frequently Asked Questions on the Labour Codes (16 March 2026).
[13] Equal Remuneration Act, 1976 (25 of 1976), s. 4, repealed and subsumed by the Code on Wages, 2019 (29 of 2019), ss. 3 and 69.
[14] Code on Social Security, 2020 (36 of 2020), Chapters VI (Maternity Benefit) and VII (Employee's Compensation).

4. The Constitutional Lineage of Equal Pay

The parity clause sits within a long judicial conversation about equal pay. The Constitution mentions the idea only as a Directive Principle in Article 39(d).[15] The Supreme Court gave it bite in *Randhir Singh v. Union of India* (1982)[16], where a driver-constable in the Delhi Police successfully claimed the pay scale of drivers in other government departments. The Court read Article 39(d) together with Articles 14 and 16 and held that equal pay for equal work, though not expressly a fundamental right, was a constitutional goal that could be enforced where unequal scales were based on no rational classification.

The principle soon reached temporary and casual workers. In *Dhirendra Chamoli v. State of U.P.* (1986)[17], casual workers employed in Nehru Yuvak Kendras claimed the same pay as regular employees performing the same duties. The Court accepted the claim and observed that the State could not take advantage of a worker's vulnerability to pay less for identical work merely because the worker had accepted casual employment. *Surinder Singh v. Engineer-in-Chief, C.P.W.D.* (1986)[18] applied the same reasoning to daily-rated workers in the Central Public Works Department. In the private sector context, *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa* (1987)[19] interpreted "same work or work of a similar nature" under the Equal Remuneration Act and held that small differences in duties do not defeat a claim if the work is broadly similar in substance. That approach should guide the reading of section 2(o).

The doctrine then entered a cautious phase. In *State of Haryana v. Charanjit Singh* (2006),[20] the Court stressed that equal pay was not an abstract principle and that the claimant must establish equality of work, responsibility, qualifications and conditions. Differences in mode of recruitment and in the nature of duties could justify different pay. The decision placed the burden firmly on the employee. In the same year, the Constitution Bench in *Secretary, State of Karnataka v. Umadevi (3)* (2006)[21] held that temporary, casual and ad hoc employees had no right to regularisation when their appointments had not been made through the constitutional scheme of public employment. *Umadevi* was about regularisation and not about wages, but its spirit of judicial restraint spread well beyond its facts.

State of Punjab v. Jagjit Singh (2017)[22] restored balance. The Court examined the earlier decisions at length and held that temporary employees performing the same duties as regular employees were entitled to at least the minimum of the regular pay scale. It described the denial of equal wages for equal work as exploitative and coercive, because a worker who accepts lower pay for the same labour does so out of compulsion and not out of choice.

More recently, in *Jaggo v. Union of India* (2024),[23] the Supreme Court dealt with workers who had been kept on a temporary footing for many years while performing continuing duties. The Court distinguished *Umadevi*, noted that it had never been meant to protect employers who misuse temporary engagement, and directed regularisation. It also commented on the wider pattern of precarious engagement in public and private employment, observing that employers often use temporary labels to avoid obligations that come with ongoing work.

[15] The Constitution of India, art. 39(d).
[16] *Randhir Singh v. Union of India*, (1982) 1 SCC 618.
[17] *Dhirendra Chamoli v. State of U.P.*, (1986) 1 SCC 637.
[18] *Surinder Singh v. Engineer-in-Chief, C.P.W.D.*, (1986) 1 SCC 639.
[19] *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, (1987) 2 SCC 469.
[20] *State of Haryana v. Charanjit Singh*, (2006) 9 SCC 321.
[21] *Secretary, State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1.
[22] *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148.
[23] *Jaggo v. Union of India*, 2024 SCC OnLine SC 3826.

Two lessons follow for the Code. The first is that the parity clause codifies something the courts had already accepted, at least for the State, and extends it to private employers who were never bound by Articles 14 and 16. That is a real gain. The second is that the courts reached their conclusions by looking at the substance of the work and the length of the engagement, and they were alert to the misuse of temporary labels. Section 2(o) borrows the first part of that reasoning and ignores the second.

5. Non-Renewal and the Retrenchment Question

The real test of fixed-term employment is what happens at the end of the term. Under the Industrial Disputes Act, 1947, retrenchment was defined very widely.[24] In *State Bank of India v. N. Sundara Money* (1976),[25] the Supreme Court held that any termination for any reason whatsoever, other than those expressly excluded, amounted to retrenchment, including the automatic ending of a fixed appointment. Employers responded, and Parliament added clause (bb) to section 2(oo) in 1984, excluding termination as a result of the non-renewal of a contract on its expiry or under a stipulation in that behalf.[26]

Courts did not read clause (bb) as a blank cheque. In *S.M. Nilajkar v. Telecom District Manager, Karnataka* (2003),[27] the Supreme Court held that an employer relying on the exception must show that the worker was engaged for a specific project or scheme and that the termination followed the completion of that project or scheme. The burden lay on the employer, and the exception was to be construed strictly because it took away a protection that the main definition conferred. Several High Courts went further and refused to apply clause (bb) where employers had used a chain of short appointments with artificial breaks to keep workers from completing continuous service. In such cases the courts looked through the paperwork and treated the termination as retrenchment,[28] often noting that the Fifth Schedule to the 1947 Act listed as an unfair labour practice the employment of workers as temporaries for years with the object of denying them the status and privileges of permanent workers.[29]

The Industrial Relations Code keeps the broad architecture. The definition of retrenchment in clause (zh) of section 2 again excludes termination on non-renewal of a contract on its expiry and, specifically, termination as a result of completion of the tenure of fixed-term employment.[30] The Code also carries forward, in its schedule of unfair labour practices, the old prohibition against keeping workers as temporaries for years to deprive them of permanent status.[31]

The difficulty is that the two provisions now pull against each other more sharply than before. Under the 1947 Act, fixed-term engagement was not a recognised general category; an employer who relied on clause (bb) had to justify a time-bound contract, and the courts asked why. Under the Code, fixed-term employment is a lawful and ordinary form of hiring for any kind of work. An employer who renews a worker five times on one-year contracts for a permanent production line is, on the face of the statute, using a recognised category, and each expiry is excluded from retrenchment. A worker who wants to invoke the unfair labour practice

[24] Industrial Disputes Act, 1947 (14 of 1947), s. 2(oo).
[25] *State Bank of India v. N. Sundara Money*, (1976) 1 SCC 822.
[26] Industrial Disputes Act, 1947 (14 of 1947), s. 2(oo)(bb), inserted by the Industrial Disputes (Amendment) Act, 1984 (49 of 1984), w.e.f. 18 August 1984.
[27] *S.M. Nilajkar v. Telecom District Manager, Karnataka*, (2003) 4 SCC 27.
[28] Cf. *Haryana State Electronics Development Corpn. Ltd. v. Mamni*, (2006) 9 SCC 434.
[29] Industrial Disputes Act, 1947 (14 of 1947), Fifth Schedule, Part I, item 10.
[30] Industrial Relations Code, 2020 (35 of 2020), s. 2(zh); supra note 4.
[31] Industrial Relations Code, 2020 (35 of 2020), s. 84 read with the Second Schedule.

provision must prove the employer's object, which is notoriously hard. The judicial approach in *Nilajkar*[32] may survive, but the statutory context that supported it has changed.

There is a practical side as well. Because expiry is not retrenchment, the worker gets no notice, no retrenchment compensation and no right of re-employment preference. The only terminal benefit is proportionate gratuity,[33] which, on one year's wages, is small. The worker also loses the leverage that comes from being retained. A fixed-term worker who raises a grievance about parity during the term can be quietly denied renewal, and the denial will not look like punishment because no reason is required.

6. What the Code Does Not Say

The weaknesses of the scheme lie mostly in its silences. Four stand out.

First, there is no limit on the length of a single contract or on the total period of successive contracts. A worker may be engaged for ten years through ten contracts, and at no point does the law treat the worker as permanent.

Second, there is no limit on the number of renewals. Most systems that permit fixed-term work use either a cap on renewals or a cap on cumulative duration, sometimes both, as the main defence against abuse. The Code uses neither.

Third, the Code does not restrict fixed-term employment to work that is temporary in nature. The 2003 and 2018 notifications were justified as tools for seasonal, project-based or export-linked demand. The Code allows fixed-term engagement for core and perennial activities. This is significant because the Code separately restricts contract labour in core activities under the Occupational Safety, Health and Working Conditions Code, 2020.[34] The result is a route by which an employer can staff a core activity with directly hired but disposable workers, avoiding the restriction on contract labour while keeping the flexibility that contract labour once offered.

Fourth, the Code is silent on collective dimensions. Fixed-term workers are, by the nature of their position, reluctant to join unions or raise disputes. The Code also raises the threshold for standing orders to establishments employing three hundred or more workers,[35] which means that in a large part of industry the conditions of fixed-term workers will not be found in any certified document at all. Whatever protection exists will depend on the individual contract, drafted by the employer.

7. A Comparative Glance

India is not the first jurisdiction to face this problem, and comparative law shows that parity and abuse prevention usually travel together.

The European Union's framework agreement on fixed-term work, given effect by Council Directive 1999/70/EC,[36] contains two central clauses. The first is a non-discrimination principle very similar to section 2(o): fixed-term workers must not be treated less favourably than comparable permanent workers solely because they are on fixed-term contracts, unless there are objective grounds. The second, which India has not

[32] Supra note 27.
[33] Supra note 11.
[34] Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020), s. 57.
[35] Industrial Relations Code, 2020 (35 of 2020), s. 28.
[36] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, [1999] OJ L175/43, Annex, cls. 4 and 5.

adopted, requires member states to introduce at least one of three measures to prevent abuse of successive contracts: objective reasons justifying renewal, a maximum total duration, or a maximum number of renewals. The Court of Justice of the European Union has repeatedly held that national law must contain effective measures against abuse and that a bare permission to renew without limits does not comply.[37]

The directive was transposed into the UK law by the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.[38] A worker who has been regularly employed under two or more successive fixed-term employment contracts for four years or more will be deemed to be in permanent employment unless the employer can objectively justify the continued use of the fixed-term employment contracts.

The Part-Time and Fixed-Term Employment Act in Germany allows a fixed-term contract without an objective reason only for a maximum of two years, with up to three extensions within that time. Beyond that, the employer is required to demonstrate a recognised reason, for example, the employer's need for temporary labour, the replacement of an employee who is unable to work or a probationary purpose. If a contract does not meet these criteria, it is considered to be of indefinite duration.[39]

At the international level, ILO Termination of Employment Convention, 1982 (No. 158) requires adequate safeguards against recourse to fixed-term contracts, which are designed to circumvent the protection of the Convention.[40] It hasn't been ratified in India, but the idea in it is a good guide and it's the same logic behind the reasoning in *Jagjit Singh* and *Jaggo*.[41]

The common thread is evident. If there is a fixed-term job, parity is only considered as necessary and not sufficient. The law also restricts the duration of the fixed term as if a worker can be replaced at the end of the contract, then what is the point of the guarantee of parity?

8. Towards a Viable Parity

Here, it is not the intention to criticize fixed-term contracts at all. Fixed term contracts are preferable to contract labour via an intermediary and a one-year gratuity is a significant amelioration. The contention here is that the Code should have a second leg upon which it could stand. There are a number of changes that can be achieved by rules and/or standing orders and a relatively small amendment.

The duration to be limited should be the first consideration. A principle that if a fixed-term contract were to be extended, for example three or four years, and to the same or similar work by the same employer, then the contract would be assumed to be permanent, unless the employer could demonstrate in an objective way, would follow the British model[42] and would be easy to administer.

In the case of shorter cycles, the imposition of a limit on renewals or stipulation by the government that objective reasons for renewal be provided other than the first contract would serve the same purpose. The reasons may be specified in the rules based on the original one of fixed-term work, which was that it is based on seasonal demand, specific projects, etc., in which people are absent and orders are limited in time.

The hypothetical comparator should be added to the parity clause. If no permanent worker works the same or a comparable job, the comparison should be made with the terms which a permanent worker would have

[37] Case C-212/04, *Adeneler v. Ellinikos Organismos Galaktos*, ECLI:EU:C:2006:443.
[38] Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, S.I. 2002/2034, regs. 3 and 8.
[39] *Teilzeit- und Befristungsgesetz* [Part-Time and Fixed-Term Employment Act] of 21 December 2000, BGBl. I S. 1966, ss. 14 and 16.
[40] ILO Termination of Employment Convention, 1982 (No. 158), art. 2(3).
[41] Supra notes 22 and 23.
[42] Supra note 38.

obtained on the employer's own pay structure or, if no such structure exists, with the terms that are prevalent in the industry. It is the employer who has the information and it should be their responsibility to show that the work is not similar.

The non-renewal should not be completely without justification. A brief written warning prior to the expiration and a prohibition on non-renewal following a worker's exercise of statutory rights would safeguard the worker who complains about unequal pay. The rules on unfair labour practices might be more easily applied if the onus were placed on the employer if the worker has been employed on successive contracts for a long period of time.

Finally, transparency matters. The Central Rules already require employers to keep records distinguishing regular, contractual and fixed-term employees.[43] These numbers could be reported periodically and be made public and/or available to inspectors to monitor the actual use of fixed-term work in each sector.

9. Conclusion

The Industrial Relations Code fixed-term worker is a strange legal construct. The law defines the worker as being equal to a permanent employee and gives her/him the same wages, hours and benefits during the term. The law treats the worker as nothing at the end of the term, since the relationship just ends, and the Code does not consider stopping to be an end of employment regulated by the Code. The equality is only borrowed for a season.

The Supreme Court, from *Randhir Singh* to *Jagjit Singh* and *Jaggo*, has already learnt to ignore the labels and figure out what this work is and for how long. The Code has incorporated the first half of this lesson into its definition clause. It now needs the second half. If there are no restrictions on the length of time a person can be employed, renewals and fixed-term contracts for permanent jobs could mean that parity becomes a bait and switch tactic: employers can ensure that no one is employed for long enough to reap the benefits. There is no reason that the pay rate of a worker should be influenced by whether they can make it through the calendar.

[43] Supra note 2.