Regulation of Fixed-Term Employment: An Inter-Country Perspective

NLI Research Studies Series
No. 133/2019

Dr. Sanjay Upadhyaya

V.V. Giri National Labour Institute

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ISBN: 978-93-82902-61-4

No. of Copies : 300

Year of Publication : 2019

This document can be downloaded from the Institute's website at www.vvgnli.gov.in

Opinions expressed in the study are solely of the author and do not necessarily reflect the views of the Institute.

Printed and Published by V.V. Giri National Labour Institute, Sector–24, Noida–201301, U.P.

Printed at: Chandu Press, D-97, Shakarpur, Delhi-110092

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PREFACE

The organizations of different kind employ staff on a variety of contracts. Continuing contracts are used when there is an expected need for the work to be done indefinitely. On the contrary, Fixed-Term Contracts (FTCs) are used when there is no continuing need. FTCs have always existed in labour markets and serve important purposes. This form of employment provides flexibility to enterprises to respond to changes in demand, replace temporarily absent workers or evaluate newly hired employees before offering them an open ended contract. At times, it may also be an attractive employment option for workers. FTCs can provide them the opportunity to enter or reintegrate into the labour market, to gain work experience, to develop skills and to extend social and professional networks.

Of late, the trend towards engaging more and more persons on Fixed-Term Contract basis is constantly on the increase and this trend is going to continue in future also. FTCs typically offer a lower level of protection to workers in terms of termination of their employment, as generally no reasons are provided by the employer to justify the end of employment relationship beyond reaching the end date of FTC. The matter of concern, therefore is that uncertain nature of fixed-term contracts can lead to crucial employment issues like, insecurity about employment, widening inequality between standard and non-standard workers in terms of remuneration, working conditions, social security and increased stress etc. All these aspects need to be appropriately dealt with. Any regulatory policy on fixed-term employment contract requires a balance between the social protection of workers on the one hand and flexibility of the labour market on the other. All these issues need to be duly addressed.

Countries in different parts of the world have adopted different policy framework to address these issues. In this context, it is important to identify, understand and capture the various good regulatory policies and practices prevailing in various countries in the world to draw suitable lessons for the purpose of strengthening regulatory framework concerning this aspect in India.

Undertaken in this broad context, the present study critically examines these regulatory policies, draws important conclusions and makes a number of policy recommendations. I am confident, this study would be found useful and relevant by various concerned stakeholders.

(Dr. H. Srinivas)
Director General

Acknowledgement

I have immense pleasure in expressing my gratitude to several people who have been instrumental at different stages of this study and its completion. First of all, I express my sincere thanks to Shri Manish Kumar Gupta, former Director General in-charge, VVGNLI during whose tenure this study was conceptualized. I am also beholden to Dr. H. Srinivas, the current Director General, VVGNLI for his constant support for this study.

I express my deep sense of gratitude to various officers from the organization of the Chief Labour Commissioner and State Labour Departments as well as to senior representatives from various Central Trade Union Organisations and the Employers' Organisations for sharing their valuable views and perceptions on various aspects of Fixed Term Employment.

I am thankful to my faculty colleagues and the distinguished members of the Research Advisory Group (RAG), Centre for Employment Relations and Regulation namely Shri B.P. Pant, Advisor, FICCI & AIOE, Prof. Surendra Nath, IAS (Retd), Former Secretary to the Government of India and Ms. Amarjeet Kaur, General Secretary, AITUC for their valuable guidance and professional inputs for strengthening the study.

I am obliged to Ms. Kirti Aggarwal and Mohd. Waseem Saifi, especially Mohd. Waseem Saifi for his unstinted and excellent professional support as Project Staff working under this study. I am thankful to Ms. Geeta Arora, Steno Grade I for her active participation in discussing the various aspects pertaining to this Study and for strengthening the same especially in terms of its overall presentation.

Dr. Sanjay Upadhyaya

CHAPTER 1
INTRODUCTION

1.1 CONTEXT OF THE STUDY: The organizations of various kinds and categories employ staff on a variety of contracts. Continuing contracts are used when there is an expected need for the work to be done indefinitely. On the contrary, Fixed-Term Contracts (FTCs) are used when there is no continuing need. FTCs have always existed in labour markets and serve important purposes. 'Fixed-term Contract of Employment' may broadly be defined as an employment contract which terminates on the occurrence of a specified event, the completion of a specified task or project or a fixed date other than employee's normal or agreed retirement age and otherwise than the termination by way of disciplinary action or resignation by the employee prior to the date specified in such contract. **The Directive of the European Union on Fixed-term Employment** defines '*fixed-term worker as a person having an employment contract or similar relationship where the end is determined by objective conditions such as reaching a specific date, completion of a specific task, or occurrence of a specific event*'[1].

The FTCs provide flexibility to enterprises to respond to changes in demand, replace temporarily absent worker or evaluate newly hired employees before offering them an open ended contract. FTCs may also be an attractive employment option for workers. They can provide them the opportunity to enter or reintegrate into the labour market, to gain work experience, to develop skills and to extend social and professional networks. They may also be preferred by some workers over permanent contracts for example when work is combined with education. Available data on the incidence of FTCs suggests significant variation in their use across countries ranging from 5 percent to over 40 percent. Young, low skilled and female workers are usually over represented amongst workers with fixed-term contract[2].

Of late, the trend towards engaging more and more persons on Fixed-Term Contract basis is constantly on the increase and this trend is going to continue in future also. FTCs typically offer a lower level of protection to workers in terms of termination of their employment, as generally no

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1 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC (European Trade Union Confederation), UNICE (Union of Industrial and Employers' Confederations of Europe, a Brussels-based European association of industries and employers, now known as BUSINESS EUROPE) and CEEP (Centre for European Employers and Enterprises providing Public Services).

2 ILO, 2015 IN Work and Governance Policy Brief No.6, ILO, 2015.

reasons are provided by the employer to justify the end of employment relationship beyond reaching the end date of FTC. The matter of concern, therefore, is that uncertain nature of fixed-term contracts can lead to crucial employment issues like, insecurity about employment, widening inequality between standard and non-standard workers in terms of remuneration, working conditions, social security and increased stress etc. All these aspects need to be appropriately dealt with. Any regulatory policy on fixed-term employment contract requires a balance between the social protection of workers on the one hand and flexibility of the labour market on the other. This can be ensured *inter alia* by: enhancing job security; offering greater consultation regarding the termination or renewal of contracts; increasing personal development and support to move to other fixed-term or continuing position. All these issues need to be duly addressed.

Countries in different parts of the world have adopted different policy framework to address these issues. For example, as per the EU Directive of 1999 (1999/70/EC, Fixed-Term Work), all EU member states have adopted national regulation seeking to curb the use of successive fixed –term employment contracts entrenching non-discrimination principles. Similarly, China, South Korea and India have also moved in the recent past to regulate fixed-term contracts. However, regulation varies widely in practice from country to country.

In this context, it would be interesting to identify, understand and capture the various kinds of regulatory policies and practices prevailing in various countries in the world to draw suitable lessons for the purpose of formulating appropriate regulatory framework in India (JILPT Report No.9 2010)[3].

1.2 AIM AND OBJECTIVES OF THE STUDY: This study aims to identify, understand and capture the key features of the policies and practices pertaining to regulation of various aspects of fixed-term employment from selected countries with a view to draw suitable policy lessons. The key objectives of the study are as follows:

i. Identification of the key characteristic attributes and features of fixed-term contract system.

ii. Identification of the prevailing policies and practices pertaining to regulation of various aspects of fixed-term employment in particular

[3] Labour Policy on Fixed-term Employment Contract, The Japan Institute of Labour Policy and Training.

the current regulation on fixed-term contracts from selected countries.

iii. To gather the views and perceptions of various social partners on different aspects of Fixed-Term Employment.

iv. To make a comparative analysis of these regulatory policies and practices with a view to draw appropriate policy framework for India.

v. To suggest the regulatory framework for addressing the various issues related to Fixed-Term Employment.

1.3 AREA AND SCOPE OF THE STUDY: The study covers within its ambit the various aspects of fixed-term employment contracts like, Recruitment to fixed-term contracts; Extension and ending of fixed-term contracts; Redundancy payments, Social Security; Equality of treatment with regard to basic terms and conditions of employment; and Limitation on the use of fixed-term contracts etc. Total 13 countries representing both the developed as well as developing countries have been included under the study. These include: China, India, USA, Russia, Japan, Nigeria, Germany, United Kingdom, France, South Korea, South Africa, Canada and Sweden.

1.4 METHODOLOGY: The study is primarily based on the review of the existing policies and practices pertaining to fixed-term employment contract prevailing in the countries selected under the study. The selection of the countries for the purpose of the study was made by following the purposive sampling method. In addition, it has also used primary data in terms of the views and perceptions gathered through structured questionnaire from Central trade unions federations, employers' federations and selected labour administrators from Central and State Labour Departments. It has followed both the Inductive as well as the Deductive method of analysis for drawing various conclusions.

CHAPTER 2

PROFILE OF THE LABOUR MARKETS AND SOCIAL SECTOR SPENDING: AN INTER-COUNTRY PERSPECTIVE

2.1 INTRODUCTION: Regulation of fixed-term employment, so as to maintain a proper balance between the requirement of industry in terms of providing sufficient flexibility to hire and fire the employees/ workers and that of the employees/ workers in terms of ensuring just, reasonable and humane conditions of work and a modicum of social security assumes paramount importance almost for all the countries in the present context. However, the strategies and interventions for realization of this twin objective may differ from country to country depending on its overall socio-economic context and prevailing labour and employment scenario in general and social sector provision in particular. A broad understanding of the inter-country context with regard to these aspects are quite relevant for proper appreciation and understanding of the overall legal framework for regulation of employment relations in general and formulation of regulatory framework for fixed-term employment in particular. Accordingly, this chapter provides a synoptic cross country picture of the same.

2.2 CHINA: China has an estimated population of 1379.30 million. Out of this, 72.09% population is in the age group of 15-64 years, 17.15% in the age group up to 14 years and remaining 10.81% in the age group of 65 years above and with the median age of 37.4 years (36.3 years for males and 38.4 years for females). More than half of the total population (57.9%) lives in urban areas. Shanghai, Beijing, Chongqing, Guangdong, Tianjin and Shenzhen are its major cities. The major industries in the country include: mining and ore processing; iron; steel; aluminum and other metals; coal; machine building; armaments; textiles and apparel; petroleum; cement; chemicals; fertilizer; consumer products (including footwear, toys, and electronics); food processing; transportation equipment, including automobiles, railcars and locomotives, ships, aircraft; telecommunications equipment, commercial space launch vehicles and satellites.

In the country the life expectancy at birth is 75.7 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy (primary to tertiary education) is 14 years. China stands First in the world in terms of labour force with a total number of 807.1 million (2012). 28.3%of the labour force was engaged in agriculture, 29.3% in industry and 42.4% in services (2015).The registered unemployment rate in urban areas is

around 4% (2016). However, there is a substantial unemployment and under employment in rural areas. (CIA, 2017)[4]

The proportion of population below poverty line in the country is nearly 3.3% (2016). As regards the composition of GDP by sector, agriculture contributes about 8.6%, industry 39.8% and services 51.6%. The major infectious diseases in the country (food or waterborne, vector borne and soil contact diseases) include: bacterial diarrhoea, hepatitis A, typhoid fever, Japanese encephalitis and hanta viral haemorrhagic fever with renal syndrome (HFRS). The degree of risk to various infectious diseases is intermediate. The country spends about 5.5% (2014) of its GDP on health. The physician density in the country is about 1.50% per 1000population and hospital bed density 3.8 beds per 1000 population (2011). Almost 95.5% of the population has access to improved drinking water resource and 76.5% of population has access to sanitation facilities (CIA, 2017). As per various estimates the country spends less than 4.0% (2012) of its GDP on education.

As per various sources, at present in China most of the employees are working under the fixed-term employment contracts except for employees of government agencies, though there has been marginal increase in the proportion of the employees with open ended contracts after the enactment of Labour Contract Law (LCL). Before the enforcement of Labour Contract Law, according to the research by Li (2005)[5], 70% of employment contracts were fixed-term contracts, among which the short term employment contracts dominated; 80% of the employment contracts were within a term of three years and most of them were within one year.

The percentage of open-ended employment contracts was different in state-owned enterprises and non-state-owned enterprises. In the state-owned enterprises, only 20% of the employees worked under open-ended employment contracts. In the non-state-owned enterprises, the number was 3% (Li, 2005)[6]. As per the survey conducted by All-China Federation of Trade Unions in ten cities in 2006, (published in 2008) among 5,000 employees questioned, 85.2% were under fixed-term employment contracts, of which 83.2% reported of working under the FTC from a period from one to three years and 36.7% upto one year.

2.3 INDIA: India has an estimated population of 1,281.936 million (July 2017). Out of this almost 2/3rd (66.42%) of the population is in the

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4 CIA, World Fact Book, (2017)

5 Kungang Li, 2005, 'Practice and Problems: The Fixed-Term Employment Contract in China' in Labour Policy on Fixed-Term Employment Contracts, JILPT Report, No.9, 2010

6 Supra

age group of 14-65 years, 27.34% in the age group up to 14 years and remaining 6.24% in the age group of 65 years above and with the median age of 27.6 years (26.9 years for males and 28.3 years for females). 32.7% of the population lives in urban areas. New Delhi, Mumbai, Kolkata, Bangalore, Chennai and Hyderabad are its major cities. The major industries of the country include: textiles; chemicals; food processing; steel; transportation equipment; cement; mining; petroleum; machinery; software and pharmaceuticals.

In the country the life expectancy at birth is 68.5 years. As per the latest source, literacy rate of the country is 71.2% and the school life expectancy (primary to tertiary education) is 12 years. India stands Second in the world in terms of labour force with a total number of 513.7 million (2016). 47% of the labour force was engaged in agriculture, 22% in industry and 31% in services (2014). The registered unemployment rate in urban areas was 10.7% (2016). However, there is a substantial unemployment and under employment in rural areas. In the country, a substantial proportion of over 90% of the workers work in the unorganised and informal sector. However, no estimates are available with regard to the fixed-term employees. The proportion of population below poverty line was around 22% (2011), (CIA, 2017).

The major infectious diseases in the country (food or waterborne, vector borne, water contact and animal contact diseases) include: bacterial diarrhoea, hepatitis A& E, typhoid fever, dengue fever, Japanese encephalitis, malaria, leptospirosis and rabies. The degree of risk to various infectious diseases is very high. The country spends about 4.7% (2014) of its GDP on health.

The physician density in the country is about 0.73% per 1000 population and hospital bed density 0.7 beds per 1000 population (2014). Almost 94.1% of the population has access to improved drinking water resource and 39.6% of population has access to sanitation facilities. Unemployment among youth (15-24) is 10.7% (2012). The country spends around 3.8 % (2014) of its GDP on education (CIA, 2017).

2.4 USA: USA has an estimated population of 326.60 million (2017). Out of this, 65.64% of the population is in the age group of 15-64 years, 18.73% in the age group upto 14 years and remaining 15.63% in the age group of above 65 years with the median age of 38.1 years (36.8 years for males and 39.4 years for females). 82.3% of the total population (2018) lives in urban areas. New York -Newark, Los Angeles –Long Beach- Santa Ana, Chicago, Houston, Miami and Washington D.C. are its major cities. The major industries of the country are: petroleum; steel; motor vehicles; aerospace;

telecommunications; chemicals; electronics; food processing; consumer goods; lumber (timber processing) and mining.

In the country, the life expectancy at birth is 80 years. As per the latest available source, literacy rate of the country is 86% (April 2018)[7] and the school life expectancy (primary to tertiary education) is 17 years. USA stands **fourth** in the world in terms of labour force with a total number of 106.4 million (2017). As per recent available estimates, 0.7% of the labour force is engaged in agriculture (farming, forestry and fishing), 20.3% in industry and 79.1% in services. The registered unemployment rate in the country is around 4.4% (2017). In the country, approximately 4.2% of the workers/employees work under Fixed-Term Contracts (2017)[8].

As per the latest estimates (2016)[9], the official poverty rate was 12.7% and at that point of time, an estimated 43.1 million Americans lived in poverty. As regards the composition of GDP by sector, agriculture contributes about 0.9%, industry 18.9% and services 80.2% (CIA, 2017).

The country was spending about 17.1% (2014) of its GDP on health. The physician density in the country was about 2.57% per 1000 population (2014) and hospital bed density 2.9 beds per 1000 population (2013). Almost 99.2% of the population has access to improved drinking water resource and 100% of population has access to sanitation facilities (CIA, 2017). As per various estimates the country spent approximately 5.0% (2014) of its GDP on education.

2.5 RUSSIA: Russia has an estimated population of 142.26 million (CIA, 2017). Out of this, 68.60% population is in the age group of 15-64 years, 17.12% in the age group upto 14 years and remaining 14.28% in the age group of 65 years and above with the median age of 39.6 years (36.6 years for males and 42.5 years for females). The major industries of the country include: mining and extractive industries producing coal, oil, gas, chemicals, and metals; all forms of machine building from rolling mills to high-performance aircraft and space vehicles; defence (including radar, missile production, advanced electronic components), ship-building; road and rail transportation equipments; communication equipments; agricultural machinery, tractors and construction equipments; electric power generating and transmitting equipments; medical and scientific instruments; consumer durables, textiles, foodstuffs and handicrafts.

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7 Report of the U.S. Department of Education and the National Institute of Literacy, April 2018.

8 ILO - Employment protection Legislation Database > EPLex, USA, 2017.

9 U.S. Census Bureau, 2016

In the country, the life expectancy at birth is 71 years. 74.4% of the total population lives in urban areas. Moscow, Saint Petersburg, Novosibirsk, Yekaterinburg, Nizhniy Novgorod and Samara are its major cities. As per the latest source, literacy rate of the country is 99.7% and the school life expectancy (primary to tertiary education) is 15 years. Russia stands **seventh** in the world in terms of labour force with a total number of 76.53 million (2017). As per recent available estimates, 9.4% of the labour force is engaged in agriculture, 27.6% in industry and 63% in services (2016).The registered unemployment rate in urban areas is around 5.5% (2017).

The proportion of population below poverty line in the country is nearly 13.3% (2015). As regards the composition of GDP by sector, agriculture contributes about 4.7%, industry 32.4% and services 62.3% (2017). The major infectious diseases in the country (food or waterborne and vector borne) include: bacterial diarrhoea and tick borne encephalitis. The degree of risk to various infectious diseases is intermediate. The country was spending about 7.1% (2014) of its GDP on health. The physician density in the country was about 3.98% per 1000 population and hospital bed density 8.2 beds per 1000 population (2013). Almost 96.9% of the population has access to improved drinking water resource and 72.2% of population has access to sanitation facilities (CIA, 2017). As per latest available estimates (2012), the country spent less than 4.0% (3.8%) of its GDP on education, (CIA, 2017).

2.6 JAPAN: Japan has an estimated population of 126.451 million. Out of this 59.29 % of the population is in the age group of 14-65 years, 12.84% in the age group up to 14 years and remaining 27.87% in the age group of 65 years above and with the median age of 47.3 years (46 years for males and 48.7 years for females). 94.3% of the population lives in urban areas. Tokyo, Osaka-Kobe, Nagoya, Kitakyushu-Fukuoka, Shizuoka-Hamamatsu, and Sapporo are its major cities. Motor vehicles, electronic equipment, machine tools, steel and nonferrous metals, ships, chemicals, textiles and food processed are some of the key industries of the country.

In the country the life expectancy at birth is 85.3 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy (primary to tertiary education) is 15 years. Japan stands at Ninth place in the world terms of labour force with a total number of 66.73 million (2016). 2.9% of the labour force was engaged in agriculture, 26.2% in industry, 70.9% in services (2014).The registered unemployment rate in urban areas was 3.1% (2016). However, there is a substantial unemployment and under employment in rural areas. (CIA, 2017)

Until 1995, the proportion of fixed-term the employees in Japan constituted approximately 20% of all the employees'. However, the overall percentage of atypical employees rose quite sharply reaching over 34% by 2008 and the number and proportion of regular employees substantially decreased during this period. As regards the proportion of fixed-term employment to total employment as per the Survey on The Current Situation of Fixed-term Employment Contracts, 2009 the ratio of the employees with fixed-term employment contracts to regular employees was 22.2%. (Hishashi Takeuchi–Okuno, 2010)[10]*. In other words, while long term employment is still a characteristic feature of Japanese employment system, its prevalence is diminishing*

The proportion of population below poverty line is nearly 16.1% (2013). The country spends about 10.2% (2014) of its GDP on health. The physician density in the country is about 2.3% per 1000 population and hospital bed density 13.7 beds per 1000 population (2011). Almost 100% of the population has access to improved drinking water resource and 100% of population has access to sanitation facilities. Unemployment among youth (15-24) is 5.9% (2014). The country spends around 3.8 % (2014) of its GDP on education (CIA, 2017).

2.7 NIGERIA: Nigeria has population of 190.632 million. Out of this, about 55% (54.33%) population is in the age group of 14-65 years, 42.54% in the age group up to 14 years and remaining 3.13% in the age group of above 65 years with the median age of 18.4 years (18.3 years for males and 18.5 years for females). A substantial proportion of 50% (49.4%) of the population lives in urban areas, where Lagos, Kano, Ibadan, Abuja, Port Harcourt and Benin City are its major cities. The major industries of the country include: Crude oil; coal; tin; columbite (coltan); rubber products; wood; hides and skins; textiles; cement & other construction materials; food products; footwear; chemicals; fertilizer; printing; ceramics and steel.

The life expectancy at birth is 53.8 years. As per the latest source, literacy rate of the country is 59.6%. School life expectancy is 9 years. Nigeria stands at Eleventh in the world in terms of labour force with a total number of 58.8 million (2016). 70% of the labour force was engaged in agriculture, 10% in industry and 20% in services (1999). The registered unemployment rate in urban areas was 13.4% (2016). However, there is a substantial unemployment and under employment in rural areas. The proportion of population below poverty line is nearly 70% (2010, CIA World Fact book, as updated on July 9, 2017).

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[10] Hishashi Takeuchi –Okuno, 'The Regulation of Fixed-Term Employment in Japan' in Labour Policy on Fixed-Term Employment Contracts, JILPT Report, No.9. 2010

The major infectious diseases in the country (food or waterborne, vector borne, water contact, respiratory, aerosolized dust or soil contact and animal contact diseases) include bacterial and protozoa diarrhoea, hepatitis A& E, typhoid fever, dengue fever, yellow fever, malaria, leptospirosis, schistosomiasis, meningococcal meningitis, Lassa fever and rabies. The degree of risk to various infectious diseases is very high. The country spends about 3.7% (2014) of its GDP on health. The physician density in the country is about 0.38% per 1000population (2014). Almost 68.5% of the population has access to improved drinking water resource and 29% of population has access to sanitation facilities. Unemployment among youth (15-24) is 8.1% (2014, CIA, 2017). The country was spending around 8.42% of its national budget on education (Nigeria Education Fact Sheet, 2012)[11].

2.8 GERMANY: Germany has an estimated population of 80.594 million. Out of this 65.12% of the population is in the age group of 14-65 years, 12.82% in the age group up to 14 years and remaining 22.06% in the age group of 65 years above with the median age of 47.1 years (46 years for males and 48.2years for females). 75.7% of the population lives in urban areas. Berlin, Hamburg, Munich and Cologne are its major cities. The major industries of the country include: iron; steel; coal; cement; chemicals; machinery; vehicles; machine tools; electronics; automobiles; food and beverages; ship-building and textiles.

In the country the life expectancy at birth is 80.8 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy is 17 years. Germany stands at Fifteenth place in the world terms of labour force with a total number of 45.42million (2016 est.). 1.4% of the labour force was engaged in agriculture, 24.2% in industry and 74.3% in services (2016).The registered unemployment rate in urban areas was 4.2% (2016). However, there is a substantial unemployment and under employment in rural areas. The proportion of the employees engaged on FTCs constituted around 14%[12].

The proportion of population below poverty line is nearly 16.7% (2015). The country spends about 11.3% (2014) of its GDP on health. The physician density in the country is about 4.13% per 1000population and hospital bed density 8.2 beds per 1000 population (2011). Almost 100% of the population has access to improved drinking water resource and 99.2% of population has access to sanitation facilities. Unemployment among youth

[11] Nigeria Education Fact Sheet, United States Embassy in Nigeria, 2012.

[12] Eurostat as of second semester 2012. (Directorate-General of the European Commission located in Luxembourg).

(15-24) is 7.7% (2014). The country spends around 4.9 % (2013) of its GDP on education (CIA, 2017).

2.9 UNITED KINGDOM: United Kingdom has an estimated population of 64.769 million. Out of this 64.43 % of the population is in the age group of 14-65 years, 17.53% in the age group up to 14 years and remaining 18.04% in the age group of 65 years above and with the median age of 40.5 years (39.3 years for males and 41.7 years for females). London, Manchester, Birmingham, Glasgow, Southampton/Portsmouth and Liverpool are its major cities. Machine tools, electric power equipment, automation equipment, railroad equipment, shipbuilding, aircraft, motor vehicles and parts, electronics and communications equipment, metals, chemicals, coal, petroleum, paper and paper products, food processing, textiles, clothing and other consumer goods are country's major industries.

In the country the life expectancy at birth is 80.8 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy (primary to tertiary education) is 18 years. United Kingdom stands Sixteenth place in the world terms of labour force with a total number of 33.36 million (2016). 1.3% of the labour force was engaged in agriculture, 15.2% in industry and 83.5% in services (2014).The registered unemployment rate in urban areas was 4.9% (2016). However, there is a substantial unemployment and under employment in rural areas. (CIA, 2017)

The proportion of population below poverty line is nearly 15% (2013). The country spends about 9.1% (2014) of its GDP on health. The physician density in the country is about 2.81% per 1000population and hospital bed density 2.9 beds per 1000 population (2011). Almost 100% of the population has access to improved drinking water resource and 99.2% of population has access to sanitation facilities. Unemployment among youth (15-24) is 16.9% (2014).The country spends around 5.8 % (2014) of its GDP on education.

As regards the proportion of fixed-term employment contracts to total employment, the same constituted almost half of the total non- permanent contracts(47% to be more precise) with casual workers, temporary agency workers and seasonal workers comprising of 19% ,17% and 5% respectively (and 11% other temporary workers). (David E. Guest and Michael Cliton, 2017)[13]*. However, as temporary agency workers can have either a temporary or permanent contract with their agency and they may also be self-employed, they are a difficult group to categorise.*

[13] 'Contracting in the U.K: Current Research Evidence on The Impact of Flexible Employment and The Nature of Psychological Contracts', in Employment Contracts and Wellbeing Among European Workers By Nele De Cuyper, Kerstin Isaksson and Hans De Witte, Rutledge, 2017.

2.10 FRANCE: France has an estimated population of 67.106 million. Out of this 61.99 % of the population is in the age group of 14-65 years, 18.53% in the age group up to 14 years and remaining 19.48% in the age group of 65 years above and with the median age of 41.4 years (39.6 years for males and 43.1 years for females). 80% of the population lives in urban areas. Paris, Lyon, Marseille-Aix-en-Provence, Lille, Nice-Cannes and Toulouse are its major cities. The major industries in the country are: machinery, chemicals, automobiles, metallurgy, aircraft, electronics, textiles, food processing and tourism.

In the country, the life expectancy at birth is 81.9 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy (primary to tertiary education) is 16 years. France stands Twenty second in the world in terms of labour force with a total number of 30.68 million (2017). As per the latest available source, 2.8% of the labour force is engaged in agriculture, 20% in industry and 77.2% in services (2016). The registered unemployment rate in urban areas is 9.5% (2017). Unemployment among youth (in the age group of 15-24) is almost 25% (24.6% to be more precise in 2016). Further, there is a substantial unemployment and under employment in rural areas.

The proportion of population below poverty line is nearly 14.2% (2015). The country spends about 11.5% (2014) of its GDP on health. The physician density in the country is about 3.23% per 1000population and hospital bed density 6.4 beds per 1000 population (2011). Almost 100% of the population has access to improved drinking water resource and 98.7% of population has access to sanitation facilities. The country was spending around 5.5 % (2014) of its GDP on education (CIA, 2017). The proportion of the employees engaged on fixed-term contracts constituted around 15%[14].

2.11 SOUTH KOREA: South Korea has an estimated population of 51.181 million. Out of this 72.67 % of the population is in the age group of 14-65 years, 13.21% in the age group up to 14 years and remaining 14.12% in the age group of 65 years above and with the median age of 41.8 years (40.2 years for males and 43.4 years for females). 82.7% of the population lives in urban areas. Seoul, Busan (Pusan) Incheon, Daegu (Taegu), Daejon (Taejon) and Gwangju (Kwangju) are its major cities. The key industries of the country are: electronics; telecommunications; automobile; chemicals; ship-building and steel.

In the country the life expectancy at birth is 82.5 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy

[14] 15.2% to be more precise, Eurostat annual average for 2012.

(primary to tertiary education) is 17 years. South Korea stands Twenty-fifth in the world terms of labour force with a total number of 27.25 million (2016). 4.9% of the labour force was engaged in agriculture, 24.1% in industry and 71% in services (2016).The registered unemployment rate in urban areas was 3.7% (2016). However, there is a substantial unemployment and under employment in rural areas. The country spends around 4.6 % (2012) of its GDP on education (CIA, 2017). The proportion of the employees engaged on fixed-term contracts constituted around 24 % (23.8% to be more precise, OECD statistics, 2011).

According to the report titled 'Research on economically active people' by the Korea National Statistical Office (Statistic Korea), as of March 2008 the number of temporary employees in Korea totalled 5,638,000 which accounted for 35.2 percent of total salaried employees (15,993,000 people). This report further revealed Fixed-term workers totalled 2,293,000 or 40.7 percent of total temporary workers. Compared to the statistics of March 2007 before the enforcement of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees (hereafter referred to as the Irregular Workers Protection Law), the number of both fixed-term employees who had relatively good working conditions and temporary employees who were able to repeatedly renew their contracts recorded declined. However, the number of temporary employees, those who had relatively inferior working conditions or who could not expect to have continuous work, increased sharply. Therefore, it can be interpreted that since the enforcement of the Fixed-term Employee Act, the overall conditions of fixed-term employees deteriorated.

According to Lee (2010)[15], among total salaried employees, an irregular employee›s wages were 65.3 percent of a regular employee›s salary. Furthermore, only 40 percent of irregular employees received social insurance. The conditions faced by irregular employees such as employment insecurity, low wages, increments in the intensity of labour, and exclusion from social insurance or company welfare, were much inferior compared to those of their regular employee counterparts.

The proportion of population below poverty line is nearly 12.5% (2013). The country spends about 7.4% (2014) of its GDP on health. The physician density in the country is about 2.23% per 1000population and hospital bed density 10.3 beds per 1000 population (2011). Almost 97.8% of the population has access to improved drinking water resource and 100% of

[15] John Lee, (2010) (in Labour Policy on Fixed –Term Employment Contracts, JILPT Report, No.9.2010).

population has access to sanitation facilities. Unemployment among youth (15-24) is 10% (2014) (CIA, 2017).

2.12 SOUTH AFRICA: South Africa has an estimated population of 54.841 million. Out of this 66.05 % of the population is in the age group of 14-65 years, 28.27% in the age group up to 14 years and remaining 5.68% in the age group of 65 years above and with the median age of 27.1 years (26.9 years for males and 27.3 years for females). 65.8% of the population lives in urban areas. Johannesburg (includes Ekurhuleni), Cape Town (legislative capital), Durban, Pretoria, Port Elizabeth and Vereeniging are its major cities. The major industries of the country are: mining (world's largest producer of platinum, gold, chromium); automobile assembly; metal works; machinery; textiles; iron and steel; chemicals; fertilizer; food-stuffs and repairing of commercial ships.

In the country the life expectancy at birth is 63.8 years. As per the latest source, literacy rate of the country is 94.4% and the school life expectancy (primary to tertiary education) is 13 years. South Africa stands at Thirtieth place in the world terms of labour force with a total number of 21.53 million (2016). 4.6% of the labour force was engaged in agriculture, 23.5% in industry and 71.9% in services (2014). The registered unemployment rate in urban areas was 26.7% (2016). However, there is a substantial unemployment and under employment in rural areas.

The major infectious diseases in the country (food and waterborne and water contact) include bacterial diarrhoea, hepatitis A, typhoid fever and schistosomiasis. The degree of risk various is intermediate. In addition around 9% of the children under the age of 5 are under weight. The proportion of population below poverty line is nearly 16.6% (2016).The country spends about 8.8% (2014) of its GDP on health. The physician density in the country is about 0.77% per 1000 population (2015). Almost 93.2% of the population has access to improved drinking water resource and 66.4% of population has access to sanitation facilities. Unemployment among youth (15-24) is 51.3% (2014). The country spends around 6.1 % (2014) of its GDP on education (CIA, 2017).

2.13 CANADA: Canada has an estimated population of 35,623,680 million. Out of this, 65.93% population is in the age group of 15-64 years, 15.44% in the age group up to 14 years and remaining 18.63% in the age group of 65 years above and with the median age of 42.2 years (40.9 years for males and 43.5 years for females). 82.2% of the population lives in urban areas. Toronto, Montreal, Vancouver, Calgary, Ottawa and Edmonton are its major cities. The prominent industries of the country are: transportation equipments;

chemicals; processed and unprocessed minerals; food products; wood and paper products; fish products; natural gas and petroleum.

In the country the life expectancy at birth is 81.9 years. As per the latest source, literacy rate of the country is 99% (2008) and the school life expectancy (primary to tertiary education) was 16 years (2000). Canada stood Thirty first in the world in terms of labour force with a total number of 19.44 million (2016). 2% of the labour force was engaged in agriculture, 13% in manufacturing, 6% in construction, 76% in services and 3% in others (2006).The unemployment rate among youth was 13.1% (2016). The registered unemployment rate in urban areas is around 7% (2016). However, there is a substantial unemployment and under employment in rural areas. The proportion of the employees engaged on fixed-term contracts constituted around 14 % (13.7% to be more precise, OECD statistics 2011).

The proportion of population below poverty line is nearly 9.4% (2008). As regards the composition of GDP by sector of origin, agriculture contributes about 1.7%, industry 27.5% and services 70.8% (CIA, 2016).The country spends about 10.4% (2014) of its GDP on health (2014) and 5.3% on education. The physician density in the country is about 2.48% per 1000 population (2012) and hospital bed density 2.7 beds per 1000 population (2010). Almost 99.8% of the population has access to improved drinking water resource and 99.8% of population has access to sanitation facilities. The country spends around 5.3 % (2011) of its GDP on education (CIA, 2017).

2.14 SWEDEN: Sweden has an estimated population of 9.960 million. Out of this 62.11% of the population is in the age group of 14-65 years, 17.43% in the age group up to 14 years and remaining 20.26% in the age group of 65 years above and with the median age of 41.2 years (40.2 years for males and 42.2 years for females). 86.1% of the population lives in urban areas. Stockholm is the major city of Sweden. Country's key industries are: iron and steel; equipment (bearings, radio and telephone parts, armaments); wood pulp and paper products; processed foods and motor vehicles.

In the country, the life expectancy at birth is 82.1 years. As per the latest source, literacy rate of the country is 96.4% and the school life expectancy (primary to tertiary education) is 18 years. Sweden stands Seventy eighth in the world terms of labour force with a total number of 5.276 million (2016). 2% of the labour force was engaged in agriculture, 12% in industry and 86% in services (2014).The registered unemployment rate in urban areas was 7% (2016). However, there is a substantial unemployment and under employment in rural areas. The proportion of population below poverty

line is nearly 15% (2013) (CIA, 2017). The proportion of the employees engaged on fixed-term contracts constituted 17 % (Eurostat)[16].

Sweden, along with many of its European neighbours, faces a challenge in terms of an aging population. The most worrisome aspect is that compared to other OECD countries, Sweden has a low proportion of people who are of working age (aged 20-64). This means that even if Sweden currently has a fairly high level of employment, at 74.3% (compared to the EU average at 65.9%), this number can be expected to dwindle in the coming years. A considerable proportion of Swedes work on part-time. Parents of young children often choose to shorten their workday. Under the Parental Leave Act, parents who have a child under the age of eight have a right to shorten their workday up to 25%. For example, parents may opt to work six hours per day, instead of eight. Many workplaces in Sweden apply flexible working hours, also called "flexitime." This means that an employee can start work any time between 7 a.m. and 9 a.m. and go home after the fixed amount of working hours has been accomplished, sometime between 3 p.m. and 5 p.m. The use of flexitime facilitates life for families with two working parents; often one partner will start work early while the other brings the children to childcare. The parent who started his or her day early will then be responsible for pick up in the late afternoon.

The country spends about 11.9% (2014) of its GDP on health. The physician density in the country is about 4.11% per 1000population and hospital bed density 2.54 beds per 1000 population (2011). Almost 100% of the population has access to improved drinking water resource and 99.3% of population has access to sanitation facilities. Unemployment among youth (15-24) is 22.9% (2014).The country spends around 7.7% (2013) of its GDP on education (CIA, 2017).

The description and analysis of various other factors such as, proportion of people living in urban areas and proportion of the work force engaged in non-agriculture sector reveals that except in India and Nigeria more than half of the total population in all the countries stays in urban areas and except Nigeria, a substantial proportion in the range of 53% (India) to over 98% (UK, France and Sweden) is engaged in non-agriculture sector compelling the people to accept atypical forms of employment in industries and services sector, as opposed to a regular , long term and typical employment with inbuilt features of social security necessitating its regulation.

[16] 15.2% to be more precise, Eurostat annual average for 2012.

Table-1 : A Comparative Picture of Key Features of Labour Markets in the Selected Countries

Country Name	Labour Force in the age group of 15-65 years in %	Population in the age group up to 14 years in %	Population in the age group above 65 years in %	Non-working age group population in %	People living in urban areas in %	Engagement in Non-Agriculture sector		
						Industry in %	Services in %	Total in %
China	72.09	17.15	10.81	27.91	57.9	29.3	42.4	71.7
India	66.42	27.34	6.24	33.58	32.7	22	31	53
USA	65.64	18.73	15.63	34.36	82.3	20.3	79.1	99.4
Russia	68.60	17.12	14.28	31.40	74.4	27.6	63.0	90.6
Japan	59.29	12.84	27.17	40.71	94.3	26.2	70.9	97.1
Nigeria	54.33	42.54	3.13	45.67	50	10*	20*	30*
Germany	65.12	12.82	22.06	34.88	75.7	24.2	74.3	98.5
UK	64.43	17.53	18.04	35.57	83.1	15.2	83.5	98.7
France	61.99	18.53	19.48	38.01	80	18.3	79.3	97.6
South Korea	72.67	13.21	14.12	27.33	82.7	24.1	71	95.1
South Africa	66.05	28.27	5.68	33.95	65.8	23.5	71.9	95.4
Canada	65.93	15.44	18.63	34.07	82.2	19	76	95
Sweden	62.11	17.43	20.26	37.89	86.1	12	86	98

Source: CIA, 2017, The World Factbook. The estimates relate to the period 2011 and thereafter.

* These proportions belong to the year 1999, as the data has not been updated after that.

Table-2 : Comparative Picture of Youth Unemployment, BPL Population and Other Key Factors

Country Name	Youth Unemployment	Proportion of BPL population	Percentage of GDP Expenditure on Health	Access to improved drinking water source	Access to sanitation facilities	Percentage of GDP Expenditure on Education
China	4.0*	3.3	5.5	95.5	76.5	4.0
India	10.7	22.0	4.7**	94.1	39.6	3.8
USA	4.4	12.7	17.1	99.2	100	5.0
Russia	5.5 (in urban areas)	13.3	7.1	96.9	72.2	3.8 (2012)
Japan	5.9	16.1	10.2	100	100	3.8
Nigeria	8.1	70.0	3.7	68.5	29	8.42 (2012)
Germany	7.7	16.7	11.3	100	99.2	4.9
UK	16.9	15.0	9.1	100	99.2	5.8
France	23.2	14.0	11.5	100	98.7	5.5
South Korea	10	12.5	7.4	97.8	100	4.6
South Africa	51.3	16.6	8.8	93.2	66.4	6.1
Canada	13.1	9.4	10.4	99.8	99.8	5.3
Australia	13.3	0.0	9.4	100	100	5.3
Sweden	22.9	15.0	11.9	100	99.3	7.7

Source: CIA, 2017, The World Factbook. The estimates relate to the period 2011 and thereafter.

* This data is only for registered urban unemployment which excludes private enterprises and migrants.

** It is to be mentioned in this context that as per the latest available source, currently the percentage of GDP expenditure on health in India is 1.15% which is likely to be increased to 2.5% by the year 2025. (Source: Jansatta, New Delhi, December 13, 2018)

Further, the description provided in various sub-sections and the above **Table-2** of the chapter reveals that in most of the countries, a substantial proportion of the youth is unemployed (in the range of 4% in China to over 23% in France) which is over and above the unreported and disguised unemployment; in almost all the countries (except China 3.3%) a substantial proportion of population (in the range of 9.4% in Canada to 70% in Nigeria) is below poverty line. In addition, majority of the countries selected under the study have a very limited provision of public spending

for social sector, in particular the health and education. All these factors cumulatively also compel the people to accept informal and atypical forms of employment such as fixed-term employment. As per various sources, a substantial proportion of the workforce (workers/employees) work under fixed-term employment contract which make out a strong case for regulation of fixed-term employment. Accordingly, the next chapter is devoted to an analytical assessment of the existing policies and regulatory framework for employment relations in general again followed by the chapter providing an overview of the legislative measures pertaining to Fixed-Term Employment Contracts in particular in the countries selected under the study.

2.15 SUMMING UP: A comparative analysis of the cross country data with regard to labour force described in detail in sections 2.2 - 2.14 of this chapter and **Table-1** clearly reveals that though there are many differences in the labour and employment context of various countries selected under the study, there are also certain common features which make out a strong case for adopting appropriate policy and legal framework for regulating fixed-term employment contract. For example, in most of the countries a substantial majority (in the range of approximately 54% in Nigeria to 72% in South Korea) falls under the working age group of the population. This working population has also to support a substantial proportion (in the range of around 27% in South Korea to over 46% in Nigeria) of the non-working age group population.

CHAPTER 3

REGULATORY FRAMEWORK FOR EMPLOYMENT RELATIONS: AN INTER-COUNTRY OVERVIEW

3.1 INTRODUCTION: Both employers and employees/workers play an equally important role in ensuring continuous supply of goods and services to the society. The problem however is that the interests of both these partners if not always divergent are also not congruent. While the employer wants maximum return on the capital invested by him (by way of profit), the employees want maximum reward (in terms of wages/salary, overall conditions of work and social security etc.) for the services rendered by them. Therefore, there is always a chance of tussle between both these parties. Hence, the state has to intervene and the state does so *inter-alia* by way of enacting labour legislations to balance these conflicting claims. Accordingly, the countries in several parts of the world have adopted various legislative measures for this purpose. This chapter provides a synoptic view of the legislative measures mainly dealing with employment relations with a focus on severance compensation/benefits in the countries selected under the study.

3.2 CHINA: In China, presently the labour relations and employment contracts between the employers and their employees are primarily governed by the provisions of the Employment Contract Law (ECL), 2008. Under the ECL, an employer is obliged to engage in discussions and consultations with its employees before enacting any labour regulations or policies. Further, an employer is required to execute written employment contracts with its employees within one month of the commencement of employment. In the event of contravention of this provision, an employee is entitled to receive double salary for the period during which, a written employment contract is not in place. *In case, an employer fails to execute an employment contract for more than 12 months from the commencement of the employee's employment, an employment contract would be deemed to have been entered into between the employer and employee for an indefinite term.*

Under the ECL, 2008 employment contracts are by and large fixed for a definite term. Employees have the right to request for a non-fixed-term employment contract if they have been employed with the same employer for a period of not less than 10 years. In addition, an employee is also entitled to a non-fixed-term contract with an employer if s/he has completed two fixed-term employment contracts with such employer; however such employee must not have committed any breach or should not have been subjected to any disciplinary action during his employment. Unless the

employee requests to enter into a fixed-term contract, an employer who fails to enter into a non-fixed-term contract pursuant to the ECL is liable to pay the employee double salary from the date, the employment contract is renewed (China Practice Bulletin, 2008)[17].

Under the ECL, employees are entitled to compensation upon the termination or expiry of an employment contract. Employees are also entitled to compensation even in the event, the employer (1) has been declared bankrupt; (2) has its business license revoked; (3) has been ordered to cease or withdraw its business; or (4) has been voluntarily liquidated.

Where an employee has been employed for more than one year, the employee is entitled to such compensation equivalent to one month's salary for every completed year of service. Where an employee has been employed for less than one year, such employee will be deemed to have completed one full year of service.

The ECL also permits a trade union to enter into a collective employee contract with an employer on behalf of all the employees. Where a trade union has not been formed, a representative appointed under the recommendation of a high-level trade union may execute the collective employment contract. Within districts below county level, collective employment contracts for industries such as those engaged in construction, mining, food and beverage and those from the service sector, etc. may be executed on behalf of employees by the representatives from the trade union of each respective industry. Alternatively, a district-based collective employment contract may be entered into. Where a collective employment contract is entered into, labour regulations and policies enacted by employers and existing individual employment contracts will be subject to the terms and conditions of the collective employment contract.

3.3 INDIA: In India, the broad policy framework for regulation of employment relations and various other aspects related to the same is provided by the Constitution of India and large number of Central and State Labour Legislations. "Social justice" forms the basis of majority of labour legislations in India, most of which were enacted during the decades when Indian political thinking was aligned with socialism. Ensuring economic justice and legitimate dues commensurate with the contribution of workers to the industry, society and nation as a whole is a cornerstone of legislations pertaining to factories, mines, plantations, shops, and commercial establishments as well as of the legislations concerning wages, regulation of trade unions, social security, industrial safety and hygiene etc.

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[17] RHT Law Taylor Wessing's China Practice Bulletin, issue 1 March, 2008 pages 1&2

In the country, there are more than 150 Central and State labour legislations including over 40 (forty) legislations enacted by Central Legislature. Most of these legislations relate to blue-collar employees or workmen as defined under these legislations. The applicability of various labour legislations also depends on the nature of activity, the employees are engaged in or the place of work. Certain legislations also have the number of employees engaged by a particular place of work as one of the criteria for the purpose of the scope and applicability of the legislations and various benefits under such legislation vary according to the employee position in the workplace.

Labour and employment legislations in India mainly address three themes, i.e. (i) employer-employee relations; (ii) service conditions, such as wages, social security and (iii) working conditions, such as working hours. Enactments such as the Trade Unions Act, 1926; the Industrial Employment (Standing Orders) Act, 1946, the Industrial Disputes Act, 1947primarily focus on the employer-employee relations. Whereas enactments such as the Factories Act, 1948, Plantation Labour Act, 1951; Mines Act, 1952 and the Shops and Commercial Establishments Act of various states relate to working conditions and the enactments like, the Payment of Wages Act, 1936; Minimum Wages Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act, 1952; the Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 and the Equal Remuneration Act, 1976 etc. primarily focus on the service conditions.

It is worth mentioning that majority of the labour legislations largely apply to only workmen. Employment relations with a "non-workman" are regulated by individual contracts of employment with each such employee. Further, most of the industries that typically employ a large number of skilled white-collar employees, such as the technology industry and the banking and financial services industry etc., provide various social security benefits under social security legislations regardless of whether their employees are "workmen" or otherwise.

Though, labour legislations in India do not insist that an employment contract should be in writing, the contract is nevertheless governed by the general law of contracts and it is a common practice to have all the terms and conditions agreed and signed by both parties. Contracts are governed by the Indian Contract Act, 1872 and the provisions of the Contract Act dealing with the parties to a contract, consideration and validity are applicable to all employment contracts as well. In addition, employment contracts contain certain basic details of the employment, most of which are based on the IESO Act, 1946. Some of the common provisions of an employment contracts include: (i) location, description and title of job; (ii) date of commencement, duration (whether fixed-term or unlimited

term) and type (whether part-time or full-time) of the job; (iii) trial or probationary period; (iv) leave entitlement; (v) salary details and other benefits; (vi) terms governing termination of employment; (vii) restrictive covenants; and (viii) governing law. The terms of employment can be changed only with 21 (twenty-one) days' prior written notice. Employment contracts in India are generally considered to be "unlimited term" contracts i.e. contracts that are valid until termination or superannuation, unless specifically identified as a "fixed-term" contract.

As regards, severance benefits, the employees engaged in industrial establishments with 50-99 workmen and covered by the provisions of the Industrial Disputes Act, 1947 are entitled to 1 month's retrenchment notice in writing indicating the reasons for retrenchment or notice pay and retrenchment compensation equivalent to 15 days' average pay for every completed year of service. The employees falling in this category are also entitled to similar kind of benefit in case of closing down of undertakings. In addition, an employer running such establishment is also obliged to serve 60 days' notice of his intention to close down in the prescribed manner. In case of the industrial establishments engaging hundred or more employees, the employer running such establishment is obliged to serve a notice of 3 months or pay in lieu of the same to the employees to be retrenched at the time of effecting retrenchment. Similar provisions also exist in some of the states in India having their separate legislation for regulating industrial relations and related aspects. (such as the state of U.P., M.P. and Maharashtra) with the only difference that while the numerical limit (minimum number of workers) for the purpose of the applicability of the requirement of 3 months retrenchment notice under the Central ID Act is 100 workmen, in case of several state legislations, the limit is 300 workmen. Further, some of the states, (such as Rajasthan and Andhra Pradesh) have also enhanced the numerical limit from 100-300 workmen by carrying out state amendments in the Central Industrial Disputes Act in the recent past.

3.4 USA: In USA, the employment relations are regulated by large number (over 150) of federal employment laws administered by the US Labour Department. However, the core provisions of these laws include: the National Labour Relations Act (NLRA), 1935; the Fair Labour Standards Act (FLSA), 1938; the Equal Pay Act (EPA), 1963; Section 1981 and Title VII of the Civil Rights Act (CRA), 1964; the Age Discrimination in Employment Act (ADEA), 1967; the Occupational Safety and Health Act (OSHA), 1970; the Pregnancy Discrimination Act (PDA), 1978; the Immigration Reform & Control Act (IRCA), 1986; The Americans with Disabilities Act (ADA), 1990; the Family and Medical Leave Act (FMLA), 1993; and the Uniformed Services Employment and Re-employment Rights Act (USERRA), 1994. In

addition, there are numerous other state and local laws aimed at protecting against employment related discriminations. Some of these statutes have expanded coverage in the sense that these provide protection to employees not having coverage under the federal statutes.

For the purpose of applicability of many of the federal employment laws, an employer must be employing a certain specified number of employees (depending on the type of the employer and the discrimination sought to be addressed). Numerous state and laws apply to smaller employers in terms of number of employees engaged by them as required under federal laws.

The employer - employee relations in the country are distinguished on the basis of an "employment by contract" (based on collective bargaining agreement) or an "employment at-will". Parties to the 'At-will' contract can freely terminate the contract with or without notice and for or without any reason, as long as any of the specific provision(s) of any of the federal, state or local law is not violated. Typically, all employment contracts in the country are presumed to be 'at-will' unless a different employment relationship is proved to have been established. In case of 'employment by contract' the employer - employee relationship is regulated by the terms and conditions of collective bargaining agreement. Other factors distinguishing various kinds of employment relationships in the country include: whether an employee works in public or private sector; whether s/he is an employee or an independent contractor; and whether s/he is exempted or non-exempted from over time work. The non-exempted employees are entitled to overtime pay, whereas the exempted employees are not entitled to overtime pay and not protected by the Fair Labour Standards Act (FLSA), 1938.

Under the Federal employment laws in the country, there is neither the requirement of employment contracts of being in writing nor of providing employees with any specific information. However, state and local employment laws may require particular information to be in writing. The provisions dealing with employment contract law in the country allow the parties to lay down the terms of employer – employee relationship. However, employers are duty bound to have environment of good faith and fair dealings in various aspects of employment contracts.

Minimum terms and conditions of employment are determined cumulatively by the federal, state and local laws. As per the Fair Labour Standards Act, 1938 the employees are required to be paid by their employers' federal minimum wages and overtime pay for hours worked in excess of 40 hours per week. Employers and unions are required to meet at reasonable intervals and bargain in good faith the wages, hours of work, vacation time, insurance, safety practices and other mandatory subjects. In the country, it is considered an unfair labour practice for a party to

employment contract to refuse to bargain collectively. However, the parties are not obligated to reach an agreement or to make any concessions.

The collective bargaining agreements are governed by the provisions of NLRA, 1935 which lays down the requirements for bargaining. Normally, the bargaining takes place at company level. In some industries it takes place at regional or industry level. The NLRA, 1935 duly protects the interest of those engaged in trade union activities and unfair labour practices. Various federal, state and local laws protect the employees/ job applicants against employment related discrimination on grounds like race, colour, sex, pregnancy, religion, national origin, disability, genetic information or age etc. The employees are also protected against workplace harassment and retaliation for exercising any of their legal right(s) or reporting violations.

In USA, it is unlawful to discriminate or harass employees/workers on the basis of their 'protected class' membership. 'Protected class' or 'protected group' in this context is a group of people qualified for special protection by a law, policy, or similar authority. In the United States, this term is frequently used in connection with employees and employment. These groups include: men and women on the basis of sex; any group which shares a common race, religion, colour, or national origin; people over 40; and people with physical or mental handicaps[18]. Discrimination or harassment based on any of the above ground may manifest in two forms: 'hostile work environment' or '*quid pro quo* harassment'. Hostile work environment refers to a situation when an employee is subjected to unwelcome treatment based on his or her protected class, which is severe or pervasive enough to be termed as hostile or offensive work environment. In contrast, the *quid pro quo* harassment is the harassment which generally results in a tangible employment action based upon the employee's acceptance or rejection of unwelcome conduct based on protected classes. *Quid pro quo* harassment is generally committed by the person empowered/authorised to recommend employment decisions (such as demotion, promotion, termination) that may affect the victim. On the contrary the hostile work environment can result on account of any action or omission on the part of the co-workers/ clients/customers or anybody else with whom, the employee is supposed to interact in connection with the work.

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[18] Every U.S. citizen is a member of some protected class, and is entitled to the benefits of Equal Employment Opportunity (EEO) Laws: Five (EEO) laws which prohibit discrimination on the basis of the above grounds include: The Equal Pay Act of 1963, as amended; Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Pregnancy Disability Act of 1978; The Rehabilitation Act of 1973, as amended; The Age Discrimination in Employment Act of 1967, as amended; The Civil Rights Act of 1991.

3.5 RUSSIA: In Russia, the employment relations are primarily regulated and governed by the provisions of the Labour Code of Russian Federation, 2002 as amended last in October, 2015. In the country, enterprises of all the size are mandatorily covered by this Code. However, those engaged in army, managerial positions and executive positions are excluded from the coverage of the Code. The maximum probationary (trail) period for workers is three (3) months and six (6) months for managers and financial officers, within which they have to be conferred permanent status by way of confirmation[19].

Article 3 of the Labour Code prohibits the discrimination at work on several grounds. These grounds include: marital status, pregnancy, race, colour, sex, political opinion, social origin, nationality/national origin, age, trade union membership and activity, financial status, language, ethnic origin. Workers enjoying special protection in the country include: workers' representatives; pregnant women and or women on maternity leave; workers' with family responsibilities; and minors[20]. As per Article 81 of the Labour Code, in case of dismissals, the employers are required/ obligated to provide reasons. The valid/justified grounds for dismissal include: economic reasons, workers conduct and workers capacity. The prohibited grounds for discrimination at/during work (as indicated above) also constitute the prohibited grounds for dismissal.

The procedural requirement for individual dismissals on economic grounds is that the employers are obligated to provide written notice or pay in lieu of that to the worker (having put in a service of at least six months) to be dismissed of a minimum of two months, irrespective of the tenure of service rendered by him or her[21]. In such cases, there is no requirement of notification either to the public administration or to the workers' representatives. Similarly, no prior approval by public administration or judicial bodies or the workers' representatives is required. However, in case of the collective dismissal for economic reasons, as per Article 82 of the Labour Code the same are to be defined by collective agreements at the branch and or territorial level. Further, Article 180 of the Labour Code

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19 Article 70 of the Labour Code of Russian Federation, 2002

20 Article 261 of the Labour Code prohibits the dismissal of a pregnant worker except in the event of enterprise liquidation. It also prohibits the dismissal of women with children under three years old, single mother raising a child under fourteen years old (disabled child under eighteen), workers raising children, without a mother except on certain limited grounds (liquidation and grounds related to the misconduct of the worker). Similarly, as per Article 269 of the Labour Code, except in the event of enterprise liquidation, workers under 18 can only be dismissed with the authorization of the Labour Inspectorate and the Commission for the rights of minors.

21 Article 180 of the Labour Code of Russian Federation, 2002

requires prior consultations with trade unions / workers' representative, Articles 21 and 25 of the Law on Employment require the employer to inform the government three months in advance about any expected dismissals and Article 82 of the Labour Code require the employer to inform the trade union about any expected reduction of the workforce for economic reasons two months in advance. However, under the law there is no requirement of the approval of such dismissals either by the public administration or by the workers representatives.

As regards the severance pay and redundancy payment, in such cases the workers having put in a service of six months and above are entitled to severance payment equal to their average monthly wage in case of termination due to liquidation or redundancy. Additionally, the employer is also required to pay the dismissed employee there average monthly salary during the period of their search for a new job (for no longer than two months). In exceptional cases, an employee is entitled to receive average monthly salary for the third month following the date of termination based on a decision of the employment agency, subject to the condition that the employee addressed the agency within two weeks and was not employed. An employment agreement or a collective bargaining agreement can provide for a higher severance pay (Maximenko & Klutchareva, 2017)[22]. In case of unfair dismissal, there is a provision in the country for its free determination by Courts and also for reinstatement of such employees[23]. As per the Labour Code the complaint about the alleged unfair dismissal is to be filed within one month of the termination of employment[24]. Further, the Code of Civil Procedure provides that any such case has to be considered within one month[25].

3.6 JAPAN: In Japan, the broad labour and employment relations regulatory framework is contained in the Labour Standards Law, 1947 and the Labour Contract Act, 2007. In principle, the employment laws in Japan equally apply to all the employees. In addition, government is also trying to reduce inequalities between various categories of workers i.e., regular employees and non-permanent employees. Regular employees are generally hired to an indefinite contract and the fixed-term contracts are usually used for works of temporary nature. Part-time workers may be engaged either on fixed-term or indefinite term. However, the

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[22] Employment and Employee Benefits in the Russian Federation – Overview, Anna Maximenko & Elena Klutchareva, Debeviose & Plimpton LLP, in The Global Guide to Employment and Employee Benefits Law, 01-January-2017 Thompson Reuters Practical Law, www.practicallaw.com/employment-guide

[23] Article 394, the Labour Code of the Russian Federation, 2002

[24] Article 392, the Labour Code of the Russian Federation, 2002

[25] Article 154, the Civil Procedure Code of The Russian Federation, No. 138-Fz, 2002

working hours of part-time workers are normally shorter than those of the full time employees.

Since 2015, efforts are on in the country to treat the fixed-term/part-time employees at par with comparable permanent/ full time employees in respect of the terms and conditions of their employment. In order to reduce the inequalities between various categories of workers in terms of the status, the efforts are on to introduce legislation concerning 'equal pay for equal work' for improving the working conditions of non-regular employees. *In December, 2016 the Council for Realization of Work Style Reform issued draft guidelines providing for differences in working conditions between regular and non-regular employees and the extent to which they can be reasonable. In March, 2017 the government published an Action Plan for Realization of Work Style Reform which inter-alia included implementing legislation and guidelines to ensure the effectiveness of the requirement of equal pay for equal work; introducing a strict limit on overtime and ensuring compliance through the imposition of criminal penalties; promoting flexible work options and work life balance (e.g. Tele-work and second jobs); accepting more foreign workers with high- level skills and knowledge (e.g. by introducing a Japanese Green Card for high-level foreign workers).*

Employment contracts in Japan may be oral or in writing. Contracts can be minimal if the same are supported by work rules. Work rules are the specific rules for the work place which set out working conditions inter-alia in relation to wages, working hours and breaks; holidays and the rules to be complied by the employees including disciplinary procedure. As per the existing Japanese labour law, employers engaging 10 or more employees are obliged to adopt work rules and file them with the local Labour Standard Inspection Office. However, the employers engaging less than 10 employees can formulate work rules on a voluntary basis.

There is an increased emphasis in the country on improving the management of overtime work mainly in view of some of the tragic events in the Japanese media relating to 'karoshi' (death from over work) and many of the well-known companies facing trial over karoshi cases. That is why recently (January, 2017) the Ministry Of Health, Labour and Welfare issued 'Guidelines for Employers to appropriately manage their Employees Working Hours'. These Guidelines provide that, in principle, employers will monitor the same based on visual confirmation of working hours by the employer, or keep an objective record by using a time card system or a similar method. If an employer, in lieu of using either of the above methods, manages employee working hours by utilizing an employee self-reporting system, the employer must take certain measures to ensure appropriate management of working hours. Although the 2001 Standards also provided similar rules, the Guidelines require employers to take various additional measures to prevent the under reporting of

working hours, such as requiring an investigation when there is a large gap between employee's time spent in the workplace as indicated by objective data and self-reported working hours. Employees are entitled to at least a 45 minute break for 6 hours of work and a 1 hour break for 8 hours of work.

There is a minimum 30-day notice period before an employer can dismiss an employee. If the employer does not wish the employee to work any part of this notice period, it can pay his / her salary in lieu of notice. Although, this procedure is cumbersome and seldom applied in practice, no notice is required where the employer summarily dismisses the employee for serious misconduct, as long as it has obtained the local Labour Standards Inspection Office's consent.

Employers may terminate an employment contract for just cause only. Dismissed employees can claim reinstatement and salary based on the invalidity of the dismissal or compensation for unfair dismissal, unless the employer can show that there was a serious and objective reason for dismissal (e.g. misconduct, incapacity, illegality, redundancy or some other substantial reason). The misconduct or breach of law must be serious in order to meet the stringent Japanese court standards. Unless the employer's case for dismissal is strong (including its evidence), a customary and safer alternative for the employer is to request the employee to resign. Resignation offers are made on an individual basis and employees need not accept them. Financial incentives are normally offered in order to encourage employees to accept resignation offers. The arrangement is often documented in a separation agreement covering the separation package, waivers and releases and restrictive covenants.

In principle, employees who are absent from work due to non-work related sickness or injury are not entitled to pay from their employer. Under national health insurance coverage, employees are entitled to two-thirds of the applicable standard wage (calculated according to a specific formula) as illness/injury allowance after three days of absence for 18 months. However, if the employer offers the employee any wages during this period, the allowance will be reduced by the amount received.

Dismissal is seldom an immediate option and work rules often include a suspension period (e.g., from three to six months) during which the employee need not perform his or her duties, but maintains a contractual relationship with the employer. If the employee recovers during this period and can return to work, he or she will be reinstated. If the employee does not recover within this period, the employer can give notice of termination. Various rules can be adopted in this respect and the duration and reasons for suspension will vary.

3.7 NIGERIA: The main statutes regulating employment and labour relations in Nigeria include: Labour Act; Trade Dispute Act; Trade Unions Act; Employee Compensation Act; Factories Act; Pension Reforms Act; Housing Act; Industrial Training Fund Act; National Health Insurance Scheme Act; National Industrial Court Act and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

The Labour Act, 1974 is the principal legislation governing employment relations in Nigeria. Its application is limited to employees engaged under a contract of manual labour or clerical work in private and public sector. Employees exercising administrative, executive, technical or professional functions are governed by their respective contracts of employment. By the provisions of the Labour Act, the contract of employment is required to be reduced into writing not later than three months of the commencement of the employment. It is important to note that the contracts of employment of the classes of employees not covered by the Labour Act need not be in writing, as the same may be oral or implied.

There are no specific statutory provisions as to the length of probation or evaluation period before an engaged employee could be confirmed by an employer. In practice however, such probation and evaluation periods are contained in the contract of employment and are binding on the parties. Nigerian law recognizes triangular relationship. The Labour Act defines an employer as any person "who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person."

Going by the provisions of Labour Act, 1974 and Employee's Compensation Act, 2010 one can safely say that Nigerian law recognizes casual work. For instance, the definition of an employee under the Employee's Compensation Act includes casual workers. Also, the Labour Act, though does not use the word casual, defines a worker to include anyone carrying out contract personally to execute any work or labour, an expression that accommodates casual workers. The Employee's Compensation Act provides for payment of compensation to employees including casual workers in the event of accident during employment or to the employee's dependants in the event of death. Suffice to say that, though casual workers do not enjoy same benefits as permanent workers/employees, an employer owes a casual worker a duty of care to provide safe work environment for the purposes of employment.

Usually, certain clauses are inserted in contracts of employment which provide that an employee must remain in the employment of the employer for a specified period or, upon resignation from or termination of his employment, would not take up a similar employment or will not take up employment from an undertaking who is a direct competitor to the

employer. Such clauses are also utilized where the employer has invested on the employee for example by way of training to enable the employer to enjoy the returns on his investment by ensuring that the employee remains in the employment for a specified period.

The position of the law which has been upheld by Nigerian Appellate Courts has always been that an employer can terminate the employment of his employee without giving any reason or even for no reason at all. By the established principles, an employer has the right to terminate an employment without stating any reason in so far as all laid down procedures are followed in terminating the employment. However, in many of the recent decisions by the National Industrial Court (NIC), it has been held that where the contract of employment contains grounds upon which the employment can be terminated, then any termination must fall under any of the agreed grounds and same must be stated when the employment is being terminated.

As regards, reliefs available to an employee whose employment was wrongly or unlawfully terminated, the same will depend on whether the employment is governed by statute (employments with statutory flavour) or by ordinary contract of employment (master and servant relationship). Where the employment is one with statutory flavour, the employee may be entitled to re-instatement and may also be entitled to claim damages. As an alternative to a claim for re-instatement in such cases, damages may be calculated as salary and other benefits from the period when s/he was unlawfully dismissed to when judgement is delivered. Where the employment is however a mere master and servant relationship, the employee affected would not be entitled to re-instatement as wrongful termination only entitles him to an award of damages and the damages would be calculated as the amount the employee would have earned if the termination was done in accordance with the contract of employment.

As such, parties are free to insert an arbitration clause into a contract of employment and where the same is inserted, it will be enforceable. The provisions of the Constitution [Third Alteration] Act and the NIC Act support the use of arbitration for resolution of employment related matters with the NIC having supervisory jurisdiction over such arbitral tribunal.

3.8 GERMANY: Germany not only has a well-established social welfare and social security system but also an advanced system of labour law which applies to both wage and salary earners. The German Labour Law protects both blue-collar and white-collar employees. The law is divided into two sub-categories. First the collective labour law which applies to the legal relations between unions and employers' associations at company and sub-company levels via collective agreements. Wage levels, working hours, holiday entitlements and other work conditions are also covered by such agreements. Second, the individual labour law governs the relations between single employers and single employees and regulates different

aspects of working conditions. Federal Holidays Act and the Continuation of Pay Act that secures pay during sick leave and the Unfair Dismissal Protection Act etc. ensure certain minimum rights.

Employment security and employment promotion are highly valued in Germany. Labour Law regarding protection against dismissals secures the main protection for employees. The employment promotion policies based in Book II and III of the Social Code are focused on improving employment chances for people without work. The Federal Employment Agency (PES) and its regional agencies conduct these policies.

The Work Consultations Act, 1972 (reformed in 2001) establishes how the workplace labour relations system is operated in Germany. The Act allows for the election of a working council that represents the employees in the enterprise. Via the elected representatives of the working council, employees in German enterprises have been granted the right to take part in the decision-making processes of enterprises for dealing with marketing plans, new products, capital investment, or rationalization measures. This code termination also means that employees and trade unions are sharing a corporate responsibility for shaping and stabilizing the society.

Germany possesses a broad and stable welfare system. The combination of increased labour market flexibility and higher qualification demands, through various societal challenges has lead to a changed perception of employment and the work-place, as well as of the growing importance of quality of work in Germany. This development has lead to the introduction of a wide range of measures, and cooperative projects among various groups focusing on healthy, secure and flexible workplaces. This is reflected in a number of reforms over the recent years, the most important of which are the four Acts on Modern Services on the Labour Market.

3.9 UNITED KINGDOM: In United Kingdom, which is one of the financial and service centres of the world, currently the employment and labour relations are largely governed by the Equal Pay Act, 1970; the Race Relations act, 1976; National Minimum Wage Act, 1990; the Disability Discrimination Act, 1995; Employment Rights Act, 1996; Working Time Regulations, 1998; The Equality Act, 2010 and the Revised Leave Directive, effective from March, 2013 etc.

A per the Employment Rights Act, 1996 all the employees working in the UK are entitled to be provided within 2 months of their engagement, a written statement from their employer clearly indicating the terms and conditions of their employment. This kind of statement is required to be provided to both, the employees working on fixed-term contracts and the ones working under the indefinite term contracts. This statement should contain the information pertaining to the date of commencement

of employment of the employee and its duration; job title and duties; amount of pay and pay intervals; place of employment; sick pay; normal hours of work; holidays; pension entitlement; grievance and disciplinary procedures; notice of termination requirements; and probationary period if applicable.

The Equality Act, 2010 prohibits various kinds of discrimination and harassment based on aspects like: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race, ethnicity, national origin or skin colour; religion/ belief; sex; sexual orientation; part-time work; fixed-term work; and trade union membership activities, etc. The provisions of law prohibiting discrimination apply to hiring, the terms and conditions of employment, training, promotions, terminations, and employee compensation. The law also prohibits both direct and indirect discrimination. Other anti-discrimination regulatory measures include: the Equal Pay Act, 1970; the Race Relations Act, 1976; the Disability Discrimination Act, 1995 and the Employment Equality Regulations concerning to sexual orientation and age.

The labour law in UK provides for termination of employment contracts for various reasons such as expiration of the employment contract, termination by mutual agreement, death or retirement of the employee, dismissal of the employee or redundancy. Both the parties to employment i.e. the employee and the employer are entitled to a minimum period of termination notice as contained in the employment contract.

3.10 FRANCE: In France, the labour and employment relations are primarily regulated by the Labour Code (Code du Travail) adopted in 1973 (modified in 2007 and effective from March 2008) and national level collective bargaining agreements which prevail over the terms of any employment contracts. Some of the important aspects covered by the Labour Code include: firings, health and security, temporary work, collective negotiations and wages etc. The employment relationship in the country is regulated by different levels of regulatory measures starting from bottom up i.e. i) employment agreements ii) company level agreements iii) national collective bargaining agreements iv) legislation including the labour code and the Constitution and other rules of the higher order such as EU Directives/ Treaties or Law. The employees on International assignments in the country are subject to only the core mandatory rules pertaining to aspects like health and safety rather than the entire Labour Code. As per well-established case law and principles underlying the labour Code any uncertainty regarding a termination or disciplinary action is to be judged to the employee's advantage.

Most of the employees in France (over 95%) are covered by collective bargaining agreements, regardless of the fact whether the employer

operates in unionised or non-unionised environment meaning thereby that most of the rules contained in the Labour Code are further complemented and supplemented by various other more generous rules from the view point of the employees in the matters pertaining to minimum wages; paid leave; maternity leave; medical cover and working time etc. However, some of the recent reforms in the country have given right to the employers to entering into company level collective agreements with their employees, which may deviate from an industry level's collective agreements in situations of specific demands such as working time.

Recently enacted legislation in the country, The Work Law known as *'Loi travail'* effective from August, 2016 has brought about a number of significant changes in several areas of the French employment law. Some of the major changes introduced by The Work Law are as follows:

- A new architecture of the Labour Code in the section on working time and leave of absence;
- Inclusion of provisions in the Labour Code providing for the company-level agreements to prevail over the national-level bargaining agreements to set the rules regarding working time subject to the condition that the company and national-level bargaining agreement must comply with the public order provisions;
- Provision of objective criteria to define the economic difficulties in case of economic redundancies; and
- Redesigned rules regarding the validity of a collective agreement and the representation of signatories.

There are also moves at an advanced stage at the level of government in the country to provide for framing of guidelines for awarding compensation by the courts in case of unfair dismissals. The draft guidelines provide for compensation in the range from 1-22.5 months of salary depending on the years of service, age and the personal situation of the employee.

As regards, termination, all termination notices must be in writing and must explain the grounds for termination and contain certain mandatory information. Termination for economic reasons has to follow a complex procedure involving selection criteria; exploring alternative role for the employee and explaining the reasons for redundancy. All the redundancies must be communicated to the prescribed labour authority and it has also to be ensured that the employee receives unemployment benefit. Employees are protected against unfair dismissals and are entitled to be financially compensated by payment of compensation equivalent to up to 6 months' salary if s/he has been employed with a larger employer for 2 years. The representatives of the employees and pregnant women enjoy additional protection. The termination of the former is subject to the approval of

labour inspector. Pregnant women employees and second parents are protected against dismissal from the date the employer's informed of the pregnancy up to 6 weeks after the end of the maternity leave.

3.11 SOUTH KOREA: The principal sources of law for regulating and governing employment relationships in South Korea are the Constitution, the Labour Standards Act and other statutes, individual employment contracts, internal employer work regulations, and collective bargaining agreements. Out of these the most significant is the Labour Standards Act (LSA), which stipulates minimum standards for a wide range of work conditions. The standards contained in LSA can supersede any contrary provision of an employment contract, collective bargaining agreement (CBA) or work regulation if it is less favourable from the employee's point of view of. It means that in case of any consistency between any two of the sources of employment regulation, usually that source whose provisions work to the greater advantage of the employee will prevail.

Article 32 of the Constitution of South Korea (which establishes some basic principles of employment) provides that all citizens "have the right to work," and contemplates legislation providing minimum wages and working conditions "to ensure human dignity." Article 32 also forbids gender discrimination in employment and work conditions. At the same time, it allows for "special protection" for working minors, and "preferential" work opportunities for military personnel and policemen or their family members following injury or death in the line of duty.

Labour Standards Act (together with the related "presidential enforcement decree," or implementing regulation, the "LSA"), the central piece of legislation, prescribes the minimum work conditions that an employer must provide to its employees, including minimum standards for working hours, overtime pay, vacation and other paid leave, severance, and other allowances and benefits. The LSA applies to every employer that continuously employs 5 or more employees, including foreign employers with 5 or more employees at any office or "workplace" in Korea (certain provisions of the LSA also apply to smaller companies). The LSA standards will supersede any contractual terms that are, for the employee, inferior. Violations of certain LSA provisions are punishable by criminal sanctions.

The LSA does not require an employment contract to be a contract in writing, except for an employment contract for a part-time employee. However, certain terms such as wage, working hours, annual paid leave and weekly holiday must be specified in writing, and such written terms must be provided to the employee at the time when an employment contract is entered into, and the employer must retain a copy for at least three years following termination. However, even in absence of a written

agreement, either side may claim the existence of a verbal or implied agreement, which will be enforceable if proven. The maximum work hours and overtime allowance provisions of the LSA do not apply to managerial or supervisory personnel, or part-time employees who work less than 15 hours per week.

There are certain other statutes and related regulations governing various aspects of employment such as, establishing various minimum standards; establishing certain mandatory hiring guidelines; regarding mandatory social insurance; and regarding labour unions and labour-management relations. A brief description about these is as follows:

(i) The Minimum Wage Act, Employee Retirement Benefit Security Act, Act on the Protection of Dispatched Workers, Act on the Protection of Fixed-term and Part-time Employees and the Industrial Safety and Health Act relate to establishing various minimum standards.

(ii) The statutes pertaining to mandatory hiring guidelines include: Employment Security Act, the Employee Vocational Capability Promotion Act, the Equal Employment Opportunity and Work-Family Balance Assistance Act, the Act on Promotion of Employment and Vocational Rehabilitation of Disabled Persons, and the Act on Honourable Treatment and Support of Persons of Distinguished Service to the State.

(iii) The statutes concerning mandatory social insurance are National Pension Insurance Act, the National Medical Insurance Act, the Employment Insurance Act, the Industrial Accident Compensation Insurance Act and the Wage Claim Guarantee Act.

(iv) The Labour Union and Labour Relations Adjustment Act, which covers labour union activity and dispute resolution, and the Act on Promotion of Employee Participation and Cooperation, which concerns labour-management councils and grievance procedures relate to labour unions and labour-management relations.

Employment contract: Employer and employee are free to agree on the terms of employment as a matter of contract, subject however to the mandatory standards under the LSA, and subject also to any superior provisions under the employment regulations or an applicable collective bargaining agreement.

Employment rules: Under the LSA, a workplace with 10 or more employees on a continuous basis must prepare a set of rules of employment governing wage calculation and payment, work hours and other work conditions for its employees, and file the rules with the Ministry of Employment and Labour. Such rules exist in addition to the individual employment contracts.

Collective bargaining agreement: Employees are free to form a labour union, which may negotiate a collective bargaining agreement ("CBA") with the employer. Generally, the CBA will apply only to union members, and thus, employment conditions may vary as between a union member and non-union member. However, under the Labour Union and Labour Relations Adjustment Act, if a majority of the employees ordinarily engaged in a given type of work at a given workplace or in a given business are union members and the CBA applies to such union members, the CBA will also apply to the non-union employees engaged in the same work at the same workplace or in the same business. If the general employment rules contain conditions less favourable than those under the CBA, the CBA will prevail for any employees covered by the CBA.

Employment status: The mandatory LSA standards and other key restrictions apply to "employees." Generally the term encompasses temporary as well as longer-term employees, and both full-time and part-time employees. The LSA defines the term "employee" broadly as one who "offers work to a business or workplace for the purpose of earning wages." Expanding on this, the Supreme Court of South Korea enumerated the following set of factors that, to the extent they hold true, point to an employer-employee relationship:

(i) The individual's duties, and time and location of work, are determined by the (supposed) employer. There are applicable work rules and the person is substantially supervised and ordered by the employer.

(ii) The duties are not such that the individual is able to delegate them to a third party.

(iii) Work equipment and materials are not owned by the individual.

(iv) Remuneration is in correlation to the amount of work performed by the individual, based on a fixed rate of pay, and income tax is withheld.

(v) The relationship is continuous and the individual works exclusively for the employer.

(vii) The individual is classed as an employee according to other regulations.

(viii) The economic and social circumstances of the parties indicate an employment relationship.

Directors and Officers: "Employees" generally will not include directors on the board of a corporate employer (who are registered as such in public records), except in special situations where such a director has worked under the supervision of another director or an officer and thus is seen to satisfy the criteria above. Aside from such directors, other officers and

directors are classed as "employees" for most purposes under the LSA and related regulations. *(Bae, Kim & Lee, www.ChinaGoAbroad.com Accessed on October 2, 2018)*[26].

Dispatched Workers: The Act on the Protection of Dispatched Workers (Dispatched Workers Act), regulates the use of employees of another company by way of "worker dispatch." Under the Dispatched Workers Act, worker dispatch refers to a system in which a dispatching company (Dispatching Company), while maintaining the employment relationship with its employee, causes its employee to work for another company (Receiving Company) under the supervision and direction of the Receiving Company in accordance with a dispatch agreement between the two companies. There is a distinction between outsourcing of work (when the employee is sent to the site of a client company to perform the outsourced work) and worker dispatch, based on whether the employee is supervised or ordered by his or her own employer or the client company. If the employee is ordered or supervised directly by the client company for the performance of his or her work, he or she will be regarded as a dispatched employee under Dispatched Workers Act. Under the Dispatched Workers Act, a company is prohibited from engaging dispatched workers in direct production processes and can only engage dispatched workers in certain specified business roles, such as computer expert services, travel guide services, and security services etc. Any employer who dispatches or uses a dispatched worker in violation of the Dispatched Workers Act will be subject to a criminal penalty. Further, under the Act, if a Receiving Company uses a dispatched worker for over 2 years or in violation of the Dispatched Workers Act, the Receiving Company becomes obligated to employ the dispatched worker directly as the Receiving Company's employee (unless the dispatched worker objects to such employment or there are justifiable reasons as prescribed by the Presidential Decree). The employment conditions for such workers will then conform to the employment rules applicable to that Receiving Company's regular employees who handle the same or similar jobs. Dispatched workers who suffer discriminatory treatment may file a claim for corrective measures with the LRC, whose procedures in this context are analogous to those applicable to fixed-term and part-time workers as discussed above.

3.12 SOUTH AFRICA: The labour regulation policy framework in South Africa is contained in the country's Constitution, as well as in various Labour Acts and Basic Guides and Codes of Good Practice. Section 23 of the South African Constitution emphasizes the right to fair labour practices.

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[26] Bae, Kim & Jeong Han Lee, Employment and Labour Law of Korea, China Go Abroad - Where China Meets the World, www.ChinaGoAbroad.com. Accessed on October 2, 2018.

The freedom to choose a trade, occupation or profession is guaranteed by Section 22 and Section 27 informs labour relations[27]. The Basic Conditions of Employment Act (BCEA) adopted in 1997 serves as the corner stone for guiding labour policy. The BCEA applies to all employers and workers and regulates leaves, working hours, employment contracts, deductions and termination[28]. There are also some other legislative mechanisms, which further supplement or develop the provisions of the BCEA. The Acts listed in Table 3 provide a synoptic view of the same. Key focus areas of these Acts are employment equity, skill development, labour relations, health and safety and social security.

Table-3: The Aspects Covered by Various Labour Legislations in South Africa: A Synoptic View

Labour Legislation	**Aspects covered**
Compensation for Occupational Injuries and Diseases Act, No.130 of 1993	Workers who are affected by occupational injuries and diseases are entitled to compensation.
Occupational Health and Safety Act, No 85 of 1993	Aims to provide and regulate health and safety at the workplace for all workers.
Labour Relations Act, No. 66 of 1995	Applies to all workers and employers and aims to advance economic development, social justice, labour peace and the democracy at the workplace.
Basic Conditions of Employment Act, No. 75 of 1997	Applies to all employers and workers and regulates leaves, working hours, employment contracts, deductions, pay slips and termination.
Skills Development Act, No. 97 of 1998	Aims to develop and improve the skills of the South African workers.
Employment Equity Act, No. 55 of 1998	Applies to all employers and workers and protects workers and job seekers from unfair discrimination and also provides a framework for implementing affirmative action.
Skills Development Levies Act, No. 9 of 1999	Prescribes how employers should contribute to the National Skills Fund.
Unemployment Insurance Act, No. 63 of 2001	Provides security to workers in the event of unemployment.
Unemployment Insurance Contributions Act, No.4 of 2002	Prescribes how employers should contribute to the Unemployment Insurance Fund.

[27] The Constitution of the Republic of South Africa, 1996

[28] The Basic Conditions of Employment Act No.75, Republic of South Africa, 1997

The summary of the various labour legislation in **Table-3**, illustrates the rights based approach of the new policy framework. However, it is worth mentioning that South Africa can be described as a "lean social democracy" (Bhorat, Lundall & Rospabe, 2002)[29] since a "system of rights is cultivated but the responsibility of the state to provide a universal system of social security support is abrogated." (Benjamin, 2006)[30]

Since the State is "faced with usual cohort of multiple demands for fiscal support" the tendency is "to instead invest in programs that enhance human capital acquisition and skills development (Bhorat, Lundall & Rospabe, 2002)[31]. Accordingly, South Africa's labour policy is dominated by skills development versus employment security options. In addition, the Expanded Public Works Programme (EPWP) and the Accelerated Shared Growth Initiative South Africa (ASGISA)[32] are examples of macro policies directed towards human and capital investment. Although all policy frameworks have their strengths and weaknesses, public policy in South Africa is constrained in particular by questions of efficacy and inability to influence the growing informal economy (also known as the second economy). Also, the new legislative framework contains a variety of regulatory strategies, but "levels of enforcement and compliance with labour standards remain low and implementation is a major stated priority of the State." *Since South African labour law is primarily constructed on a "foundation of the conventional employment relationship,"*[33]*, a significant portion of the labour force that works in the informal economy (29.6% in 2006) is excluded from the protection and benefits of labour regulation. Consequently, workers in the informal economy earn their livelihoods through insecure and unprotected work in which employer power is unrestrained. In essence, the increase in informal work poses a range of challenges for the "provision of labour and social protection." (Benjamin, P. (2005). A review of labour markets in South Africa, Labour market regulation: International and South African Perspectives. Cape Town, HSRC). Although the second economy is mostly beyond the reach of legislative frameworks, some public policies are aimed at the second economy.*

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29 Bhorat, H. Lundall, P. & Rospabe, S., 2002 The South African Labour Market in a Globalizing World: Economic and Legislative Considerations. Employment Paper 2002/32, International Labour Organization (ILO)

30 Benjamin, P. (2006). Beyond 'lean' social democracy: labour law and the challenge of social protection. Transformation: Critical Perspectives on Southern Africa, 60, p. 32-57.

31 Supra note 16.

32 The Accelerated and Shared Growth Initiative for South Africa is a program for expediting the sustainable growth of the economy and also ensuring that economic growth is widely shared. For details, refer to: The Presidency (2005). Accelerated and Shared Growth Initiative for South Africa (ASGISA).

33 Benjamin, P. (2005), A review of labour markets in South Africa. Labour market regulation: International and South African Perspectives. Cape Town, HS

3.13 CANADA: In Canada, the power to enact laws vests both with federal and the provincial governments. In the area of employment law, the federal government has jurisdiction only over certain specific works and undertakings such as shipping, railways and banks. The vast majority of employment relationships are governed by the provincial laws. With the exception of Quebec employment law is by enlarge similar in all the provinces.

All Canadian provinces have enacted legislation setting out minimum standards for regulation of the basic terms and conditions of employment, including minimum wage levels, vacation and holiday pay, hours of work, leave of absence, notice-period for termination and in some jurisdictions severance compensation. Employers and employees are not permitted to make any compromise with these minimum standards. These standard primarily include: 8 hours of work per day and 48 hours per week with a provision for payment of 1.5 times wages for the overtime work above 44 hours per week; 9 public holidays; Two weeks of vacation after 12 months of employment with a provision of 4% of wages as vacation pay; 17 week – Maternity/ Pregnancy leave; 35 or 37 week job-protected leave without pay, 35 weeks if the employee took pregnancy leave, 37 weeks if the employee did not avail; 10 days job-protected leave without pay for illness, injury and certain other emergencies and urgent matters (in case of the employers engaging 50 or more employees); and 8 weeks job-protected family medical leave without pay.

Provisions dealing with termination of employment: There is no employment 'at will' in Canada. Hence, an employer is generally entitled to dismiss an employee from employment without notice only where it has 'cause' in law to do so. Termination of employment for cause is considered exceptional and there is a substantial burden on the employer to establish that it has cause to end the employment relationship without notice. It is pertinent in this context that the implication of causes from the view point of justifiability may vary from case to case. While a single incident of serious employee misconduct may be a justified/sufficient cause for termination, many of the repeated minor incidents of unsatisfactory conduct may not constitute a justified/sufficient cause. Before resorting to termination in such cases, the employer is required to provide a series of clear written warnings to the employee regarding his/her unsatisfactory conduct (such as attitude, attendance and job performance problems etc.) and the need to improve or correct that conduct. In the absence of cause for dismissal, employer must generally provide employees with working notice of termination of employment or pay in lieu of notice.

However, the employees/workers of all the categories are duly protected against unjustified terminations in the sense that there is no employment

"at will" in the country and an employer is generally only entitled to dismiss an employee from employment without notice where it has cause in law to do so.

In the country, an employee's entitlements on termination without cause arise from: [i] the minimum standards established by the Employment Standards Act (ESA) [ii] The right to reasonable notice of termination at common law and [iii] termination provisions in an enforceable, written employment contract.

3.14 SWEDEN: Some of the key statutory regulations which provide for various contractual rights and obligations of the workers in Sweden include: Parental Leave Act; Equal Opportunities Act; Working Environment Law; Ethnic Discrimination Law and Swedish Social Security Guide. It is worth mentioning in this context that almost 80% of the Swedish work force is unionized and many aspects of work are regulated through a specific regulation called the collective agreement, which is concluded between the trade union and the employer. If a collective agreement deviates from the law, it has to be more beneficial to the workers than the law (Anell, 2010)[34].

In the country, safety of employment is highly valued and people who lose their jobs are typically protected by unemployment insurance. The main rule in Sweden is that employment is until further notice, which is often referred to as permanent employment. There are exceptions to the main rule, for example, seasonal employment, substitute jobs or probationary employment. Employment for a limited time may also be admitted in times of exceptional workload, but only for a maximum of six months during a two-year period. A number of labour laws are in place to protect employment rights and prevent unjustifiable dismissals without proper notice. The Employment Protection Act, 1982 regulates a number of matters pertaining to the individual employee's terms and conditions of employment. The Act is applicable to all employees both, in the public and private sector. However, a few groups of employees are excluded from its application. These groups are:

(i) *Employees who, by virtue of their duties and conditions of employment, may be deemed to be in a managerial or comparable position.*

(ii) *Employees who are members of the employer's family.*

(iii) *Employees who work in the employer's household.*

(iv) *Employees who are employed for work with special employment support or in sheltered employment.*

According to the provisions of the Employment Protection Act, an employer who wants to terminate the employment of an employee must be able to show objectively

[34] Karin E Anell, The Sloan Centre on **Aging and Work** at Boston College, Global Policy Brief No.10, March 2010.

justifiable reasons for the termination. If an employer performs a termination without such reasons being at hand, the employer may have to face both claims for an annulment of the termination and claims for damages. The damages may in some situations amount to as much as approximately two to three years' salary for the employee.

The objectively justifiable reasons that an employer must show are divided into two categories. The first category consists of terminations based on reasons related to the employer. Such terminations are called terminations due to redundancy. The other category consists of terminations where the reasons for the termination relate to the affected employee in person. Such terminations are called terminations due to personal reasons. The procedures for the two categories of terminations are similar in some respects, but there are also differences.

3.15 SUMMING UP: An analysis of the legal measures pertaining to regulation of employment relations and severance compensation (in case of open ended employment) in various countries as described in sections 3.2 - 3.12 of this chapter reveals that in most of the countries except Germany, these labour law measures are mainly restricted to the blue collar employees and the employees falling under other categories have to take resort to either the general provisions of contract law or/ and the collective bargaining agreements. The analysis further reveals that these regulatory measures in most of the countries also insist on formal/written employment contract with clear stipulation of various terms and conditions of employment (such as salary, leaves, working hours, weekly off/(s) and social security etc.) either at the very beginning or within a specified time of entering into contract of the employment. Further, these measures also provide for notice period/notice pay from the side of both the parties in case of termination of employment and severance compensation ranging from 15 days to 2 months' salary for every completed year of service mainly aimed at ensuring employment security (in addition to other terminal benefits under various other social security laws as per applicability).

CHAPTER 4

MEASURES PERTAINING TO SOCIAL SECURITY IN DIFFERENT COUNTRIES: AN OVERVIEW

4.1 CONTEXT: Social security is the most important aspect next to employment and wages, especially for those with lower levels of income and limited/shorter employment duration. Accordingly, this chapter provides a brief description of the regulatory measures pertaining to social security and various key social security benefits in the countries selected under the study.

4.2 CHINA: The current social security system in China, is based on individual employment contracts that makes employers, rather than the state, primarily responsible for contributions to pensions, unemployment, medical, work-related injury and maternity insurance. In addition, the government has established a housing fund designed to help employees, who no longer had housing provided for them, buy their own home.

In the country, the existing social security system has emerged piecemeal through a series of specific regulations and provisions in the 1994 Labour Law and 2008 Labour Contract Law etc. It was not until 2011, however, that these separate parts were codified into a comprehensive national framework in the Social Insurance Law. The basic principles of China's social security system, as outlined in the Social Insurance Law, are as follows:

- All employees, including rural migrant workers, should be covered by the social insurance system.
- Both employers and employees are required to make contributions (at different rates) to a pension fund, unemployment insurance fund and medical insurance fund, as well as the Housing Provident Fund. Employers, but not employees, are also required to contribute to the work-related injury and maternity insurance funds.
- The various insurance funds are managed by local governments and are pooled into provincial or municipal funds. Usually, it is the local labour or human resources and social insurance departments that manage the social insurance funds, while the Housing Provident Fund is managed by the local government's Housing Provident Fund Management Committee.

- The funds collected must only be used for the specific purpose intended, namely the provision of social insurance for workers and retirees.
- The pension and medical insurance funds are composed of pooled components, which can be used to benefit any eligible employee and personal accounts that benefit the individual employee concerned, when they become eligible.
- Social insurance benefits should remain with workers when they move. However, this provision has proved very difficult to implement because of the highly localized nature of the social welfare system in China. Getting different jurisdictions to share information is fraught with bureaucratic and technical difficulties, especially for workers coming from rural areas of China.

In general, as with nearly all labour legislation in China, enforcement of the *Social Insurance Law,* even its most basic provisions, has been very lax, and the majority of workers are still denied the social security benefits they are legally entitled to. The government has sought to resolve this issue, not by enforcing the law, but rather by introducing new insurance schemes based on individual contributions from urban and rural residents, and by seeking to encourage compliance of the *Social Insurance Law* by gradually reducing the contributions, employers and employees have to make to the various insurance funds. The following sections provide a brief description of prevailing system of pension and unemployment insurance in China, two of the key components of social security.

Pension: The basic framework for China's pension system was set up in 1997 under the State Council Decision on the Establishment of a Unified Basic Pension System for Enterprise Workers. *Both employees and employers are required to make contributions to the pension system. Workers contribute based on their individual wage, at a rate of up to eight percent, while employers contribute a percentage of the total wages paid to their workforce, usually around 20 percent.* There is usually a cap on contributions for both employers and employees and exact contribution rates vary from region to region. In mid-2016, however, several provinces and cities, including Beijing, started to reduce employer contributions by one percent from 20 percent to 19 percent.

Workers' contributions towards pension are paid into a personal account. On retirement, the balance of the account, including interest, is divided into 120 installments to be paid out monthly over a ten-year period. In addition to the benefits paid out from the personal account, the worker also receives general pension payments, payable until death. The general pension payments are

determined by the number of years of employment, the average wage in the locality, and life expectancy. These general pension payments are ostensibly funded by the employers' contributions, but the government is legally obligated to cover any shortfalls.

Workers become eligible for pension benefits when they reach the statutory retirement age but only if they have participated in the scheme for at least 15 years. Those who have participated for less than 15 years may delay retirement until they have contributed for 15 years, pay the remaining required contributions, transfer their pension plan to a plan for non-employed rural or urban residents, or receive the entirety of their individual account, including interest, in a lump sum payment.

One of the biggest problems with the current pension system in China is the statutory retirement age; 60-years-old for men and 50-years-old for women workers in enterprises, 55 years old for women civil servants. These limits were established in the 1950s and are clearly no longer realistic in a country where the average life-expectancy is now 75 years and there are already about 200 million people over the age of 60.

Official figures from the Ministry of Human Resources and Social Security (MHRSS) show that in 2015, only 262 million workers, about one third of China's total workforce of around 775 million, actually had a basic urban pension[35].

Unemployment Insurance: The State Council's 1999 Regulations on Unemployment Insurance established a framework for contributions to and payment of unemployment insurance that was largely affirmed by the Social Insurance Law. Both workers and their employers pay into the unemployment insurance system, originally these rates were one and two percent respectively. However, gradually many provincial and municipal governments have substantially cut contribution rates as a means of reducing costs for businesses. In Guangzhou, for example, the employer rate dropped from 1.5 percent to 0.8 percent and the employee rate was cut from 0.5 to 0.2 percent effective 1 May 2016. Towards the end of 2015, 173 million workers, including 42 million rural migrant workers, had unemployment insurance. Those covered are eligible for benefits, including continuation of medical insurance, in the event they become unemployed. The duration of benefits depends on the length of time, the employee has paid into the system, with a maximum of 24 months of benefits for those who have been employed for ten years or more. The drawback of

[35] China National Statistical Yearbook (2016), Ministry of Human Resource and Social Security

the unemployment insurance system of China is that although, employee contributions are based on salary, the benefits paid out are very low.

The 1999 Regulations state that unemployment benefits must be lower than the local minimum wage, which is already set at a very low level and can in no way be considered a living wage. Although the Social Insurance Law stresses that unemployment benefits are transferable and can be claimed in any location, structural reforms will be necessary for such a policy to become a reality, especially in rural areas that currently do not have a system for disbursing urban unemployment benefits. At present, many local authorities address the issue by providing migrant workers with a one-time payment amounting to much less than they are legally entitled to. Other aspects covered by social security in china include: Medical Insurance; Work Related Injury Insurance; Maternity Insurance; Housing Found; and Social Insurance for Migrant Workers[36].

4.3 INDIA: Indian social security system is composed of a number of schemes and programs spread throughout a variety of laws and regulations. Generally, India's social security schemes cover: Pension; Health Insurance and Medical Benefit; Disability Benefit; and Maternity Benefit.

Pension: The pension system of India can broadly be categorized into (a) The government-controlled pension system (which applies to only a small portion of the population of old age, widows and people with disability with 40% or more subject to fulfilment of certain conditions); (b) Pension scheme of the Employees' Provident Fund Organization (EPFO); and (c) The pension system for various other categories.

The amount of social security in the form of pension under the centrally sponsored schemes varies from Rs. 200 – 300/- per month up to the age of 79 and Rs. 500/- at the age of 80 and above. In addition, certain State Governments also have their own schemes for the same and the amount of monthly pension under these schemes varies from state to state and many states have a provision of much more higher monthly pension. All these schemes are non-contributory in nature.

In addition, the present government has also initiated since the financial year 2015-16 the *Atal Pension Scheme* which provides for a monthly pension in the range of Rs. 1000-5000/- depending on the age of joining the scheme and per month contribution by the beneficiary (in the age group of 18-40 years). The minimum contribution for the purpose of availing minimum monthly pension of Rs. 1000/- is Rs 42 per month for those joining the scheme at the age of 18 year and Rs. 291/- per month for those joining

[36] Source: China Labour Bulletin

the scheme at the age of 40 year. Similarly, for getting the maximum monthly pension of Rs. 5000/-, the monthly contribution ranges from Rs. 210 – 1454/-. For getting the monthly pension of Rs. 3000/-, the monthly contribution ranges from Rs.126 – 873/-. The contribution period under the scheme ranges from a minimum of 20 years to a maximum of 42 years. The pension benefit under this scheme starts from the age of 60 years. On an average, a person who joins this scheme at the age of 35 years and wishes to get a monthly pension of Rs. 3000/- per month after 25 years i.e. at the age of 60 years would have to annually contribute an amount of around Rs. 2,712/- and a total amount of nearly Rs. 95000/-.

The Employees' Provident Fund Organization, under the Ministry of Labour and Employment, ensures superannuation pension and family pension in case of death during service. Presently, only about 45 million out of a Labour force of 450 million have access to formal social security in the form of old-age income protection in India.

The schemes under the Employees' Provident Fund Organization apply to businesses with at least 20 employees. Contributions to the Employees' Provident Fund Scheme are obligatory for both the employer and the employee when the employee is earning up to Rs 15,000 per month, and voluntary, when the employee earns more than this amount. If the pay of any employee exceeds this amount, the contribution payable by the employer will be limited to the amount payable on the first Rs 15,000 only.

The Employees' Provident Fund Organization includes three schemes:

- The Employees' Provident Fund Scheme, 1952; The Employees' Pension Scheme, 1995; and The Employees' Deposit Linked Insurance Scheme, 1976.
- The Employees' Provident Fund (EPF) Scheme is contributed to by the employer (1.67-3.67 percent) and the employee (10-12 percent).
- The Employee Pension Scheme (EPS) is contributed to by the employer (8.33 percent) and the government (1.16 percent), but not the employee.

Finally, the Employees' Deposit Linked Insurance (EDLI) Scheme is contributed to by the employer (0.5 percent) only.

Four main types of pension (all monthly) are offered: Pension upon superannuation or disability; Widows' pension for death while in service; Children's pension; and Orphan's pension.

In addition, there are separate pension funds for civil servants, workers employed in coal mines and tea plantations in the state of Assam, and for seamen.

Unemployment Insurance: The regulatory framework for unemployment insurance in the country is provided by the ***National Rural Employment Guarantee Act, 2005*** This Act was notified in 200 districts in the first phase with effect from Feb. 02nd, 2006, extended to additional 130 districts with effect from April 1st, 2007 and the remaining districts (except the districts with 100% urban population) were notified with effect from April 1st, 2018. This Act grants the guarantee of 100 days of wage employment in a financial year to every rural household whose adult members are willing to do public work related unskilled manual work at the statutory minimum wage. The person applying for employment under this Act has to be provided employment within 15 days of application submitted by him/her, failing which s/he is entitled for payment of unemployment allowance at the rate equal to notified minimum wage in that area.

Health Insurance and Medical Benefit: India has a national health service, though it has a comprehensive health care network in the form of Primary Health Centres (PHCs), Community Health Centres (CHCs), District Hospitals, State Hospitals cum Medical Colleges and National Hospitals cum Medical Colleges in the form of All India Institute of Medical Sciences (AIIMS) at Delhi, Bhopal, Bhubaneswar, Raipur, Jodhpur, Patna and Rishikesh. But India being a vast country in terms of population, the existing network has its own limitations in terms of providing free/subsidised medical care for the whole population. A substantial proportion of the population engaged in factories and various other kinds of establishments is covered by the Employees' State Insurance (ESI) Act. It creates a fund to provide medical care to employees and their families, as well as cash benefits during sickness and maternity and monthly payments in case of death or disablement for those working in factories and establishments with 10 or more employees.

The ESI (Central) Amendment Rules, 2016 – notified on December 22, 2016 – expanded coverage to include employees earning Rs 21,000 or less in a month from January 1, 2017; previously, the wage limit for ESI subscribers was Rs 15,000 per month. Subsequently, the Employees' State Insurance (Central) Amendment Rules, 2017 were notified on January 20, detailing new maternity benefits for women who have insurance. Sickness benefit under ESI coverage is 70 percent of the average daily wage and is payable for 91 days during two consecutive benefit periods.

Ayushman Bharat Yojana or Pradhan Mantri Jan Arogya Yojana: This scheme launched on 14th April, 2018 is one of the key initiatives of the government aimed at providing comprehensive health care/service and coverage to at least 40 percent of India's population. It consists of two major elements, National Health Protection Scheme; and Wellness centres. National Health Protection Scheme will provide cashless treatment to patients and wellness centres will provide primary care to the patients. For this purpose, the government will upgrade existing Public Health Centres to Wellness Centres. The welfare scheme has been rolled out on August 15, 2018. The scheme which aims to cover 10 Crore families and 50 Crore people has been launched in 445 districts of the country. The government has roped in multiple agencies to ensure seamless coordination between the centre and states. Most of the states and union territories accepted the scheme. The scheme provides for a Health Insurance Coverage up to a Maximum Rs. 5 Lakh per family per year.

Disability Benefit: The Employee's Compensation Act, 1923, formerly known as the 'Workmen's Compensation Act, 1923', requires the employer to pay compensation to employees or their families in cases of employment related injuries that result in death or disability.

In addition, workers employed in certain types of occupations are exposed to the risk of contracting certain diseases, which are peculiar and inherent to those occupations. A worker contracting an occupational disease is deemed to have suffered an accident out of and in the course of employment, and the employer is liable to pay compensation for the same. Injuries resulting in permanent total and partial disablement are listed in parts I and II of Schedule I of the Employee's Compensation Act, while occupational diseases have been defined in parts A, B, and C of Schedule III of the Employee's Compensation Act.

Compensation calculation depends on the situation of occupational disability:

(a) Death - 50 percent of the monthly wage multiplied by the relevant factor (age) or an amount of Rs 1,20,000 whichever is more.

(b) Total permanent disablement - 60 percent of the monthly wage multiplied by the relevant factor (age) or an amount of Rs 1,40,000 whichever is more.

Maternity Benefit: In India, the maternity benefits are regulated by the Maternity Benefit Act (MBA) 1961. The MBA (Amendment) Act, 2017 effective from April 1, 2017, increases some of the key benefits mandated under the previous MBA. The amended law provides for women in the

organized sector with paid maternity leave of 26 weeks, up from earlier 12 weeks, for the first two children. For the third child, the maternity leave entitled will be 12 weeks.

The Act also provides for 12 weeks of maternity leave for mothers adopting a child below the age of three months as well as to commissioning mothers (biological mothers) who opt for surrogacy. The 12-week period in these cases will be calculated from the date the child is handed over to the adoptive or commissioning mother. As one of the key initiatives of the Ministry of Labour, Govt. of India has recently taken a decision that in case of the employers granting 26 weeks' maternity leave to female employees, seven weeks' maternity leave for female employees having a minimum of 12 months EPFO subscription and drawing wages upto Rs. 15000/- per month would be reimbursed by the government[37].

In other provisions, with effect from July 1, 2017, the law mandates that every establishment with over 50 employees must provide crèche facilities within easy distance, which the mother can visit up to four times a day. The Maternity Benefit (Amendment) Act introduces the option for women to negotiate work-from-home, if they reach an understanding with their employers, after the maternity leave ends.

Under the pre-existing Maternity Benefit Act of 1961, every woman is entitled to, and her employer is liable for, the payment of maternity benefit at the rate of the average daily wage for the period of the employee's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of Rs 3,500.

The 1961 Act states that in the event of miscarriage or medical termination of pregnancy, the employee is entitled to 6 weeks of paid maternity leave. Employees are also entitled to an additional month of paid leave in case of complications arising of pregnancy, delivery, premature birth, miscarriage, medical termination, or a tubectomy operation (2 weeks in this case).

In addition to the above, the 1961 Act states that no company shall compel its female employees to do tasks of a laborious nature or tasks that involve long hours of standing or which in any way are likely to interfere with her pregnancy or the normal development of the fetus, or are likely to cause her miscarriage or otherwise adversely affect her health.

Gratuity: The Payment of Gratuity Act (PGA), 1972 directs establishments with ten or more employees to provide the payment of 15 days of additional wages for each year of service to employees who have worked

[37] The Economic Times, November 15, 2018

at a company for five years or more. Gratuity is provided as a lump sum payment by a company. In the event of the death or disablement of the employee, the gratuity must still be paid to the nominee or the heir of the employee.

The employer can, however, reject the payment of gratuity to an employee if the individual has been terminated from the job due to any misconduct. In such a case of forfeiture, there must be a termination order containing the charges and the misconduct of the employee.

Gratuity is exempt from taxation provided that the amount does not exceed 15 days' salary for every completed year of service calculated on the last drawn salary (subject to a maximum of Rs 10 lakh)[38].

While a great deal of the Indian population is in the unorganized sector and may not have an opportunity to participate in each of these schemes, Indian citizens in the organized sector (which include those employed by foreign investors) and their employers are entitled to coverage under the above schemes.

4.4 USA: Social Security is a federal benefits program in the United States, founded in 1935. While the program encompasses disability income, veterans' pensions and public housing, it is most commonly associated with monthly retirement benefits.

In the country, the Social Security system is funded through payroll taxes. The Federal Insurance Contributions Act (FICA) mandates a 12.4% levy on the first $128,400, as of 2018, of each individual's earned income each year. The employer pays 6.2% and the employee pays 6.2%. The self-employed pay 12.4%. Contrary to popular belief, this money is not put in trust for the individual employees who are paying into the system, but is used to pay existing retirees. Any excess is invested in U.S. Treasury bonds.

Social Security Credits: Eligibility for Social Security benefits is accrued over time. Prior to 1978, workers were required to earn $50 in a three-month quarter in order to receive one Social Security credit. The achievement of 40 credits, accrued over 10 years of working, provided eligibility. Employers now report earnings once per year instead of quarterly and credits are accrued based on earnings, not based on a set time frame, so it is possible to earn all four possible credits even if somebody only works a short period each year. As of 2018, workers are required to earn $1,320 per credit.

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[38] Introduction to the Social Security System in India, Written by Dezan Shira & Associates, Posted by India Briefing on May 4, 2017

Collecting Benefits: The amount of a person's Social Security benefit is calculated by averaging the earnings from one's 35 highest income-generating years. The maximum monthly Social Security check that a person can earn is $2,788 per month in 2018. To sign up for Social Security benefits, it is recommended that one has to apply three months prior to his/her retirement date.

Plan for Retirement: According to the Social Security Administration of USA, Social Security was never designed to serve as the sole source of a retiree's income. The Administration notes that "Social Security replaces about 40% of an average wage earner's income after retiring, and most financial advisors say retirees need about 70% to 80% of their work income to live comfortably post retirement[39]."

4.5 RUSSIA: The Russian social security system is the responsibility of the state, mainly overseen by the Ministry of Labour and Social Protection. In some cases, expats who have a temporary or permanent residency are entitled to benefits paid out by social security in Russia, if they have paid the necessary payments into specific government funds.

If somebody is living in Russia or working in Russia for more than 183 days in a calendar year, s/he is obliged to pay contributions towards the Russian social security system. The funds one pay entitles him/her to claim certain Russian social welfare benefits, such as unemployment benefits, basic healthcare in Russia, maternity and child benefits, and a Russian pension, although subject to certain conditions.

The following paragraphs describe in nutshell Russian social security for foreigners: Who has to pay Russian social security?; Russian social security contributions; Unemployment benefits in Russia; Maternity benefits in Russia; Pension benefits in Russia; Russian healthcare and health insurance; Retiring in Russia; Other types of insurance in Russia; Education and child benefits in Russia; and Who has to pay Russian social security?

There are two major funds financing the social security system in Russia: Social Insurance Fund and Pension Fund of the Russian Federation. Both funds are supported by obligatory Russian social security payments that are deducted from employee's gross salary, although some expenses and bonuses can be exempt from the calculation. One can also make additional voluntary contributions, if s/he wants to save for his/her pension in Russia or plan for a better retirement in Russia.

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[39] Source: Investopedia, Introduction to Social Security, by James McWhinney, updated October 28, 2018

Expats are only liable to pay resident Russian taxes and the social charges if they stay in the country at least 183 days during a calendar year. The employer has to typically arrange for employee's registration with the Russian tax office and secure his/her social security number. Self-employed workers have to arrange their tax registration and Russian social security number themselves.

Employers are also responsible for deducting the compulsory amount from employee salaries and paying the state. Failure to do so before the 15th of the following month results in a 20 percent penalty. If employers are found to be avoiding tax contributions on behalf of their employees, they are fined 40 percent of the total amount of earnings. Employees are not obliged to pay social security contributions in Russia, but rather the burden rests firmly on the employer.

Russian social security rates: From 2017, the Russian tax authorities – instead of social funds – are responsible for administering most social security payments. Russian social security contribution rates w.e.f. 2017 can be broken down into the following categories: pension contributions – 22 percent of an employee's salary, subject to a maximum, plus 10 percent of any excess salary above this; social insurance contributions – 2.9 percent of an employee's salary, subject to a maximum or 1.8 percent for foreigners temporarily staying in Russia; medical insurance – 5.1–5.9 percent of salary. In addition, mandatory accident insurance contributions are paid at rates ranging from 0.2–8.5 percent of an employee's salary, depending on the level of assessed risk of the employee's occupation. This is paid separately to the above social security contributions and still administrated by the social funds.

In certain situations Russian social security may be exempt; for example, income earned by foreign employees hired under highly-skilled migrant schemes can be exempt from paying contributions, although accident contributions will still be mandatory. Most foreigners in Russia are subject to the same mandatory contributions as Russian nationals.

Unemployment benefits: In order to be entitled to Russian unemployment benefits, one should be older than 16 years, able to work, actively seeking suitable work, and not having any kind of income or pension in Russia. After applying for this purpose, one has to undergo a re-assessment procedure to help him/her find suitable jobs in Russia. If it still does not help an individual find a job, then s/he will be registered as unemployed and entitled to receive Russian unemployment benefits for a maximum of 12 months. If somebody is still out of work after 12 months, s/he can reapply for benefits. Unemployment benefits in Russia are typically paid

monthly and calculated on a percentage of past average salaries. Monthly payments vary depending on a person's savings. Low-income families are also entitled to discounts on medicine.

Maternity benefits: Under Russian labour law, employees are entitled to more protections that most other EU countries. Maternity leave in Russia is a good example of this, as pregnant women with employment contracts are entitled to 140 days maternity leave – 70 before the due birth date and 70 days post-delivery – and entitled to receive 100 percent of their salary. In the event of complications or giving birth to twins and triplets, the number of days is extended up to a maximum of 194 days. Maternity benefits are also granted to couples who adopt a child below the age of 16.

Pension benefits: In 2002, Russia approved a reformed pension system that encompasses three types of pensions: state, compulsory occupation pension and non-state pensions. The compulsory pension categorizes workers in three categories – old age, disability, and survivor pension. For being entitled to receive a Russian pension, one must have contributed to the compulsory Pension Fund of Russian Federation (PFR) for at least eight years.

After two price rises in 2017, the national pension in Russia stood at RUB 13,655 as of April 2017. In previous years, the average pension in Moscow was estimated at around RUB 13,470, and RUB 13,600 for St. Petersburg.

People who develop a disability caused by general illness, work injury, occupational disease or military services are entitled to a disability pension. To be entitled to a Disability Labour Pension one must have been in employment.

Survivor pensions are granted to: widows older than 55 (or widowers and parents older than 60) or unemployed and taking care of a child younger than 14 or disabled; children up to 18 years old; sisters and brothers of 18 years old; and grandparents aged 60 and 55 or older or disabled. Additional pensions are paid by non-state private pension funds. To become a beneficiary one should make an agreement with the fund and make voluntary contributions during one's career.

Retirement in Russia: Russia is considered as one of the best countries to retire to. The age of retirement in Russia for men is 60 and 55 for women. The national average pension in Russia currently stands at RUB 12,400 while in Moscow the average pension is RUB 13,470 and RUB 13,6000 for St Petersburg. The Pension Fund of the Russian Federation has nearly 2,500 regional offices in the country.

Healthcare and health insurance: Russian authorities make it compulsory to pay health insurance in Russia to the social security system. This entitles everyone to basic medical care covering emergency services, and is free to everyone living in Russia. The quality of public healthcare in Russia is lower compared to other developed countries, although there are many private healthcare centres providing medical services equal to international standards.

Education and child benefits: There are several education benefits in Russia worth looking at. For instance, Russia is among a few countries that offer free tuition for foreign nationals. Each year, the government awards several thousands of Russian scholarships to international students seeking to study in Russia.

After the birth of a child, Russian child benefits are paid out in certain circumstances, for example, for low-income families, children born while a parent was serving as a soldier or parents on maternity or child-rearing leave (although parents who return to work can receive a higher amount of up to 40 percent of an average salary). The amount of the award will be based on your salary statements for the previous three months. Together with people on disability benefits, a person is also entitled to certain legal and medical benefits.

4.6 JAPAN: In Japan, both the employers as well as employees are required to pay into the social security system. Employers match employees´ payments and the government funds the rest of the system´s costs. Employees pay about 12% of their annual salary into the system for availing various social security benefits.

Japan has four different kinds of social insurance systems which companies are legally obliged to take part in; all workers that meet certain criteria are covered by the insurance i.e. *Workers' Accident Compensation Insurance:* This covers any illness or injury at work or while commuting to or from work; *Employment Insurance:* This provides for workers that become unemployed and helps to maintain stable employment such as by providing financial aid and subsidies; *Health Insurance and Nursing Care Insurance:* These cover medical and nursing care expenses incurred by workers; and *Employees' Pension Insurance:* This provides benefits for old age, death or disability.

Generally, Workers' Accident Compensation Insurance and Employment Insurance are known collectively as "labour insurance," while Health, Nursing Care and Employees' Pension Insurances are referred to collectively as "social insurance."

A company must enter these insurance systems when first incorporating or hiring staff/workers by submitting labour and social insurance notification forms to the relevant authorities. The company usually pays insurance premiums by deducting the portion of the premiums payable by employees/workers from their wages, and paying these together with the portion of the premiums payable by the company to the relevant authorities. The key features of both these categories of insurance may be described as under:

Workers' Accident Compensation Insurance: As a rule, this is compulsorily applicable to all workers. However, in case of some workers such as officers of corporation or relatives living together it may not be applicable. Benefits under it are paid for any illness, injury, disability or death incurred as a result of an accident caused by a work or while commuting to or from work. Premiums for coverage are generally calculated as a certain percentage of total amounts of each worker's wage. Premium rates (as revised in April 2015) depend on the kind of business carried out at the workplace; the maximum premium rate is 8.8% (for metal/non-metal/coal-mining industries) and the minimum is 0.25% (for finance, insurance telecommunications and broadcasting industries). The employer bears the whole cost of premiums.

Employment Insurance: In principle, this applies to all general workers. However, to qualify for Employment Insurance, prescribed working hours must not be less than 20 hours per week, and they must expect to be employed for not less than 31 days. Insurance benefits are paid for a predetermined period when the insured worker leaves his/her job; the amount of benefits are determined according to the reason for leaving the job, the length of time for which the insured was covered, the insured party's age, etc. There are also a number of benefits available for the purpose of maintaining stability of employment.

Premiums are calculated as a certain percentage of each worker's total wage. The insurance premium rate (as revised in April 2017) was 0.9% (the employer paying 0.6% and the worker paying 0.3%) with the exception of a few kinds of job.

Health Insurance and Nursing Care Insurance: All incorporated companies without exception and a representative office which has 5 or more regular employees and falls under the prescribed kinds of businesses are obliged to take part in the insurance. Branches and sales offices of overseas companies are treated as incorporated businesses, and representative offices are treated as sole proprietorships. Generally, all employees of the aforementioned applicable businesses are covered. Part-

time employees are covered where their prescribed working hours are not less than 75% of those of full-time employees[40].

Insured parties' lineal ascendants, spouses, children, grandchildren and siblings whose livelihood is maintained mainly by the insured party are eligible to receive insurance benefits. This applies only to those of 40 years or over. 70% of expenses incurred for medical treatment at designated Insurance Medical Institutions are covered by insurance, while the insured party must pay the remaining 30%.

If an insured party incurs medical treatment expenses at a medical institution while staying or travelling overseas, he/she can apply to be reimbursed after returning to Japan. The amount of medical expenses incurred overseas is converted into a comparable amount of Japanese medical expenses, and 70% of that amount is reimbursed.

General insurance premiums for the Japan Health Insurance Association Run Health Insurance are 9.90% (in Tokyo[41]) of each insured party's standard monthly remuneration[42] and standard bonus[43] for those of 40 years or over 11.47%. In either case, the insured party and the employer share the premiums equally (revised on April 2018). In the case of Union Run Health Insurance[44], a certain amount of leeway in deciding insurance premiums is granted to the managing union.

4.7 NIGERIA: Nigeria has over the years tried various social security schemes/systems. However, these have not been implemented satisfactorily. For instance, this apparent gap has led to instances of alleged embezzlement/misappropriation of pension funds, long queues of pensioners to access pension funds and ultimately, stranded pensioners,

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40 Part-time employees working for an enterprise with 501 or more employees are also insured where their working hours are at least 20 hours per week receiving a monthly pay of at least 88,000 yen with a prospect of continuous employment of at least one year. At an enterprise with 500 or less employees, part-time employees meeting the same requirements become insured based on the agreement between the employer and employees (excluding students).

41 Standard bonus refers to the amount of the bonus rounded down to the nearest unit of 1,000 yen.

42 Effective from September 2009, premium rates for health insurance administered by the Japan Health Insurance Association have changed from a uniform rate to one that varies depending on prefecture.

43 Standard monthly remuneration refers to the division of the total amount of wages and other such payments into predetermined brackets.

44 Union Run Health Insurance refers to an insurance scheme provided by a union run by a company or a group of companies.

amongst others in the area of pension fund management in Nigeria. The prominent social security measures initiated by the Federal Government over the years include:

Nigeria Social Insurance Trust Fund (NSITF) – 1961, 1993 – 2003: NSITF was established in 1961 as National Provident Fund (this metamorphosed into NSITF in 1993) with the aim of protecting employees in the Nigerian private sector who were mostly in non-pensionable employment. The scheme was targeted at protecting private sector employees, whose employers were then mostly the multinationals, from financial difficulties in the event of either old age, cessation of employment, invalidity or death. This is more so as most employers did not have such provisions in the employment contracts with their employees. Under the scheme, a portion of employees' emolument is deducted and remitted to the NSITF.

Pension Scheme - 1954 – 2004: This scheme used to be governed by the Pension Act and other relevant legislation, guidelines and policies issued by the government. Under this scheme, a portion of the emoluments of public servants were deducted and paid into pension funds. Similar, or perhaps worse than the case under NSITF, pensioners have been known to struggle to access the funds. In view of the seeming shortfalls of the above schemes, the Federal Government of Nigeria (FGN), over the past 10 years, has moved to revamp the social security systems by introducing new legislation and setting up requisite institutions. The renewed vigour infused has led to significant improvements and provide a glimpse of hope for workers in Nigeria.

The following are recent legislative measures adopted by the Federal Government to reinforce the social security framework in Nigeria:

Pension Reform Act (PRA) 2004-2014: The PRA was enacted in 2004 to improve on the erstwhile NSITF and public sector pension regimes. Under the PRA, the custody of pension funds is transferred from NSITF to private sector companies - Pension Fund Custodians (PFCs). The PRA also provides some checks and balances by vesting administration of the pension funds with other bodies - Pension Fund Administration (PFAs).

Other laudable improvisations under the PRA include introduction of mandatory life insurance for employees and strict guidelines on investment of funds, thereby protecting the pension assets and ensuring they are not trifled with. In July 2014, the PRA was further re-enacted; retaining some of the existing structures under PRA 2004 and improving thereon.

Under this Act, the employers are obligated to make at source the regular deductions from employees' emoluments on account of (i) **Pension**

Contribution (at the rate of 8% of each employee's salary and pay 10% contribution as employers share) (ii) **National Housing Fund** (at the rate of 2.5% of employee's basic salary) (iii) **National Health Insurance Scheme** (at the rate of 5% of employees basic salary and pay 10% of employee's basic salary as employers contribution) and remit these contributions in the account of prescribed organizations for the purpose of making various social security provisions.

Employee Compensation Act (ECA) 2010: It covers, medical treatment in case of accident involving no disability, rehabilitation and payment of compensation for disabilities and death. It also covers treatment and payment of compensation to employees who suffer from occupational diseases contracted in the course of employment. Additionally, ECA has improved its predecessor Workmen's Compensation Act, 2004 by extending its coverage to all employers and employees in the private and public sectors of Nigeria.

The ECA enjoins all employers to contribute 1% of their payroll costs to the NSITF, with a view to enhance proper implementation of the funds. In this regard, employers are required to report any workplace accident, injury, occupational disease or death to the nearest NSITF office. This is required to enable NSITF take over medical treatment for the injured or sick employee; and subsequently process compensation for such employee or his dependants, in case of death.

In addition, the employers are required to remit 1% of their total monthly payroll into the Employee Compensation Fund to compensate employees who suffered death or permanent incapacity resulting from accidents in the course of their employment (Employee Compensation Scheme) and every Nigerian company with 5 or more employees or with less than 5 employees but with turnover of N50,000,000 is required to remit 1% of its total annual payroll to the Industrial Training Fund not later than 1st April of every year (Industrial Training Fund).

4.8 GERMANY: In Germany, Social Security in the form of subsistence assistance is available for all those who are unable to meet their own needs or who are not able to work. Social assistance regulations are covered under Book XII of the Social Code, which is divided into seven chapters regulating benefits for specific living circumstances: a) Subsistence Assistance (Chapter III), b) Basic Security in Old-age and Reduced Earning-Capacity (Chapter IV), c) Benefits for Health (Chapter V), d) Integration Subsidies for Disabled People (Chapter VI), e) Benefits for Care (Chapter VII), f) Benefits for Overcoming Social Difficulties (Chapter VIII) and g) Benefits in Other Living Circumstances (Chapter IX).

Financial provisions under the social code are tailored to meet individual needs, taking into account the clients' circumstances of the person concerned. Assistance is provided in the form of social services, cash benefits to cover living expenses, and benefits in kind. These standard rates are based on the statistical foundation of the consumption of the lower 20% of benefit recipients. They vary between the German federal states.

The regulations for receiving unemployment benefits are included in Book III of the Social Code. This book also contains all benefits and measures for the promotion of employment and is thus the basis for the work of employment agencies.

The Unemployment Insurance is a compulsory insurance for people in paid jobs subject to social insurance contributions. Exemptions count for civil servants and soldiers. Unemployment insurance is financed through the contribution payments of employees (at present 2.8% of the assessable income) and employers, who submit an overall contribution that includes contributions to the health, long term care and pension insurances.

Further, the separate Book II of the Social Code for job-seekers, 15 to 64 years, who are able to work, was created by the Fourth Act on Modern Services on the Labour Market (Federal Republic of Germany, 2004). As per this book, the people who are capable of work, but not eligible for unemployment benefits receive the Basic Security Benefit for Job-seekers. The provided benefits and services are in monetary and non-monetary form. The actual regular monthly benefit amount is neither too much nor too less. Additionally, costs for housing and heating are paid. A temporary supplement can be paid for up to 24 months to cover financial burdens. The main focus is to overcome benefit dependency by integration in the labour market through participation in various labour market programmes. Beneficiaries are obliged to accept any job or training offer from the municipality. Moreover, they personally need to register as unemployed and be available for the labour market.

In order to receive unemployment benefits, certain criteria must be fulfilled. Individuals need to register personally as unemployed at the PES. They must have completed a qualifying period of work in which they contributed at least 12 months of contribution payments within the timeframe of two years. The benefit amount is 67% of one's previous net income for persons with at least one child and 60% for persons without children. The maximum duration for claiming benefits is 12 months.

The prevailing system of pensions in the country plays an important role in providing people with financial security in old age. Statutory old-age

pensions can be claimed by fulfilling certain criteria, including the payment of contributions (for employees and self-employed), for a qualifying period (for a minimum of at least 5 years) and having reached a minimum age limit. The standard retirement age in Germany is 65 years.

Germany has a comprehensive health insurance system in which the statutory health insurance covers employees and related family members subject to social insurance contributions. The statutory Health Insurance in Germany covers principally all workers and family members as long as their gross salary does not exceed a defined upper limit. These insured persons can freely choose their insurance fund.

The statutory health insurance covers a wide spectrum of benefits. The insured person can call their doctor of choice. They are provided with in-kind benefits such as medications or hospital treatments. Cash-benefits include the payment of sickness benefits in cases of absence from work due to illness regulated by the Continuation of Pay Act or the payment of the maternity benefit. The legal framework for the same is contained in Book VII of the Social Code. The statutory health insurance is financed through half contributions from employers and half from insured employees.

In addition, there is a provision in the country for Housing allowance which is a state grant to help cover the costs of housing. It can be paid to tenants in the form of rent support or to home-owners in the form of home maintenance support. The current legislation was changed in 2009 by taking into account increased energy costs as an integral part of the housing benefit. The benefits are calculated by the sum of the total annual income of all family members belonging to the household.

4.9 UNITED KINGDOM: The latest legislations concerning social security in the UK include the UK Pensions Act of 2011 and the Welfare Reform Act 2012. These measures have introduced several controversial changes, e.g. regarding UK pensions, disability assessments for people unable to work, or so-called "back-to-work schemes". However, British citizens can still claim a variety of financial benefits in times of need. These include, for example, next to the Universal Credit, Jobseeker's Allowance, Maternity Allowance, and other benefits.

First of all, since 2013, most UK social security benefits are gradually being replaced by a Universal Credit System. In December 2016, Universal Credit was available for single persons in England, Scotland, and Wales as well as couples or families living in certain areas. The Universal Credit System is not the only thing changing in the UK's social security system: people reaching state pension age on or after 6 April 2016 are entitled to

receive the new state pension instead of the basic and additional state pensions.

Most benefits are means-tested. A person's savings and current income have to be under a certain limit for him/her to qualify. If somebody goes to the UK for a well-paid new job, and with a financial cushion to boot, most benefits are not applicable to him/her. UK pensions can be saved for in three different ways. The three basic pillars of British social security for retirees are:

(i) state pensions; (ii) company pension plans; and (iii) private pension funds

Like most other benefits, UK pensions, as provided by the state, are funded by a mixture of contributions from employees, employers, and the government. All workers, employees, and self-employed people living in the UK have to pay into the so-called National Insurance funds — provided they have a certain minimum income. In 2016, this income limit was 112 GBP per week for employed residents, or 5,965 GBP per year for the self-employed.

National Insurance Contributions: How Much You Have to Pay: Once a person has his/her NI number, s/he is assigned a specific NI class that determines the amount of his/her contributions to the British social security system. Employees usually belong to NI Class 1. In 2016/17, they were supposed to pay 12% of their weekly earnings between 155 GBP and 827 GBP, as well as 2% of all earnings over 827 GBP per week.

Self-employed expats have to pay a flat rate of 2.80 GBP per week and a certain share of their annual taxable profit. The latter normally amounts to 9% of profits between 8,060 GBP and 43,000 GBP, as well as 2% of all earnings above that limit. National Insurance contributions which can be adjusted annually are automatically deducted from salary. They are used, among other things, to finance state pensions.

The Universal Credit System: Six Benefits in One Payment: As mentioned above, some of the means-tested benefits in the UK are gradually being replaced by the Universal Credit System which will replace six separate income related benefits: Housing Benefit, income-based Jobseeker's Allowance, Working Tax Credit, Child Tax Credit, income-based Employment and Support Allowance and Income Support. People claiming one of these benefits will have to move to Universal Credit eventually. It can be claimed if s/he is: over 18 but under state pension age; not in full-time education or training; and does not have savings over 16,000 GBP.

Contrary to other benefits, Universal Credit is paid monthly. How much one will receive depends on one's circumstances and income. The basic standard allowance for a single person over 25 is 288 GBP per week or 988 GBP per month. One may receive additional support on top of one's standard allowance for: his/her children; childcare costs; disabled or severely disabled children; disabilities or health conditions of his/her own; caring for a disabled person. Universal Credit is currently only available for single persons living in England, Wales, and Scotland, as well as couples or families living in certain areas[45].

4.10 FRANCE: France has a comprehensive social security system covering healthcare, injuries at work, family allowances, unemployment insurance, old age (pensions), invalidity and death benefits. France spends over 30 percent of its GDP on 'social security & welfare' which is more than almost any other EU country. The total social security contributions per employee (to around 15 funds) average around 60 percent of gross pay, almost 60 percent of which is paid by the employers. The self-employed must pay the full amount. However, with the exception of sickness benefits, social security benefits are not taxed and indeed they are deducted from your taxable income.

Quite unsurprisingly, the public has been highly resistant to any change that might reduce benefits, while employers are pushing to have their contributions lowered. Despite the high contributions, the French social security system is under severe financial strain due to an ageing population, which has contributed to a huge increase in spending on healthcare, pensions and unemployment benefits in recent years.

Eligibility and Exceptions: In the country, a person's entitlement to health and other social security benefits depends on his/her nationality, work status (e.g. whether employed, self-employed, or retired) and residence status. Unless somebody is covered by a reciprocal social security agreement, s/he must normally contribute to French social security for a certain period before s/he is eligible for benefits. For example, one must contribute for three months before being entitled to family allowances and one must contribute for at least a year before claiming maternity benefits.

Different periods of salaried employment are required to qualify for 'cash' benefits, e.g. disability payments, and benefits 'in kind', e.g. free medicines. If somebody no longer meets the qualifying conditions, his/her benefits are extended for a maximum of a year from that date. Benefits

[45] Social Security in the UK, InterNations - Connecting Global Minds - https://www.internations.org/great-britain-expats/guide/29458-social-security-taxation/social-security-in-the-uk-16128

are extended indefinitely for the long-term unemployed, provided they're actively seeking employment.

Employees: France has social security agreements with many countries (including all other EU countries and the US), whereby employees on a short-term assignment in France can continue to make contributions to social security in their home country and be eligible for social security benefits in France. The maximum period to which this arrangement applies is usually five years, although the person may be required to contribute to French social security, if s/he works in France for more than two years.

The exact terms of social security agreements vary from country to country and one should check before starting work in France. However, if somebody qualifies to pay contributions abroad, it's usually worthwhile doing so, as contributions in most countries are much lower than those in France. If a person is from a country which doesn't have a social security agreement with France and is employed in France, his/her employer must declare about him/her to the *Union de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales* (URSSAF)[46] and pay social security contributions on his/her behalf.

Unemployed & Low Income: If somebody is not employed, s/he may still be able to make contributions in his/her home country and claim benefits in France for a period. If somebody is unemployed and seeking work in France, s/he may be entitled to medical treatment for up to three months on fulfilment of certain conditions. Those with incomes lower than a certain limit are exempt from social security contributions and also qualify for free complementary insurance. When somebody no longer meets the qualifying conditions, benefits are extended for a maximum of a year from the applicable date. In the case of long-term unemployed people actively seeking employment, benefits are extended indefinitely.

Students: If somebody is following a standard course at a French state-supported institution, s/he is normally covered by French social security. However, if somebody is attending a private institution, e.g. the American University of Paris, or is following a non-standard program, e.g. French language and culture classes, s/he must have (and must produce evidence of) private health insurance. Those coming to France under an exchange scheme must be covered for healthcare by the exchange authorities.

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[46] The French URSSAF is a network of private organizations created in 1960 whose main task is to collect employee and employer social security contributions that finance the Régime general of France's social security system, including state health insurance.

Contributions: Social security contributions are calculated as a percentage of a person's taxable income, although for certain contributions there's a maximum salary level. Contributions start as soon as a person is employed or starts to work in France. Contributions are paid directly to the *URSSAF*, which has more than 100 offices throughout France. URSSAF offices collect contributions for their area and send them to the central social security agency that distributes funds to the various benefits to various social security agencies

Employees: The total social security contributions for employees are an average of around 60 percent of the net pay, some 60 percent of which (i.e. around 35 percent of gross pay) is paid by employers. The employees' portion comes to around 40 percent of net pay (25 percent of gross pay). Salaried employees come under the general regime for salaried workers. There are special regimes for agricultural workers and for miners, seamen and railway workers.

Self-Employed: Before one can be recognized as self-employed person in France s/he must register with the appropriate organization. A self-employed person must deduct social security contributions from his/her own earnings and pay them directly to URSSAF. Once registered, one may choose form a selection of recognized organizations providing pensions and health insurance. Contributions are payable in two lump sums on 1st April and 1st October each year. If somebody forms a limited company, s/he can decide the salary s/he pays to him/her-self and therefore limit his/her social security contributions. However, his/her total contributions are higher than for a sole trader, although one receives higher benefits.

Employers: If somebody employs full-time staff, s/he must make social security contributions for his/her employee equivalent to over 35 percent of their salary. If somebody employs someone to undertake work for him/her, s/he should ensure that he has adequate insurance or is registered as self-employed and therefore making social security contributions.

Benefits: Under French social security a person is entitled to health, sickness, maternity, work injury and invalidity, family allowance, unemployment, old age, widow(er)'s and death benefits, each of which is described below. With the exception of health benefits, these are known as 'cash' payments. Health benefits are known as payments 'in kind', e.g. free medicines. Most social security benefits (allocations) are paid as a percentage of his/her salary rather than at a flat rate, subject to minimum and maximum payments. One must have been employed for a minimum period and/or earn a minimum salary to qualify for certain benefits, as detailed below.

Health Benefits: To qualify for health benefits one must have been employed for 600 hours in the last six months (or for six months at the minimum wage), 200 hours in the last quarter or 120 hours in the last month. There's no minimum qualifying period during the first three months after registration.

Sickness Benefit: To qualify for sickness benefit one must have been employed for 200 hours in the past three months or six months at the minimum wage. To qualify for extended cash sickness benefit you must have been insured for 12 months before your incapacity and for 800 hours of employment in the past 12 months. This includes 200 hours in the first 2 of the last 12 months or 2,080 hours at the minimum wage, including 1,040 hours during the first 6 of the last 12 months. Employees who aren't automatically covered by sickness insurance can contribute voluntarily. As with unemployment benefit, sickness benefit is paid as a percentage of your previous salary (e.g. 50 percent) rather than at a flat rate.

Maternity Benefit: To qualify for maternity benefit one must have been insured for at least ten months before your pregnancy began and have been employed for 200 hours in the first 2 of the last 12 months or have been made six months' contributions. Benefits are payable for an extra two weeks before the birth if there are complications and for up to 12 weeks for multiple births. A monthly allowance or milk coupons are available for four months after the birth. Benefits are also paid for adoptions. Employees who aren't automatically covered by maternity insurance can contribute voluntarily.

4.11 SOUTH KOREA: In South Korea the social security is primarily regulated by the provisions of National Pension Act 1986 as amended in 2007. It primarily covers Social insurance to employed and self-employed persons, including farmers and fisherman, aged 18 to 59. Employed and self-employed persons aged 60 to 64 may contribute voluntarily. There are special systems for civil servants, private-school employees, military personnel and employees of various other categories. There is a provision of Basic Old-Age Pension to citizens aged 65 or older and foreigners married to South Koreans. In case of those covered under the country's Social insurance programme both the employer as well as the insured person are required to contribute at the rate of 4.5% of gross monthly earnings of the employee.

Voluntarily insured persons contribute 9% of the previous year's median monthly income of all individually insured persons. Self-employed persons are also required to contribute 9% of gross monthly earnings. This guarantees them a certain minimum monthly earnings. The part of the

cost of the administration in case of certain categories is to be borne by the government.

Old-age pension: Those with at least 20 years of contribution and aged 60 years and above are covered by it. However, the age is gradually being increased. The basic monthly pension amount (BPA) is 1.5 (decreasing by 0.015 a year from 2008 to 2027 until reaching 1.2 in 2028) times the sum of the average indexed national monthly wage in the 3 years immediately before the year in which the pension is first paid and the insured's average monthly wage over the insured's total contribution period. An increment is paid for each year of coverage exceeding 20 years. The reduced monthly old-age pension ranges from 50% to 95% of the monthly BPA if the insured has at least 10 years but less than 20 years of coverage. The Split pension is up to 50% of the insured ex-spouse's pension, according to the length of marriage. As regards the Basic Senior Pension, the monthly benefit is 5% of the average monthly income of National Pension Service participants (rising gradually to 10% by 2028).

Permanent Disability Pension: The permanent disability pension is calculated according to the insured's basic monthly pension amount (BPA) and assessed degree of disability. The BPA is 1.5 (decreasing by 0.015 a year from 2008 to 2027 until reaching 1.2 in 2028) times the sum of the average indexed national monthly wage in the 3 years immediately before the year in which the pension is first paid and the insured's average monthly wage over the insured's total contribution period. An increment is paid for years of coverage exceeding 20 years. Since, 100% of the insured's BPA is paid for a first-degree disability (total loss of work capacity and requiring constant attendance). However, 80% of the insured's BPA is paid for an assessed second-degree disability (severe loss of work capacity); 60% for an assessed third-degree disability (less severe loss of work capacity).

Survivor Benefits: If the deceased had at least 20 years of contributions, the pension is 60% of the deceased's basic monthly pension amount (BPA); if 10 to 19 years of contributions, 50%; if less than 10 years of contributions, 40%. The BPA is 1.5 (decreasing by 0.015 a year from 2008 to 2027 until reaching 1.2 in 2028) times the sum of the average indexed national monthly wage in the 3 years immediately before the year in which the pension is first paid and the insured's average monthly wage over the insured's total contribution period. An increment is paid for years of coverage exceeding 20 years.

Sickness: In case of the employees, both the employers and the insured persons each are required to contribute at the rate of 2.665% of their gross monthly earnings for the purpose of medical benefits. In case of

self employed persons the contribution varies based on personal factors including property ownership, income, age, and gender. The condition is that insured must not have missed more than 6 months of contributions since first becoming insured. Normally, the insured persons are entitled only to medical care and no cash benefits are provided. However, insured persons may receive special cash benefits for family caregivers, exceptional care, and hospitalization. The various kinds of medical benefits include: medical treatment, surgery, hospitalization, and medicine. Doctors, clinics, hospitals, and pharmacists under contract to the National Health Insurance Corporation (NHIC) provide medical services.

Long-term care: For the purpose of availing long term care both the employer and employees are required to contribute 0.175% of the gross monthly earnings of the employee. In-home services include visits, bathing, nursing, day and night care, short term respite care, and welfare equipment service. Institutional care includes: care given in licensed nursing homes, retirement homes, licensed residential establishments, and other long-term care facilities.

Temporary Disability Benefits: 70% of the insured's average daily wage in the 3 months before the onset of disability is paid if the insured is unable to work and receiving medical treatment. After 24 months and if still receiving medical treatment, persons assessed with a first-degree (total loss of work capacity and requiring constant attendance), second-degree (severe loss of work capacity), or third-degree disability (less severe loss of work capacity) receive benefits for 257, 291, or 329 treatment days according to the assessed degree of disability. The benefit ranges from 70.4% to 90.1% of the insured's average daily wage and is paid until recovery or the award of the permanent disability pension. However, the minimum and maximum benefits are adjusted annually according to wage changes.

Permanent Disability Benefits: The benefit varies according to the assessed degree of disability, in order of decreasing severity from grades one to seven. The annual pension is the insured's average daily wage in the 3 months before the onset of disability multiplied by between 138 and 329, according to the assessed degree of disability. Insured persons with an assessed disability of four to seven (medium severity) may choose between the pension and a lump sum of the insured's average daily wage multiplied by 616, 737, 869, or 1,012, according to the assessed degree of disability subject to the minimum and maximum. The minimum and maximum benefits are adjusted annually according to changes in wages.

Unemployment Benefits: All employees younger than age 65 years are covered under unemployment benefits. For the purpose of this benefit the

employees are required to contribute at the rate of 0.45% of gross annual wages, the employers are required to contribute at the rate of 0.7% to 1.3% depending on the type of business of the annual payroll. However, in case of employees engaged in many employment categories such as agriculture, forestry, hunting and fishery businesses with fewer than five employees; small-scale construction projects; electricians; telecommunications workers; fire service personnel; and household workers, the coverage is voluntary. The self employed persons are required to contribute at the rate of 0.25% of declared wages for employment services only. There are special systems in the country for civil servants, private-school employees, military personnel etc.

For the purpose of being entitled to unemployment benefits, one must have at least 6 months of coverage during the last 18 months, be registered at an employment security office, and be capable of and available for work. Unemployment must not be due to voluntary leaving, misconduct, a Labour dispute, or the refusal of a suitable job offer.

The unemployment benefit equals to half of the insured's average daily earnings during the 3 months immediately before unemployment. The benefit is paid after a 7-day waiting period for up to 90 days to those with between 6 and 12 months of coverage; for up to 240 days with more than 10 years of coverage or aged 50 or older or disabled. The minimum daily unemployment benefit is 90% of the minimum daily wage. Additional allowances are paid to unemployed persons to encourage retraining or job search. These include: the early re-employment allowance, vocational ability development allowance, and transportation and home moving allowance. Employment services are provided through the Employment Stabilization Program and the Vocational Competency Development Program.

4.12 SOUTH AFRICA: Social security in South Africa is made up of funding from national income tax and payments into insurance-based funds, and overseen by the Ministry of Social Development. The social grants in South Africa administered by South Africa Social Security Agency (SASSA) are funded by national taxes but are means-tested; it is only paid out if someone receives below a certain income threshold and does not rely on the amount of one's SASSA payments. Work-related social security benefits such as unemployment, sickness or maternity pay, however, are insurance-based and linked to a person's SASSA payments.

SASSA payments: SASSA payments that make up a key part of social security in South Africa are funded through national taxes. South Africa has a progressive rate of income tax that ranges from 18–41 percent

depending on one's income bracket. These SASSA grants are means-tested and paid to South African citizens and permanent residents with income or earnings below certain thresholds.

Healthcare: Citizens and permanent residents in South Africa have access to free primary healthcare funded through taxation, although this is means-tested and mostly available to those on lower incomes. Those who earn above the threshold will have to pay for either part or all of any treatment they receive through the public health service.

Healthcare benefits are the responsibility of the Department of Health, which runs provincial hospitals in South Africa. South African citizens and permanent residents can access free primary healthcare whereas temporary residents typically have to take out private health insurance or international health insurance.

Unemployment insurance: Unemployment benefits are paid through the Unemployment Insurance Fund (UIF). This is made up of monthly contributions of 2 percent of salaries (1 percent paid by the employee and 1 percent paid by the worker). This is also available to foreign permanent residents who are lawfully employed.

Self-employed: Those who are self-employed are not covered by the Unemployment Insurance Fund have to make their own arrangements. Self-employed workers are also responsible for sorting out their own pension and medical insurance arrangements.

SASSA grants and benefits: All SASSA grants are fundamentally social assistance services covered by the social security fund in South Africa. There are means-tested SASSA grants available to citizens and permanent residents living in South Africa who are not residing in a state-funded institution (e.g. prison or state old age home). Those residing in a state-funded care institution will have their grant amount reduced to 25 percent of the maximum amount for the duration of their stay. Recipients are only able to claim for one SASSA grant at any given time.

SASSA grants for elderly: This is a SASSA pension available to any South African citizen, permanent resident or refugee living in South Africa aged 60 or above. Like all SASSA grants, it is means-tested. It is available to anyone earning less than a certain amount a year or with assets below certain specified worth. The key requirements for claiming SASSA pension include: Must be a South African citizen / permanent resident; Must be resident in South Africa; Must be 60 years or older; Applicant and spouse must comply with the means test; Must not be maintained or cared for in a State Institution; Must not be in receipt of another social grant.

Insurance-based pensions: Social security in South Africa doesn't include a contributions-based state pension. Those that do not meet the requirements of the means test for the Grants for Older Persons will have to opt for a contributory occupational-based or private retirement fund. The insurance industry also offers cover for those that can afford it.

Full-time employees should have access to their employer's private pension or provident fund which is jointly contributed by employers and employees. Part-time and casual employees often don't have access to this and self-employed workers are responsible for setting up their own arrangements.

Disability SASSA grant: This is a SASSA grant paid to those aged between 18 and 59 who have been assessed as medically disabled within the three months preceding their grant application. As with other SASSA grants, applicants and their spouse must meet the requirements of the income-means test. The threshold amounts for the means-test are the same as for the old age SASSA grants.

Unemployment Insurance Fund (UIF): This is a contributions-based social grant available to unemployed South African citizens or permanent residents who have been working for 24 hours or more per week, provided they contributed to South African social security during employment. One can apply for UIF as long as one has not resigned voluntarily, been suspended or absconded from work. One also needs to register as a work seeker and be available for work. Unemployment benefits are then paid after 14 days of unemployment. The amount of UIF one receives is based on your SASSA payments – how long you have contributed and the level of one's working salary. It will be between approximately 40–60 percent of one's average earnings and can be paid for up to 34 weeks. One can calculate the amount of UIF s/he will be paid, and for how long.

Maternity benefits: If a woman is due to have a baby, she can claim 17 weeks of maternity benefits. If she has a miscarriage, she can claim for six weeks. The amount she will be paid will be between around 40–60 percent of her normal salary, depending on her SASSA payments.

South African healthcare and health insurance: Healthcare in South Africa is a mixture of public and private systems. Approximately the wealthiest 20 percent of the population rely on private insurance-based system. The rest of the population is reliant on the underfunded public health service. The public system provides free primary healthcare to those most vulnerable who cannot afford to pay any fees (children, elderly, disabled,

young parents). There is a Uniform Patient Fee Schedule (UPFS) used to decide the billing rates for those using the public service.

- Using the UPFS, patients are categorised as either:
- full-paying – for patients treated by a private practitioner those externally funded, or non-citizens who are not permanent residents.
- fully subsidised – for those who can't pay.
- partially subsidised – for those in a position to make a part-payment.

South Africa is looking to create a National Health Insurance Fund based on taxes and insurance contributions in order to make healthcare more accessible to the majority of its citizens and improve the quality of public healthcare.

4.13 CANADA: In Canada, the prime regulatory framework for social security comprises of 1952 (universal pension), 1965 (earnings-related pension), and 1967 (income-tested supplement). All persons meeting residence requirements are entitled to Universal pension in the form of Old-Age Security. The employees and self-employed persons working in Canada are entitled to Earnings-related pension and are covered by Canada Pension Plan/Quebec Pension Plan. However, Casual workers below specified annual earnings and seasonal agricultural workers are excluded from it. For this coverage under the earning related pension both the insured person and the employer are required to contribute 4.95% of covered earnings/ payroll respectively and the self employed have to contribute at the rate of 9.9% of their covered earning.

Qualifying Conditions: For the of coverage under the Universal Pension (Old Age Security) the people of the age of 65 or older with at least 10 years of residence in Canada after age 18. Retirement from employment is not necessary. The pension is payable even abroad if the beneficiary resided in Canada for at least 20 years after age 18.

Low-income supplement (income-tested): The person of the age of 65 years or older, receiving the universal pension and with low annual income is also entitled to Low-income supplement. This takes into account individual income or family income if the pensioner has a spouse or common-law partner. The supplement is payable abroad for up to six months.

Earnings-related retirement pension (Canada Pension Plan/Quebec Pension Plan): Those aged 65 years and above are entitled to full pension and those aged 60 to 64 are entitled to reduced pension subject to the condition of at least one valid contribution. Retirement pensioners who continue to work will contribute to the Canada Pension Plan Post-

Retirement Benefit. Contributions on pensionable employment income will be mandatory for those aged 60 to 64 and voluntary for those aged 65 to 70.

Earnings-related disability pension (Canada Pension Plan/Quebec Pension Plan): The insured must be assessed with a severe and prolonged disability that impedes any substantial gainful occupation and have contributions in four of the last six years, or three of the last six years for those with 25 or more years of contributions who are assessed with a disability no earlier than December 31, 2006[47].

Survivor pension, Universal pension (survivor allowance, income-tested): Paid to widows and widowers aged 60 to 64. The survivor must be a resident of Canada and have resided in Canada for at least 10 years after age 18. The survivor allowance ceases on remarriage or entering into a common-law relationship lasting at least a year. The survivor allowance is replaced by the universal old-age pension at age 65.

Earnings-related pension (Canada Pension Plan/Quebec Pension Plan): The deceased must have made contributions during the lesser of 10 years or one-third of the years in which contributions could have been made; the minimum contribution period is three years. The pension is payable abroad. The spouse and widow(er) include legally married persons and common-law partners (same sex or opposite sex).

Permanent Disability Benefits: The earnings-related basic disability pension A basic monthly pension of a certain amount plus 75% of the earnings-related retirement pension is paid. The disability pension is replaced by a retirement pension at age 65.

Earnings-related survivor pension (Canada Pension Plan/Quebec Pension Plan): 60% of the deceased's earnings-related retirement pension subject to a maximum monthly pension is paid to a surviving spouse aged 65 or older. A surviving spouse under age 35 who does not have dependent children or a disability is not eligible for benefits under the Canada Pension Plan.

Sickness and Maternity: The regulatory framework for sickness and maternity is provided by 1996 (employment insurance) and 2006 (Quebec maternity benefits). All salaried workers, including federal government employees; self-employed fishermen are compulsorily covered under the

[47] The Quebec Pension Plan normally requires contributions in half the years in which contributions could have been made; the minimum contribution period is two of the last three years.

same and the self-employed persons have voluntary coverage. Provincial government employees may be covered with the consent of provincial government. Coverage is portable from province to province and for emergency care anywhere in the world. The various benefits covered include: medical care, hospitalization and cash benefits subject to fulfilment of certain conditions. The brief details with regard to various benefits are as follows:

Sickness and Maternity Benefits: 55% of average weekly covered earnings in the last 26 weeks plus a family supplement for low-income and modest-income earners with dependent children is paid after a two-week waiting period for up to 15 weeks.

Maternity and parental benefits: 55% of average weekly covered earnings in the last 26 weeks plus a family supplement for low-income and modest-income earners with dependent children is paid after a two week waiting period for up to 15 weeks; up to 35 additional weeks for parental care (provided by the mother, father, or both) on the birth or adoption of a child.

Compassionate care benefit: 55% of average weekly covered earnings in the last 26 weeks plus a family supplement for low-income and modest-income earners with dependent children is paid for up to six weeks after a two-week waiting period subject to a maximum amount.

Other Major Social Security Benefits include: Medical benefits and Hospital benefits for workers. The key benefits for them include: standard ward care, necessary nursing, pharmaceuticals provided in the hospital, and diagnostic and therapeutic services. Other benefits include oral surgery if required and performed in an approved hospital and, in some provinces, osteopathic, chiropractic, and optometrist services; dental care for children; prosthetics; and prescribed medicine. Some cost sharing may be required in such cases. In some provinces, welfare recipients and persons older than age 65 are eligible for free medicine, eyeglasses, and subsidized nursing home care.

Unemployment: The unemployment security is regulated by employment insurance of 1996 and is provided through Social insurance system. All salaried workers, including federal government employees; self-employed fishermen have coverage under it and the insured persons are required to make contributions at the rate of 1.78% of the covered earnings and the employers are required to pay at the rate of 2.49% of covered payroll.

As regards the qualifying conditions for unemployment benefits, they vary from 420 hours to 700 hours of covered employment in the last

year, depending on the regional unemployment rate, or 910 hours for a new entrant or re-entrant to the Labour force. Further, the insured must be registered, able, willing, and available to work and unable to obtain suitable employment; unable to work because of sickness, maternity, or providing parental care or compassionate care to a gravely ill family member with a potentially fatal condition. If unemployment is due either to voluntary leaving without just cause or to misconduct, the disqualification is indefinite and applies until the insured re-qualifies for the benefit.

As regards the unemployment benefits, the same equals to 55% of average covered earnings in the last 26 weeks, plus a family supplement for low-income and modest-income earners with dependent children, is paid after a two-week waiting period for 14 to 45 weeks, depending on the claimant's employment history and regional unemployment rates.

4.14 SWEDEN: The Sweden has an extensive social security and welfare system that provides public health care and social insurance for all citizens. The law on social insurance therefore contains a number of regulations to ensure benefits to all citizens, whether they are capable to work or not (Eurofound, 2009).

In the country, social insurance is individually based and ensures an individual compensation if s/he is unable to work due to an illness or family obligations. Financial provisions for families with children consist of: parental insurance, child allowance, adoption allowance, housing allowance, care allowance for sick and disabled children and child pension. Social insurance also provides coverage for sickness where work capacity is reduced by at least one quarter. The first day of sickness, the employee receives no pay (waiting period…). The employer then pays for the first 14 days of sick leave, after which the Swedish Social Insurance Agency takes over. Sickness benefits are paid as full, three quarters, half or one quarter, depending on the extent to which work capacity is reduced. Such sickness compensation is for individuals aged 30-64 years with a permanent, or long-term (at least one year) inability to work, due to illness or other physical or mental impairment. These can be granted for an unlimited or definite time period. This type of compensation can also be granted to individuals under the age of 30, but such grants are always time limited.

The Parental Leave Act in Sweden applies to all parents, including adoptive parents. People who have a child under the age of 18 months have a legal right to take leave from their work. Adoptive parents have a right to take leave for 15 months from the time the baby/child is in their care. Mothers are entitled for maternity leave for a period of seven weeks leading up to the birth and seven weeks following the birth of a child. Both parents are

included under the Parental Leave Act and fathers also do take advantage of it. Employees are covered by the Parental Leave Act from the first day of employment.

In the country, there is a guaranteed pension for people who have turned 65 and expect to receive little or no income-based pension and a public pension which is based on a person's life income. The guaranteed pension is regulated in Act 1998:702, concerning public pensions.

The social partners in Sweden emphasize the importance of life-long learning and through collective agreements, many opportunities for skill development are offered. Many learning initiatives can be funded via the Structural Funds of the European Union, and social partners in Sweden encourage employees to make use of such funding. The Public Employment Service in Sweden, commissioned by the Parliament and the Government, works to improve the functioning of the labour market. As such, it coordinates a number of training programmes to support people who seek to get back into the labour force and it organizes vocational training programmes, and education about the labour market, and other educational efforts to bolster people who need to get back to work.

Sweden has an extensive public health care system that covers all citizens. In addition, there are specific regulations which pertain to the safety of workers. This is regulated in the Work Environment Act. This law includes provisions to protect the physical and mental health of employees, for example by restricting workplace hazards and preventing accidents. Sweden has a public health care system which guarantees access to health care for all individuals. Health coverage is not connected to employment and one does not risk losing access to care due to loss of employment.

In Sweden there is also a provision of unemployment benefit. In order to avail the unemployment benefit a person must meet some basic criteria such as s/he has been registered as unemployed and actively seeking work. S/he must also have been a member of an Unemployment Insurance Fund and meet the work condition. The latter criterion implies that a person must have worked for at least six months for at least 80 hours per month (or have worked 480 hours or more during six months, for at least 50 hours each of those months). However, unemployment compensation is taxable income and a person can benefit from it for a maximum of 300 days[48].

In Sweden, there are sufficient policy provisions for promotion of employment opportunities for job seekers, clear communication of terms of employment and protecting job security of the employed.

[48] The Swedish Unemployment Insurance Board, (2009)

4.15 SUMMING UP: The description pertaining to various social security measures existing in the countries selected under the study (as provided in sections 4.2 – 4.14), clearly reveals that in most of the countries the social security for substantial proportion of population is contributory in nature and for availing the various benefits under these measures both the employers & employees have to contribute over a period of time. The description further reveals that the rate of contribution to be made is substantial, which the employers and employees can make only when there is a longer employment relationship and per month earnings/ payments are enough for making these contributions.

The analysis of these measures also reveals that though in some of the countries, in respect of certain population, some of the aspects of social security such as: old-age, sickness, maternity, disability and unemployment are not linked to contribution but the benefits provided are quite meager and there are many restrictions/condition to avail the same (e.g. the universal old-age pension and widow pension in India). Further, the quality of service being provided under many of the social security schemes such as medical and health is far from satisfactory. In addition, at present due to rapid urbanization in most of the countries, one has to spend much more on housing, transportation, fuel and items of daily consumption as compared to earlier.

All the above mentioned factors clearly indicate that ideally though the employment in which a person is engaged may not be very remunerative, it should last for a longer duration till we reach the stage when there is in place an effective social security system to address various insecurities as prevalent in countries like Germany France and Sweden. If at all, there are some compulsions to engage/employ some people in some sectors for limited/fixed-term duration, the same should be coupled with adequate social security measures for meeting various contingencies in the form of disability, unemployment, sickness, maternity etc. The policy in this regard should also duly take into account the spells of unemployment between various fixed-term employments which may at times be quite long and the misery, hardship and humiliation which an employee and those dependant on him/her may have to face due to the same. Therefore, there is a need to maintain an equitable balance between fixed-term employment and employment with indefinite term to cater to the needs of both the industry and the workers so that both can co-exist peacefully.

CHAPTER 5

LEGISLATIVE MEASURES FOR REGULATION OF FIXED-TERM EMPLOYMENT CONTRACTS: AN INTER-COUNTRY PERSPECTIVE

5.1 INTRODUCTION: The phenomenon of Fixed-Term Employment (FTE) is one of the important aspects of the current forms of employment relationships throughout the world. It constitutes a substantial proportion of various forms of employment relationships in most of the countries ranging from around 5%, in case of United Kingdom to around 24%, in case of South Korea (out of the countries selected under the study). Further, the current trends suggest that this proportion is constantly increasing. The Fixed-Term Employment Contract has both the merits as well as demerits associated with it and therefore, requires to be duly regulated by appropriate policy framework.

Accordingly, the countries in different parts of the world have adopted various regulatory measures either by way of adopting specific legislative provision dealing exclusively with the issues and aspects associated with FTE or by way of incorporating provisions in legislations dealing with employment relationships, labour welfare and social security applicable to various categories and sub-categories of workers in general. The broad policy framework for dealing with various employment relations and social security measures has already been discussed in the previous two chapters. This chapter focuses on the specific legislative measures pertaining to regulation of FTE contracts in the countries selected under the study.

5.2 CHINA: In China, as per Article 12 of the Employment Contract Law (ECL), 2008 employment contracts may consist of fixed-term labour contract, open-ended labour contracts and labour contracts that expire upon completion of given jobs. As per Article 10 of ECL, it is mandatory to enter in to a written labour contract for the purpose of establishing a labour relationship within a maximum period of one month from the date of entering in to such contract. In addition, unless the employee requests to enter into a fixed-term contract, an employer who fails to enter into a non-fixed-term contract pursuant to the ECL is liable to pay the employee double salary from the date the employment contract is renewed[49]. Under the ECL there is a limitation of two successive FTCs and of a maximum of 10 years.

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[49] China practice Bulletin issue 1 March, 2008 pages 1&2

As per Article 13 of ECL 'no material reasons are required for entering into FTC'. The ECL only provides for procedural requirements, as per which, an FTC can be concluded once the employer and the worker have reached a consensus through consultations. Article 14 of ECL in this context mentions that 'if an employer fails to conclude a written labour contract with an employee within one year from the date of commencement of work, it shall be deemed that such an employer and employee/worker have entered into an open-ended labour contract'.

An FTC worker/employee has the right to request for a non-fixed-term employment contract if: (1) s/he has been employed by the same employer for a period of 10 years or more (2) s/he has been working for the employing unit for a consecutive period of 10 or more years but less than 10 years away from the statutory retirement age when the employing unit introduces the labour contract system or when the State-owned enterprise has to conclude a new labour contract with him/her as a result of restructuring, (3) s/he intends to renew the labour contract after s/he has consecutively concluded a fixed-term labour contract with the employing unit twice (Article 14 of ECL, Clauses 1, 2 & 3).

However, the condition for the purpose of making such a request is that such worker should not have been found guilty of breach of any of the terms of contract as specified in Article 39[50] or Sub-paragraph (1) or (2) of Article 40[51] of the Employment Contract Law (ECL). In addition, such a worker/employee should also not have been subjected to any disciplinary action during his/her employment.

[50] Article 39 - The employing unit may have the labor contract revoked, if a worker is found in any of the following circumstances: (1) being proved unqualified for recruitment during the probation period; (2) seriously violating the rules and regulations of the employing unit; (3) causing major losses to the employing unit due to serious dereliction of duty or engagement in malpractices for personal gain; (4) concurrently establishing a labor relationship with another employing unit, which seriously affects the accomplishment of the task of the original employing unit, or refusing to rectify after the original employing unit brings the matter to his attention; (5) invalidating the labor contract as a result of the circumstance specified in Subparagraph (1) of the first paragraph of Article 26 of this Law (i.e. the labor contract is concluded or modified against a party's true intention by means of deception or coercion, or when the party is in precarious situations); or (6) being investigated for criminal responsibility in accordance with law.

[51] Article 40 - In one of the following circumstances, an employing unit may revoke the labor contract, if it notifies in writing the worker of its intention 30 days in advance or after paying him an extra one month salary: (1) The worker is unable to take up his original work or any other work arranged by the employing unit on the expiration of the specified period of medical treatment for illness or for injury incurred when not at work; (2) The worker is incompetent for the post and remains incompetent after receiving a training or being assigned to another post.

An employer is required to pay compensation for early termination of an employment contract. As regards, the rate of compensation where an employee has been employed for more than one year, the employee is entitled to such compensation equivalent to one month's salary for every completed year of service. Where an employee has been employed for less than one year, such employee will be deemed to have completed one full year of service. Employees are entitled to compensation even in the event the employer (1) has been declared bankrupt; (2) has its business license revoked; (3) has been ordered to cease or withdraw its business; or (4) has been voluntarily liquidated. No compensation is payable on the expiry of an employment contract.

5.3 INDIA: In India, initially the legal position with regard to FTC was very vague as there was no provision in any form to regulate the same. In the year 1953, a new clause i.e. Section 2(oo) was added in the Central law dealing with industrial disputes and matters connected therewith i.e. the Industrial Disputes Act (IDA) 1947. This clause defined retrenchment, to mean 'termination by the employer of the services of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action (except voluntary retirement by the workman, retirement of workman on reaching the age of superannuation and termination of the services of the workman on the ground of continued ill-health)'.

It meant that most of the cases related to termination (except the ones falling under sub-clauses a, b and c of Section 2(oo)) of the Industrial Disputes Act (IDA), 1947 fell under the scope of retrenchment. In all such cases, the workers to be retrenched[52] were entitled to notice of one month / notice pay (in case of establishments with 50 to 99) and retrenchment compensation at the rate of 15 days' average pay for every completed year of continuous service or any part thereof in access of six months[53]. In case of establishments with 100 or more workmen, the requirements were three months' notice / notice pay and retrenchment compensation at the rate of 15 days' average pay for every completed year of continuous service or any part thereof access of six months[54]. By making amendment in the IDA in the year 1984[55], the termination of service of the workman as a result of non-renewal of contract on its expiry (FTC for the purpose of this study)

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52 Subject to fulfilment of the condition of having put in at least one year's continuous service (as defined under Section 25B of Chapter VA of the ID Act, 1947), belonging to the establishments having 50 or more workmen and non-seasonal in character.

53 Section 25F of the IDA, Conditions precedent to retrenchment of workmen.

54 Section 25N of the IDA, Conditions precedent to retrenchment of workmen.

55 As per the Amendment Act No. 49 of 1984, effective from 18-08-1984.

was taken out of the scope of the term 'retrenchment'. Thus, till recently the labour law in India neither specifically allowed nor put any restriction on FTC.

The legal position in this regard has been made clear only quite recently. As per the amendment introduced by the Government (with effect from 16th March 2018) in Industrial Employment (Standing Orders) Act, 1946 and the Rules made there under, the fixed-term employment contracts are permitted in all sectors. As per this amendment under the classification of workmen 'fixed-term has been added as one of the additional categories to the existing categories i.e. 'permanent'; 'temporary'; 'apprentices'; 'probationers'; and 'badlis'. Schedule I of the IE(SO) Act, lists out the matters (11 in number) to be provided in the Standing Orders of the establishment covered under this Act. First one of these matters is the classification of workmen.

The above mentioned amendment, has added fixed-term employment (which was initially i.e. in October 2016, restricted to only employment in apparel manufacturing sector) as one more classification of workmen to all sectors of the economy. Therefore, with effect from coming into operation of the above mentioned amendment, every employer applying for certification of the Standing Orders in respect of his/her establishment is required also to summit the details with regard to the fixed-term employees engaged by him/her.

As per the above mentioned Law, a fixed-term employee/workman may be defined as a person who is employed on a contractual basis for a fixed-term. Thus, the services of such employee automatically stand terminated as a result of non-renewal of contract between the employer and the employee concerned and such separation of service as a result of non-renewal of contract shall not be construed as termination of employment.

In order to safeguard the interest of workers, the amended provision i.e. Rule 3A of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 makes it clear that "No employer of an industrial establishment shall convert the posts of the permanent workmen existing in his industrial establishment on the date of the commencement of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 as fixed-term employment thereafter".

With a view to maintain parity in the wages and other overall conditions of work of the permanent workmen and that of the fixed-term workmen, the amended provision introducing/allowing the fixed-term employment also makes it mandatory that the hours of work, wages, allowances and other benefits of fixed-term employment workmen shall not be less than that of the permanent workmen, 'Sub-Paragraph h(a)'.

Further, in order to ensure various other statutory (social security) benefits, the amended provision i.e. 'Sub-paragraph h(b)' has introduced the concept of proportionate statutory benefits eligibility to fixed-term employment workmen on par with the permanent workmen. It provides that such workmen shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him/her even if his/her period of employment does not extend to the qualifying period of employment required in the statute. However, the employees/workers engaged on FTC are not entitled any notice or pay in lieu thereof in case of termination of services towards the end of the period specified in FTC and as a result of non renewal of contract employment. As per the Indian Law, the employer is required to mention/specify the objective/material reason(s) for engaging the workers/employee on FTC. However, there is no limit on successive number of FTCs and maximum cumulative period of successive FTCs.

Inclusion of 'Fixed-Term Employment' as one of the additional categories: A win-win policy intervention -

This initiative of Government of India in the form of the provision for expansion of the scope for hiring fixed-term employees in all sectors, with its proper regulation, in its true letter and spirit may result in paving the way for an increase in the number of jobs in future with many of the assured benefits which were hitherto available only to the employees with permanent contract. The Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 popularly known as 'Fixed Term Employment Rules' have the potential of raising the number of jobs by providing the operational/functional flexibility to organizations to hire employees for a fixed period, irrespective of the sector. This amendment may also help in removing the middle men in the form of contractors and in eliminating the element of exploitation of workers, which is an inherent feature of the contract labour system.

It is pertinent to mention in this context that as per the Labour Bureau's Annual Survey on Employment and Unemployment 2015-16, the latest count of unemployment in India was 5%. Almost 33% of those in employment were casual workers and did not have many of the employment benefits like assured minimum wages, fixed number of working hours, etc. Further, around 95% of casual workers did not even have a written job contract. It can be hoped that the amended Fixed-Term Employment Rules may in the long run bring these workers in the fold of formal employment with all applicable benefits. This would also streamline hiring by industries that witness a seasonal spurt in demand for workmen (For example courier services, small manufacturing units etc.).

As per the amended rules, a fixed-term worker is entitled to better working conditions as compared to a casual worker. S/he is entitled for all benefits like wages, hours of work, allowances and others statutory benefits, just like a permanent workman. The rules have also made it difficult to fire temporary employees. The amendment also mandates that services of a temporary worker shall not be terminated as punishment unless he or she has been given an opportunity to explain the charges of misconduct alleged against him or her.

The description provided above clearly indicates that the inclusion of 'fixed-term employment' as one of the additional permissible categories as per the amendment in the IE(SO) Rules, can be viewed as a win-win policy intervention from the view point of both, the employers as well as employees as compared to the currently prevailing contract labour system.

5.4 USA: In USA, there is no federal legislation distinguishing between different kinds of employment contracts (including in regard to termination of employment) and such contract are primarily regulated by various State laws. Although, generally there is no limitation on the duration of a fixed-term employment contract, such contracts in the United States are typically for a term of one to three years. In general, the term of an employment contract is decided by the parties to the contract. The employees represented by a union are usually covered by collective bargaining agreement that may have provisions containing the employers' use of part-time or temporary employees. However, such provisions do not appear in all collective bargaining agreements.

There is neither any separate legislation nor any specific provision under any law concerning regulation of Fixed-Term Employment in the country. Hence, no valid/material/objective reasons are required for entering into an employment contract in the form of FTC. Similarly, there are no limitations either on maximum number of successive FTCs or on maximum cumulative duration of successive FTCs.

However, the termination of an employee/worker before the date specified in the employment contract is protected in the form of prohibition on termination on the grounds like pregnancy, maternity leave, filing a complaint against the employer, race, sex, sexual orientation, religion, age, trade union membership and activities, disabilities, parental leave, whistle blowing, gender identity, adoption leave, raising occupation health and security concerns, performing jury service and genetic information.

5.5 RUSSIA: In Russia, the fixed-term employment contracts are regulated by the Labour Code of Russian Federation 2001. Article 59 of the Code provides the exhaustive list of the cases/situations where the FTCs are authorized[56]. There is no limitation on maximum number of successive FTCs, but as per Article 58 of the Code there is a ceiling on maximum cumulative duration of successive FTCs which is 5 years.

[56] These include: for replacing a temporary absent employee for whom the job is retained in accordance with the law; for the period of performing temporary (up to two months) work as well as seasonal work when due to natural conditions, the work can be performed only during a certain period (season); with persons enrolling in the organizations located in the Polar North areas or in the localities equated with them, if this is occasioned by a move to the job venue; for performing urgent work on preventing accidents, incidents, catastrophes, epidemics, epizootics as well as for liquidating consequences of the above mentioned and other emergency situations; with persons enrolling in small business organizations with the personnel numbering up to 40 persons (up to 25 persons in the trading and consumer services organizations) as well as working for individual employers; with persons being sent for a job abroad; for performing work out of the regular operational scope of the organization (renovation, assembly, commissioning and other work) as well for performing work in connection with the knowingly temporary (up to one year) expansion of production or volume of the services rendered; with persons enrolling in the organizations formed for a knowingly predetermined term or in performing a knowingly predetermined work; with persons hired for performing a knowingly predetermined work in cases when its implementation (completion) cannot be determined by a specific date; for jobs directly connected with practical training and professional training of the employee; with persons attending day schools; with persons working for the organization part-time; with old-age pensioners as well as with the persons to whom temporary work is only allowed due to their health in accordance with a medical opinion; with creative personnel in mass media, movie industry, theatre, theatrical and concert organizations, circuses, and with other persons participating in creation and/or performance of art works, professional sportsmen in accordance with the lists of professions approved by the Russian Federation Government with account for the opinion of the Russian tripartite commission for regulating socio-labour relations; with researchers, teachers and lecturers, with other personnel concluding labour contracts for a definite term as a result of the competition held in the manner set by the law or another normative legal act of a state authority or a local self-government body; in case of election for a predetermined term to an elective body or to an elective position as paid job as well as in case of enrolling in the work directly connected with supporting activities of elective body members or officials in state authority and local self-government bodies as well as in political parties and other public associations; with heads, deputy heads and chief accountants of organizations irrespective of their organizational and legal status and form of ownership; with persons assigned to temporary jobs by official employment agencies, including public works; in other cases stipulated by federal laws.

The valid grounds for justified dismissal prior to the date specified in the employment contract include economic reasons; workers conduct; and workers capacity (Article 81 of the Labour Code). The employment (including FTCs) is also protected against dismissal/termination by prohibited grounds include marital status, pregnancy, race, colour, sex, political opinion, social origin, nationality, national origin, age, trade union membership and activities, financial status, language and ethnic origin.

5.6 JAPAN: In Japan, the fixed-term employment contracts are regulated by the Labour Standards Act (LSA), 1947 (as amended by the latest amendment in the year 2003). Article 1 of the LSA states that, 'its goal is to ensure that working conditions shall be those which should meet the needs of workers who live lives worthy of human beings'. As per LSA, Fixed-term Contracts (FTCs) can be concluded for a period of less than 3 years without objective reasons. However, an FTC can be concluded for a maximum duration of 5 years only (i) if the employee is highly specialized or (ii) if the employee is of the age of 60 years and above (Article 14, LSA). It is worth mentioning in this context that an employee with a fixed-term contract cannot be dismissed before the expiry of the term unless "there are unavoidable circumstances" (Article 17(1) Labour Contract Law, 2007).

There is no statutory limitation on the maximum number of successive FTCs. (However, Article 17(2) of the Labour Contract Act, 2007 which codifies existing case law states that "With regard to a fixed-term labour contract, an employer shall give consideration to not renewing such labour contract repeatedly as a result of prescribing a term that is shorter than necessary in light of the purpose of employing the worker based on such labour contract"). Similarly, there is no maximum cumulative duration on successive FTCs. Although the legislation places limits on the duration of a single fixed-term contract, maximum duration of FTC is not subject to statutory limitations.

After the amendment in Labour Contract Act effective from April 1, 2013 Article 18 of the Act grants employees the right to convert their fixed-term labour contract without a fixed-term subject to fulfilment of certain conditions. Section 18 of the Act, in this regard states that if a worker whose total contract term under 2 or more fixed-term labour contracts which are concluded with the same employer exceeds 5 years, applies for conclusion of a labour contract without a fixed-term before the date of expiration of the currently effective fixed-term labour contract to begin on the day after the said date of expiration, it shall be deemed that the employer accepts the said application. In this case, the labour condition for the said labour

contract without a fixed-term will be the same as the condition of the currently effective fixed-term labour contract[57]. It is pertinent to mention in this context that the amendment providing for 'Conversion of fixed-term labour contract to a labour contract without fixed-term' became effective with effect from April, 1st 2013, hence April 1st 2018 was the first day when a conversion could take place under this provision. In the country, typically the term of Non-Regular Employee's contract is one (1) year starting from April, 1st and ending on March, 31st.

The amended Labour Contract Law, passed in the year 2012 incorporated into law the concept of abusive dismissal. This amendment clarified that notwithstanding the expiration of an FTC, the employer may not refuse to renew an FTC agreement without a justifiable reason in either of the following circumstances: (1) the fixed period of the employment contract has been repeatedly renewed and the refusal to renew is deemed as equivalent to dismissal of a permanent employee based upon social convention; (2) there is a reasonable cause for the employee to expect, at the time of expiration of the period, that the employment contract would be renewed.

Article 19 of the amended Labour Contract Law (2012) concerning 'Expectation of continued employment and renewal of contract' provides that when a fixed-term contract has been repeatedly renewed: (1) to make the contract effectively identical to a contract with no specified term due to their being repeatedly renewed; (2) to make the worker conceive a reasonable expectation of continued employment in view of the repeated renewal, if there are no objectively reasonable grounds and it is judged socially unacceptable for the employer to refuse the application, the employer shall be deemed to have accepted the application under the same working conditions as before[58].

Further, as per the Employment Guidelines of MHLW (2013 p. 48) "when terminating employment under a fixed-term labour contract, an employer must give at least 30 days' notice and when the worker requests written certification of the reason for termination of employment, the employer must provide this without delay"[59].

5.7 NIGERIA: In Nigeria, FTCs are not regulated and the employment contracts are governed by contract law of contract i.e. according to the principle of freedom of contracts and the conditions and terms of contracts

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57 Employment Guidelines, MHLW (Ministry of Health and Labour Welfare), 2013, p. 48.

58 Employment Guidelines, MHLW (2013, p. 47).

59 Article 1 - Standards on the Conclusion and Renewal of Fixed-Term Labour Contracts and Termination of Employment, Ministry of Labour, Notice No. 357, 2003.

on the will of the parties. In the country, no objective and material reasons are required for entering into FTC. The Nigerian Labour Act 1990, only provides that the date of expiry of fixed-term of contract must be specified along with other things in the written contract of employment which shall be given to the employees within 3 months of employment (Section 7(1) d)LA).

In addition, the common law position that contracts for a fixed-term or fixed amount of work expire according to their terms is contained in Section 9(7)(a) of the LA. There are no further statutory regulations on fixed-term contracts. Under the Nigerian Labour Law there are no limitations on maximum number of successive FTCs nor on the maximum cumulative duration of successive FTCs.

5.8 GERMANY: In Germany, the fixed-term employment contracts are regulated by Part-Time and Fixed-Term Employment Act (PTFTEA) 2011[60]. Under this Act, FTCs are permitted only with objective and material reasons. However, such reasons are not required for the conclusion of a contract for a term not exceeding 2 years. Within this time the contract can be renewed 3 times (section 14(2) PTFTEA). For newly founded enterprises this time limit is up to 4 years. Similarly, no justification is required for the conclusion of fixed-term contracts with the employees over 52 years of the age.

The extent of limitation in terms of the number of successive contracts depends on whether or not there is an objective reason for resorting to FTC. If there is an objective reason for each successive contract, it can be renewed without any limitation. However, the maximum number of successive fixed-term contracts without objective/material justifications is restricted to 4 and the total duration should not exceed 2 years. Thus, the maximum cumulative duration of successive FTCs without material/objective justification under PTFTEA is 24 months[61]. It is pertinent to mention in this context that PTFTEA is silent about situations and procedure to be followed in case of termination of FTC prior to the date specified in the fixed-term employment contract and the compensation to be paid in such case.

In addition, all the employees/workers engaged in establishments with more than 10 employees/workers, (except those falling in the excluded categories: Civil/public servants; those employed in Army; working in Managerial/ executive positions; seafarers) also have the protection of the Protection against Dismissal Act (PADA), 1969, as last amended in July 2017. This Act provides for substantive requirements for dismissals. As per the Act, the employee has

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[60] The relevant provisions in this regard are contained in Section 14 of PTFTEA, 2011.

[61] Section 14 (2) PTFTEA.

to be provided the reasons for dismissal and the dismissal is socially justified for reasons relating to employee's personal capacity, conduct or compelling operational requirements. However, the Act (PADA) clearly prohibits dismissals on grounds like pregnancy, maternity leave, filing a complaint against the employer for violation of any of the legal provisions, race, colour, sex, sexual orientation, religions, social origin, nationality, trade union membership and activity and disabilities etc.

Further, all the employees/workers in the country also enjoy the protection of The General Equal Treatment Act, 2006 (as amended in 2013) which prohibits discrimination (including with respect to termination of employment) on the basis of race, ethnic origin, gender, sexual identity, religion, disability, and age etc. This apart, as per applicability, the employees/workers are also entitled to other benefits under the provisions of the Federal Act on Maternity Protection, 2002[62] (as amended in May 2017), the Federal Parenting Benefits and Parental Leave Act, 2007 (as amended in May 2017) and the Works Constitution Act (WCA), 2001[63] (as amended in July 2017). The WCA 2001 also provides for notice period before effecting dismissals of varying durations ranging from 1 month to 7 months depending on the length of service rendered[64].

In addition, in case of collective dismissal for economic reasons like redundancy, retrenchment, as per Section 17 of PADA it is mandatory to have prior consultation with trade unions and as per Section 17 (2) notification to the public administration is also a must, though these provisions do not insist on approval either by workers' representatives or by public administration or judicial bodies.

As regards, the severance pay in case of dismissal, the legal position is that for individual dismissal based on workers conduct or capacity there is no severance pay but in case of economic dismissals (individual and collective both), the employees are entitled for redundancy payments subject to the compensation equivalent to monthly wages not exceeding 12 months in

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62 This Act inter-alia provides for prohibition of dismissal during pregnancy and upto 4 months after child birth.

63 This Act (Section 75 of WCA) puts an obligation on the employer and the works council to ensure that the employees do not suffer any discrimination on the ground of race, creed, nationality, origin, political or trade union activity, gender or sexual identity. The Act (Section 612a CC) also prohibits discrimination on the basis of the lawful exercise of his/her right by the employee.

64 As per Section 622 CC of WCA 2001, an employee having put in service of 2 years is entitled to a notice of 1 month, with 5 years of service, of 2 months; with 8 years of service, of 3 months; with 10 years of service, of 4 months; with 12 years of service, of 5 months; with 15 years of service, of 6 months; and with service of 20 years and more, to a notice of 7 months before effecting dismissal.

general with an exception of wages upto 15 months for workers aged over 50 and with at least 15 years of service and upto 18 months for workers aged over 55 years and with at least 20 years of service.

5.9 UNITED KINGDOM: In United Kingdom, the fixed-term employment contracts are regulated by the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations, 2002. As per these Regulations, there is no restriction/limitation on FTCs in terms of duration and maximum number of successive FTCs subject to valid reasons. *These Regulations effective from Oct, 2002 stipulate that a fixed-term employee shall have the right to become a permanent employee after 4 years of continuous employment under one or more successive fixed-term contracts (Regulation 8(2) (a)). However, this 4 years' statutory limitation does not apply if the employment on fixed-term contract can be justified on objective grounds or if the period of 4 years has been lengthened under a collective or work place agreement (Regulation 8(2) (b) and 8(5) FTER).*

As regards assessment of the less favourable treatment, the same can be proved if, it can be shown that the fixed-term employee's terms and conditions are less favourable than a permanent employee or if the fixed-term employee's overall package is less favourable than that of a permanent employee. The fixed-term employees can make comparison of their terms and conditions or overall package with the employees engaged with the employer with an open ended contract. If such kind of comparison is not possible within the establishment, the same can be drawn with permanent employees working for the same employer in another establishment.

As per these Regulations, fixed-term employees are entitled to the following rights: 1) not to be treated less favourably than comparable permanent employees; 2) right to receive a written statement from their employer setting out the reasons for the less favourable treatment; 3) right to treat their contract as a permanent contract if it is successively renewed for more than 4 years; 4) right to qualify for statutory redundancy payment if they have been employed for the necessary period; 5) right to receive information on permanent vacancies within the organization; 6) right for employees on "task contracts" as well as specified period contracts to claim unfair dismissal at the end of the fixed-term contract if it is not renewed and to receive a written statement from the employer with reasons for the dismissal; 7) employees on fixed-term contracts of three months or less have also the right to Statutory Sick Pay[65], (once they have been employed

[65] ***Statutory Sick Pay** (**SSP**) is a benefit **paid** to a person in employment, earning more than the lower earnings limit (currently £112 per week or more), who falls ill (whether due to physical or mental disablement) for a period of four days or more. The employer is responsible for **paying SSP.***

for 1 month); 8) employees on fixed-term contracts of 3 months or less have the right to receive 1 weeks' notice after they have served 1 month's continuous service, if the employer wishes to bring the contract to an end before it is due to expire. The employees are also required to give 1 weeks' notice to the employer if they wish to terminate the contract themselves before the expiry date; 9) a right to access to the employer's occupational pensions schemes. The rights indicated under serial number 1, 3 and 9 above can be denied by the employer if they can justify this on objective grounds.

5.10 FRANCE: In France, the FTCs are regulated by the Labour Code of 1917. The Labour Code permits FTCs for objective and material reasons. Article L 1242-2 of the Labour Code provides the exhaustive list of situations in which the FTCs are authorised. Article L 1243-13 of the Labour Code restricts the maximum number of successive FTCs to 2. As per the general rule (Article L 1242-8 LC) the maximum cumulative duration of successive FTCs can be 18 months and depending on the grounds for resorting to the same, it can be up to 24 months in 3 specific situations i.e. i) in case of persons with seasonal employment, ii) in case of persons engaged by an agency or employment exchange and hired to a third party to perform a specific task and iii) in case of persons with specific training contracts.

As per Article L 1234-9 LC (last amended by Act No 2008-596 of 25 June 2008) the employees engaged on fixed-term contract basis have the right to severance pay after a tenure of at least 1 year without interruption, except in case of serious misconduct. The calculation modalities for the same are determined by Article R 1234-2LC. The statutory minimum is 1/5 of monthly wages per year of service[66].

5.11 SOUTH KOREA: In South Korea, the relevant provisions for regulation of fixed-term employment contracts are contained in the Protection of Fixed-Term and Part-Time Employees (FTPTE) Act, 2006 as amended in 2012 and the Enforcement Decree concerning the same. *As per this Act, there is no limitation for conclusion of one or more fixed-term contracts provided that the total cumulative duration does not exceed 2 years*[67]*. However, as an exception it is possible to conclude a fixed-term contract for more than 2 years, if there are objective and material reasons, such as: 1) the period needed to complete a project or particular task is defined; 2) there is a need to fill a vacancy in case of a worker's temporary suspension from duty or dispatch until the worker returns to work; 3) the job requires professional knowledge and skills or is offered as part of the government's welfare or unemployment measures prescribed by a Presidential Decree; 4) there is a rational reason prescribed by Decree.*

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66 *Employment protection legislation database - EPLex - ILO,2008*

67 Article 4 of Fixed-Term and Part-Time Employees Act, 2006.

The legal protection of the employees in fixed-term employment in South Korea has further been strengthened by the recently enacted guidelines of the Ministry of Employment and Labour (MoEL) titled 'Guidelines for Job Security for Fixed-term Workers' aimed at improving the protection to non-regular workers (including Fixed-term Workers) which came to force with effect from 8th April 2016. The Key feature of these Guidelines is that fixed-term workers in 'regular or continuous work' now have the right to be converted to a 'regular' status, i.e. to permanent employees.

Fixed-term Workers in 'regular or continuous work' are those who have worked with an employer for the entire duration of the year for the previous two years, and whom the employer expects to continue to work in future. These Guidelines also contain provisions prohibiting employers from discriminating between workers who have been converted to a regular status and permanent employees, as well as provision requiring that all workers at the work place should be treated at par with each other *(Herbert Smith Freehills)*[68].

As per these Guidelines, employers are mandated to identify fixed-term workers in 'regular or continuous work' and convert them to regular status and to ensure that the new working conditions in respect of such workers reflect the workers past employment history. Further, if the fixed-term workers are to be engaged, to ensure that: a) a reasonable contract period is entered in to; b) the worker is provided an explanation about the reasons behind the selection of the period and to ensure that welfare arrangement in the work place apply to all workers uniformly (Herbert Smith Freehills)[69].

5.12 SOUTH AFRICA: In South Africa, the relevant provisions concerning various types of employment contracts are contained in the Labour Relations Act, 1995 (LRA). Till recently, there were no provisions in the LRA for regulating FTCs. Renewals of FTCs used to be dealt with in relation to the definition of dismissal. As per Section 186(1) b of the LRA 'Dismissal means that an employee reasonably expected the employer to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms or did not renew it'. In addition, there was no limitation on FTCs either in terms of successive FTCs or maximum period. However, an employer who failed to renew a fixed-term contract, when a 'reasonable expectation' that it will be renewed is held by the employee, was deemed to have dismissed the employee.

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[68] Herbert Smith Freehills is an international law firm co-headquartered in London, United Kingdom and Sydney, Australia.

[69] Supra

However, the Labour Relations Amendment Act, 2014 has introduced a new regulation on fixed-term employment contracts. The Act as amended has become effective with effect from January 1, 2015. The relevant regulation is contained in Section 198B of the LRA.

As per this regulation, a fixed-term employment contract except in case of (i) lower earning employees (Since July, 2014 the earnings threshold for this purpose is in South African Rand 205,433.50 which at the exchange rate prevalent at that time was US $20,000 per annum), (ii) employers engaging less than 10 employees, (iii) Start-up companies with fewer than 50 employees in operation for less than two years, and (iv) Specific fixed-term contracts permitted by statute, sectoral determination or collective agreements, for a period of more than 3 months, should be in writing. Further, it provides that the same is permissible only if the nature of the work involved is of the limited duration or the employer can demonstrate a "justifiable reason" for the term of longer than 3 months. In addition, such longer fixed-term contracts must contain the justifiable reason(s) for its longer term. Some of the examples of justifiable reasons for the purpose of entering into a contract for a duration of more than 3 months or successive fixed-term contracts are: (i) employment due to a temporary increase in the volume of work, which is expected to last for less than 12 months; (ii) replacing another employee who is temporarily absent from work; (iii) seasonal work; (iv)employee will be working exclusively on a specific project that has a limited or defined duration; (v) foreign employee working on work permit for a defined period; (vi) the position is funded by an external source for a limited period and (vii) the employee is retained post the normal or agreed retirement age in the employer's business.

In case of failure on the part of an employer to furnish a reasonably justifiable basis for the fixed-term period with the employee, the consequence is that the employment relationship would be deemed to be of indefinite term.

Further, a fixed-term contract, in excess of 3 months, requires that an employer must not treat such an employee less favourably than an employee employed on a permanent basis performing the same or similar work, unless there is a justifiable reason for the differing treatment. An employee who works on a fixed-term contract in excess of 24 months is also entitled to severance pay at termination of the contract unless the employee is offered permanent employment, in which instance, he or she would not be entitled to any severance pay. Severance is calculated at one week's compensation for every year worked.

5.13 CANADA: In Canada, though approximately 15% (13.7% to be more precise in the year 2012) of the workforce works under fixed-term employment contracts, the *Canadian labour law does not put any restriction on the freedom of parties from entering in to successive FTCs and such employment contracts are not regulated in the sense that no reasons are required for entering into fixed-term employment contracts. Similarly, there*

is no limit for entering into fixed-term employment contracts in terms of successive FTCs as well as in terms of maximum cumulative duration for single or successive FTCs.

Further, there is no provision for giving temporary workers including fixed-term a preferential right to be hired into a permanent job, even if the same is available. In addition, the Canadian Labour Law also does not require equality of treatment for temporary and permanent workers. Therefore, employers may offer lower wages or less favourable conditions to temporary workers than to permanent employees. Alternatively, in some cases such workers may receive higher wages, which largely depends on conditions to labour market, characteristics of the firm and level of unionization.

Under the Canadian law, the employees working under FTC are not entitled to any notice or pay in lieu of the same at the time of termination of FTC. The same is not required as it is implied into the fixed-term contract of employment on account of the fact that a clear date of expiry as stipulated in FTC acts as a substitute for notice of termination. Further, an employee working under an FTC employment who is fired for just cause is also not entitled to any compensation on the account of the fact that under the common law egregious employee misconduct itself is a sufficient ground for breaking of employment relationship.

However, in case of termination of employment prior to the date fixed in the FTC without just cause the employee is entitled to claim compensation in the form of pay for remaining period under FTC. Likewise, in the absence of an enforceable termination clause in the employment contract the employees working under FTC can sue the employer for the contractual sum of the unperformed work, which was contracted for.

5.14 SWEDEN: In Sweden, approximately 17% of the workforce is engaged under fixed-term contracts (2012) and the fixed-term employment contracts (FTCs) are regulated by Employment Protection Act, 1982 (EPA) as amended by the amendment in 2010. Section 6 of EPA refers to the possibility of concluding "contract for probationary employment, provided that the probationary period does not exceed 6 months". As per Section 5 of EPA, a contract of employment for fixed-term may be concluded 1) for a general fixed-term employment, 2) for a temporary substitute employment, 3) for a seasonal employment, and 4) when the employee has attained the age of 67.

The EPA, 1982 does not put any limit on maximum number of successive FTCs. However, there is limit of 24 months for the purpose of maximum cumulative duration of successive FTCs. As per Section 5 of EPA an employee may only be employed for a maximum 2 years during a 5 years

period under FTC concluded for a general fixed-term employment or for a substitute employment. If this time limit is exceeded, the employment contract automatically gets converted into an indefinite contract.

5.15 SUMMING UP: An analysis of the various legislative measures concerning different aspects of fixed-term employment (described in sections 5.2 – 5.14) reveals that these measures in most of the countries make it mandatory to make such contracts in writing and also insist on objective/material justifications (such as: employment due to a temporary increase in the volume of work, which is expected to last for less than a specified time limit; replacing an employee temporarily absent from work; seasonal work; employee to be engaged exclusively on a specific project of limited or defined duration; foreign employee working on work permit for a defined period; funding of position by an external source for a limited period; and retaining the employee post the normal or agreed retirement age in the employer's business etc.) for entering into FTC instead of open-ended contract. These measures also provide that if such arrangement is not converted into writing within the stipulated time limit (which varies from country to country) and there are no material justifications, it may be deemed to be an open-ended contract.

Further, the provisions in most of the countries put a ceiling on maximum number of successive FTCs and cumulative duration of FTCs ranging from 2 – 5 successive FTCs and a maximum cumulative duration of 2 – 10 years. Though, the provisions in a few of the countries, do not put any such limit (in case of India, Nigeria and Canada) subject to the condition that there can't be any substantial difference in the treatment meted out to FTC employees in terms of wages and overall conditions of work as compared employees engaged on open-ended employment contract. In addition, all the countries having regulatory measures for FTC make it mandatory to follow certain procedural requirements to enter into a valid FTC. The legislative measures also contain the provision to the effect that an employee, who has been under certain specified successive FTCs with the same employer over a specified time limit and having fulfilled certain specified conditions (e.g. not been guilty of breach of any of the term of contract and not been subjected to disciplinary action), may request his employer to convert the FTC into an open-ended contract.

Finally, the regulatory measures concerning FTC in most of the countries also put prohibition on termination of such employee prior to the date specified in the FTC on grounds like: pregnancy, maternity leave, disability, trade union membership and activities, raising occupational health and security concerns, filing complaint against the employer engaged in any unlawful activity (whistle blowing) etc. and also provide for payment of compensation (of varying degree) for the same.

CHAPTER 6

PERSPECTIVE OF DIFFERENT STAKE-HOLDERS ON VARIOUS ASPECTS OF FIXED-TERM EMPLOYMENT

The different social partners having stakes in various aspects related to Fixed-Term Employment have different view point and perspective in this regard. A proper understanding and appreciation of these perspectives is quite crucial for evolving the overall policy and regulatory framework in order to effectively address the various issues related to Fixed-Term Employment. Accordingly, we tried to elicit the views of the maximum possible representatives from central trade union federations, employers' federations, labour administrators and public sector organizations by way of structured questionnaires and also having discussions. For this purpose, we approached all central trade union federations, all employers' federations, approximately 50 labour administrators at various levels from central and various state governments and various major public sector organizations i.e. BHEL, Coal India Ltd., Power Grid Corporation of India, Indian Oil Corporation, NTPC, ONGC and GAIL.

It is pertinent to mention in this context that we got very encouraging support from Central Trade Union Federations and Labour Administrators in terms of response rate i.e. 6 out of 12 and 20 out of 50 (50% and 40% respectively). However, in-spite of our constant and repeated requests and efforts, we could get response from much lesser proportion of employers' federations i.e. 2 out of 6 (33%) and could get no response from Public Sector Undertakings (PSU). The following sections of this chapter provide a brief summary of these responses and perspectives.

6.1 RESPONSES AND PERSPECTIVE OF CENTRAL TRADE UNION FEDERATIONS: In principle, majority of the trade union federations i.e. $2/3^{rd}$ are totally against the concept of Fixed-term Employment Contract and only a very limited proportion i.e. $1/3^{rd}$ of them are in favour. However, even those in favour are of the opinion that it should be allowed only in seasonal, short term, contractual and time bound assignments. With regard to the duration of FTE contracts, they have the view that it should be for a maximum period of 6 months extendable by another 6 months depending on the exigencies of situation and it should not go beyond two successive FTCs. In the same context, one of the federations shared that if the service is required for more than 240 days in a year irrespective of successive number of FTCs, there must be a permanent employment.

Those who are against, have the following arguments in support of their view:

- The employers will try to rationalize the regular workforce by engaging them in FTE system to exploit them further through vulnerability.
- It will render the employees jobless after certain time with no job security and attached with that all the benefits would be a casualty.
- It would give the employers free hand to hire and fire the employees.
- In the name of FTE, the workers will be denied the statutory provisions of social security and be deprived of various legislative benefits available to the regular employees.
- The workers will be at employers' mercy and would be amenable to exploitation in terms of payment of low wages, extended working hours, non-payment of wages as per OT rates, denial of weekly day off, annual leave with pay and various safety measures and welfare provisions.
- With passage of time, there would be no freedom of association and collective bargaining and there would be no respect to ILO Convention No.87 and 98.
- Uncertainty would affect the industry/output and would be detrimental to development itself.
- It would be in a way, against all the historical achievements of the labour movement for more than a century and will put the clock back and will make uncertainty of life as certain.
- The Notification concerning fixed-term employment provides fixed-term employment as a means of employment in all sectors. By virtue of the same, now onwards the workers employed in fixed-term employments are not entitled for any notice or pay in lieu for the termination of service as a result of non-renewal of contract or employment or on the expiry of such contract period without it being renewed.
- Workmen engaged in "fixed-term" are also not covered under the definition of retrenchment, being excluded under Section 2(oo) (bb) of the ID Act, thus not being entitled to the protection against retrenchment under the Act. The amendment permits managements to practice unfair labour practice specifically prohibited under the ID Act.
- There is nothing defining when a person can be engaged as a fixed-term employee as opposed to a permanent workman, and the parameters to be adopted for the same, thereby allowing for any

and all persons to be engaged in this form alone. The amendment allowing for fixed-term thereby allowing for workers to be engaged permanently to permanent posts but as "temporary workers" is also another form of subterfuge that the employers are being allowed.

- It will discourage unionisation and collective bargaining and workers will not be in a position to fight even for well established legal rights to which they might otherwise be entitled to because the sword of "fear of losing contract" will always hang over their neck.
- FTE will do away with any permanent recruitment and its benefits and it will also do away with any scope, including judicial, of raising the issue of regularization and equal pay for equal work.
- Permanent employment will vanish from the industrial sector and with the passage of time most of the jobs will be converted into temporary contract works for a fixed period only.
- As a result of this notification providing for extension of FTE to all sectors, 'Hire and fire will become the legalized rule in the labour sector'.
- The notification providing for extension of FTE to all sectors has been issued in violation of ILO Convention No. 144 on Trade Union Consultation, which has been ratified by the Indian Parliament. In this context, BMS, the largest trade union observed as under "The important amendment has been brought about by an executive order, without the matter being sent to Parliament or being subjected to the scrutiny of a Parliamentary Standing Committee on Labour. This is a backdoor method of bureaucrats taking up the legislative power enjoyed by the Parliament on matters of national importance. The amendment is brought about under pressure from a powerful Industrial lobby," Citing studies in Europe, it observed that fixed-term employment has increased unemployment. This was because employer can easily go for automation or can easily close business after a period. Adding further, it observed that "ease of doing business" will become "ease of closing business".
- It will change the basic characteristics of employment. Fixed-term cannot be substitute of permanent employment.
- It will only help companies in hiring and firing at will and it will also create huge imbalance in the labour market.

As regards the specific conditions/situations in which the FTE can be allowed:

- All the trade unions are of the strong view that FTC employment should in no way be treated as a replacement of/substitute to permanent employment

- It should be restricted to a prescribed contractual jobs which are specific, time bound and target oriented and these jobs too should be covered under all sorts of legal benefits available to regular workers. It should not be allowed for regular nature of jobs.
- Further, in case of workers getting benefits under the Factories Act and covered by the provisions of the Industrial Disputes Act, it should not be allowed.
- The employer must categorically specify the limit of term of employment along with the benefits. Any employer overriding the work permit provisions should be black listed to engage the FTE Workers.

As regards the minimum safeguards to protect interest of the employees' engaged on Fixed-Term Contract basis, the trade unions are of the view that such employees should be treated at par with permanent employees in terms of conditions of work and social security; should have coverage of the provisions of the Factories Act (where applicable); the welfare, safety and health provisions should be followed strictly; the provisions pertaining to maternity benefits, minimum wages, OT rates should not be compromised at any cost. In addition, the Fixed-term Contract must have component of equal pay for equal work, provident fund and all other social security benefits.

Majority (almost 3/4th) of the trade union federations shared that the employees/workers engaged on fixed-term employment basis frequently approach them/their affiliates for their problems. The major issues/ problems with which such employees normally approach include the following:

- Discontinuation of jobs, removal/ suspension/ retrenchment, non-payment of notified/ promised wages, non-maintenance of muster roll records, non-issuance of appointment letters and pay slips etc.
- Denial of the right to form union/become member of registered trade unions and no protection of collective bargaining under the fear of being fired at any point of time.
- No/ inadequate health and safety protection and no fixed hours of employment.
- Intervention for various remedial measures in terms of equal wages and other benefits at par with permanent workers as per their legal rights/ entitlement.
- Absorption as regular workers in situations where the jobs are of permanent nature.

- Issues related to salary, service contract and continuation of employment.

Table-4 : Responses from Trade Unions with regard to minimum and maximum duration of FTC and No. of Successive FTCs

Sr. No.	In favour / against	Minimum	Maximum	No. of FTCs
1.	Against	NA	NA	NA
2.	Against (Only in seasonal/short term/ contractual time bound assignments)	NA	NA	NA
3.	Against	NA	NA	NA
4.	Against (Only in seasonal/short term/ contractual time bound assignments)	-	6 Months- Extendable by another 6 months	2
5.	Against	NA	NA	NA
6.	In Favour	-	1 Year	NA

Most of the trade union federations are of the strong view that the workers of all the categories whether they are regular/out-sourced/contractual/ casual/daily wage have every right to unionise for collective bargaining and be part of the trade unions. Majority of these trade union/ federations make all possible efforts to organize them and protect their rights. They take up their issues both with the employers and the government. They take-up in particular the following steps/initiatives to protect the interest of FTE employees:

- Their affiliates take representations from all sectors and take up the issues of the affected employees with managements and various labour authorities and make all possible efforts to sort out their problems.
- They have in particular taken up the issues of their regularisation/ continuation of employment, extension of service contract, payment of wages/salary at par with permanent employees, social security and other benefits and various other sorts of victimization.
- Almost all issues raised by them are taken up both with various managements and labour authorities. The mobilisation, processions, dharnas etc. are also part of the activities to press upon their demands.

As regards the experience & perceptions of these trade union federations/ their affiliates in taking up the issues of FTC employees with the

employers'/employers' organizations with regard to such issues, some of the key experiences are as follows:

- Employers generally don't pay any heed to the grievances taken up by them and act as per their whims and fancies.
- There is an outright denial by the employers of owning the workers, then of committing any violation of their labour rights.
- The managements generally defy the labour authorities, who are to mediate conciliation and on failure of conciliation, the delay tactics is the common practice to tire and frustrate the workers who face acute economic hardship. Keeping them optimistic and united to pursue their cases is quite a hard task which unions take up.
- Although they have been successful in resolving many issues they feel that the enforcement of law has been very poor.

The major issues /problems which the unions contemplate to take up in near future and their approach and strategy as shared by them may be summarized as under:

- Contractualization of work may increase and this will be an undesirable development.
- The contractualization, casualisation and informalization is rampant and it is in a way pushing the workforce in most precarious conditions, indecent working as well as living conditions. This is why they are opposed to contract work which will be perpetuated under the newly inserted form of employment termed as fixed-term employment.
- They are opposed to anti-labour changes in labour legislations and would fight back formalizing of this law or its implementation. United movements of trade unions would be intensified in future. They also press for withdrawal of fixed-term employment. Till it is withdrawn, to ensure that workers are not engaged on fixed-term employment on job of perennial nature.
- Violation of constitution of India, ILO Conventions and recommendations, Court judgement in relevant cases is being noticed. Workers will be treated as bonded labour in days ahead.
- One of the Unions shared that in the case of ALLIANCE AIR, the subsidiary of AIR INDIA union was formed and demanded same wage and benefit as those in AIR INDIA, which could not be met as the management refused.
- It further shared that in the case of ONGC, Rajahmundry, too workers succeeded in getting organised and fought for regularisation. A batch of workers was regularised. The union continued to fight and approached the High Court for regularisation of the rest. High Court

gave favourable order but the management refused and it has not been implemented till now. Union is contemplating filing contempt of court case.

6.2 RESPONSES AND PERSPECTIVE OF EMPLOYERS' FEDERATIONS: In principle, the employers' federations are in favour of Fixed-term Employment Contracts. They have the following arguments in support of their view:

- It helps industry to stay competitive in global market economy and promotes economy of scale and ensures better utilization of human resources.
- Today companies hire and fire due to seasonality. This is just formalising, legalising what is already going on.
- It helps in giving boost to business sentiment. It will bring certain equity and enhance confidence to investors.
- Since the provisions under the existing labour laws did not provide flexibility, industry had inhibitions in engaging extra labour to discharge timely commitments like export orders. The amendment providing for Fixed-term Employment will remove this hurdle and employment generation will receive an impetus in the time to come.
- It is much ado about something. There is a schedule in the Standing Orders Act and there are six classifications of workers. They have added one more. This is not a revolutionary one that one must feel threatened. It is a small step in the right direction.
- It will help companies to employ people for a fixed-term duration for which they have orders or assignments and there will be no burden of carry-over of extra labour force during the lean season.
- The shift will help in creating new job opportunities in companies with seasonal businesses.
- It establishes formal and direct relationship between employer and employee without any middleman i.e. contractors.
- Under this system of employment, employees are treated equally and fairly in terms of wages and social security etc. with permanent employees.
- It will take care of unorganised workforce in the organised sector.

As regards the specific conditions/situations in which the FTC can be allowed, the employers federations also feel that the employees should be engaged on FTC basis only in seasonal, temporary and project based jobs and no permanent job be converted to FTE.

Table-5 : Responses from Employers' Organizations with regard to minimum and maximum duration of FTC and No. of Successive FTCs

Sr. No.	In favour / against	Minimum	Maximum	No. of FTCs
1.	In Favour	1 Year	3 Years	2
2.	In Favour	Difficult to mention as it may vary from industry to industry and project duration		

As regards the minimum and maximum duration of FTC, they hold the view that it may vary from a minimum of six months to a maximum of three years. Though, at the same time they also have the view that it is difficult to mention specifically for all situations as it may vary from industry to industry and based on the project duration. As regards successive FTCs, it may extend up to two FTCs.

As regards the minimum safeguards to protect the interest of the employees' engaged on Fixed-Term Contract basis, majority of the employers federations are in support of the same and described the following as the key safeguards:

- Workers engaged on fixed-term contract should get equal wages, allowances, working conditions and other social security benefits at par with permanent workers.
- The employees should be entitled to all social security and terminal benefits.
- Fixed-term Workers should be given the first preference in case of job openings.

With regard to, whether the employers engaging employees on fixed-term employment basis approach the employers' federations/their affiliates for any of the problems being faced by them from the side of fixed-term employees/trade unions, we got the mixed response. Half of the federations responded in 'affirmative' and remaining half in negative by saying that nobody has approached them yet, as this concept has newly been introduced in law. Those responding affirmatively shared that initially there were some queries on engaging workers for fixed-term in different types of jobs and its applicability to different industries such as IT/ITEs.

Similarly, with regard to whether they have taken in the recent past any steps/initiatives for addressing the issues of the employers engaging employees on fixed-term basis, also response was a mixed one and those responding in affirmative shared that these issues have been taken up both

with the trade unions as well as the government. They further shared some of the key steps taken by them include:

- Conducting dialogues with all stakeholders i.e. State Govt., Industry, and Trade unions to spread awareness about its provisions.
- Conducting workshop, webinars and road-shows to enable employer and employee seek its benefits and to overcome on ground challenges in implementation.

6.3 RESPONSES AND PERSPECTIVE OF LABOUR ADMINISTRATORS: Majority of the Labour Administrators both from the Central and State Labour Departments are in favour of fixed-term employment. Those in favour have the following arguments in support of their point of view:

- This system of employment is beneficial for projects of fixed duration as it entails no future liability or compulsion on the part of the employer to retain the employee after completion of the project.
- It will provide flexibility to the employers to hire employees as per their need. Employers will be out of psychological fear of regularisation of services of the workmen.
- It helps in maintaining the work efficiency. It is cost effective and trouble free for employers.
- Fixed-term of employment will remove complacency in performance and finally would lead to competitiveness and productive workforce. Employees will be more accountable. It is also cost effective.
- It will encourage employers to engage more employees and would help in employment of large number of unemployed youth.
- It would help in bridging the gap/divide/disparity between the salary and other benefits of the FTE employees and permanent employees.
- In case of FTCs, the employees would at-least be sure of their employment till the end of the term of their employment. This would inculcate the sense of job security among them for the specified period and thus, they would dedicate to their allotted work and can plan their future course of action in advance in respect of their employment.

Those who are against have the following arguments in support of their view:

- In principle, employment on FTC basis should not be practised to fill-up the positions which relate to normal and permanent activity of the organization but in reality this kind of practice is followed in such situations also.

- Initially, the fixed-term contracts may be signed for a limited period say 12-18 months or 18-24 months but it may be renewed from time to time reducing the opportunity of regular/permanent employment.
- The concept of FTC is erroneous as employment is always need based and the employer cannot be forced to enter into a FTC.
- Under the FTC system, the employers hire workers directly from the market without mediation of a contractor, which may cause a problem to the industry.
- The concept of FTE is not in the interest of the employer as it will be difficult for him/her to get rid of the employee before the expiry of the term where the circumstances compel him/her to terminate the contract earlier.
- It is not in the interest of the employees as well as it may drastically affect their feeling of belongingness to the organization. It leaves the employees in the lurch and also has an adverse effect on their contribution to the establishment.
- The FTE may provide a strong tool to the management to exploit the employees and threaten the workers.
- This system would reduce the social security coverage of workers and tends to deprive the workers of many benefits and there is no job security attached to it. It may also promote misuse of Section 2(oo) (bb) of the ID Act.
- The employees would be deprived of most of the benefits, if FTC is for less than one year.
- FTC employees are not given same wages and allowances as given to regular workers doing the same work although the Act stipulates the same.
- It may lead to termination of services of the FTC employees without complying with labour laws and in the long run minimize chances for regular employment.
- The employee may be working as fixed-term employee for any period, even then s/he does not become entitled to permanent status.
- This simply leads to promoting the policy of Hire-and-Fire with no job security for such workers.
- Normally, the employees engaged on FTC basis are not treated at par with regular/permanent employees in terms of working hours, wages, overall conditions of work and various kinds of allowances and perquisites.

- Though, technically the FTC employees have the right to be given a notice at the time of renewal or expiry of their contract, but in practice the same is/would not be followed.
- The employers are not mandated to provide retrenchment benefits to workers hired on FTC basis.
- The system of FTC can be useful only in temporary and seasonal nature of employment but in practice it may be resorted to for employments which are regular and permanent in nature, primarily as a means/ tool to hire and fire.
- One of the modified forms of FTC is engaging workers as trainees with no element of permanency. The period of work as trainee is not calculated in the total length of service for the purpose of extension of various service benefits.
- Workers would not be loyal to the employers because the FTC employees are deprived of social security, particularly gratuity and job protection.
- It may be misused by the management and lead to unfair labour practice/exploitation.
- Non-requirement of serving prior notice before termination of FTE employee is bad in law as it contravenes the basic spirit of the provisions of section 25 F of the ID Act.
- It is a tool in the hands of employers to keep FTE workmen under the threat of losing their contract.
- As per the changed provision providing for FTE, no parameter has been suggested to calculate the proportionate salary and other benefits of FTE workmen.
- Job security will be minimized, it will encourage authoritarian management and workers will be exposed to large scale exploitation.
- It acts as an excuse for the employer to extend various social security benefits.

With regard to the situations, in which the system of FTE may be allowed, majority of the Labour Administrators responded that it should be allowed only in situations of seasonal employment and for jobs which are urgent and time-bound in nature and it should not go beyond a period of two-three years. The requirements in terms of qualification and experience for FTC employees should be at par with regular employees. Similarly, their salary and various other benefits should also be at par with regular employees. It was also shared by them that FTCs should be applicable to private establishments only and that too where work itself is for a fixed-term. They further expressed that the system may be more beneficial

where work is meant for the highly skilled employee in executive cadre. In addition, some of the respondents from this category also shared that FTC should be for a considerably longer period so as to ensure the minimum statutory requirements provided under various labour laws.

As regards the minimum and maximum duration of FTC, we got varied responses with a very wide variation with regard to both ranging from three months to two years in case of minimum and one year to ten years in case of maximum. Similarly, with regard to the maximum number of successive FTCs also we got the varied view ranging from a minimum of 1 to a maximum of 5. The Table below which is self-explanatory provides a synoptic view of the responses in this context.

Table-6 : Minimum and Maximum duration of FTC and No. of Successive FTCs: Responses of Labour Administrators

Sr. No.	In favour (Y)/ against (N)	Minimum	Maximum	No. of FTCs
1.	Y	2 Years	9 Years	3
2.	N	-	2 Years	1
3.	Y & N both	2 Years (subject to the Job availability)	03 Years	5
4.	N	NA	NA	NA
5.	Y	3 Years	5 Years	5
6.	N	6 Months	1 Year	2
7.	Y	3 Years	No Limit	3
8.	Y & N both	5 Years	10 Year	3
9.	Y	5 Years (in case of permanent establishments)	No Limit	-
10.	Y	5 Years	-	2
11.	N	2 Years	5 Years	2
12.	Y	3 Years	5 Years	2
13.	N	3 Months	1 Year	1
14.	N	Less than a year	1 Year	1
15.	N	2 Years	-	-
16.	N	1 Year	2 Years	1
17.	N	-	-	1
18.	N	-	1 Year	2
19.	N	5 Years	-	5
20.	N	-	2 Years	1

It is pertinent to mention in this context that a few of the labour administrators shared that though in principle they are against the concept of Fixed-term Employment Contract, but since in the changed economic scenario, at present it has become almost inevitable, it may be allowed only with certain restrictions that too for limited duration and only once or twice, so that in addition to meeting the requirements of the industries, the interest of the workers can also be duly taken care of.

On the contrary, those advocating for a comparatively longer duration of four years and above suggested that the Payment of Gratuity Act, 1972 should be amended so that the FTC employees having put in less than four years of service are also entitled for gratuity. In the same context, they also strongly suggested that there should be a provision for regularisation of the services of the employees having served as FTC employee for a comparatively longer duration of five years and above subject to fulfilment of the conditions like satisfactory service, efficiency, qualification and sanctioned strength in the organization.

With regard to the question, whether the labour administrators are approached by the fixed-term employees or the employers engaging them, only a few of the respondents responded in affirmative by observing that they are approached very rarely because till recently the employers had the defence under Section 2(oo)(bb) of the ID Act. However, those responding affirmatively shared that the key issues brought before them include:

Non-Settlement of dues; Abrupt/Sudden removal from job/alleged illegal termination; Full and final (workers' terminology); Demand for further/ re-employment; Non-extension of Social Security Benefits; Disparity in wages and other conditions of work as compared to regular employees on grounds like, Skill differentiation, non revision of wages even after rendering several years of service. It was further shared by them that such employees continue to work even beyond the FTC period without break and after that their contract is terminated, even though the work continues and new FTC employees are appointed; Their services are termination before expiry of FTC period while the vacancy exists and new FTC employee appointed and they have great difficulty in maintaining their families during the intervening period of unemployment.

The issues in which they have intervened as labour administrators primarily include: Non-payment of gratuity; Non-payment of closure compensation; Arrears if any on account of increase/declaration of industrial DA; Un-availed leave; Extended working hours and denial of other amenities available to regular employees; Denial of proper wages and leaves;

Payment of wages and dues; Termination issues; Compensation; and Service conditions etc. If any issue is raised as an industrial dispute, as per the ID Act, the same is taken for conciliation. The labour administrators take up these issues primarily with the employers and in case of need they also seek the assistance of various Government authorities.

One of the senior labour administrators from Govt. of Delhi shared that after amendment in the IE(SO) Act, 1946, wherein the term Fixed-Term Employment has been re-introduced, no complaint has been received by the Labour Department, Delhi. However, in the year 2010, the prosecution was launched against one of the employers in Delhi who continued to engage workers/employees on FTC, in-spite of the fact, the FTC was removed from the IE(SO) Act, 1946 by the Central Govt. in the year 2010.

As regards the various kinds of experiences and perception of the labour administrators in dealing with various issues, it was shared that these primarily include the following:

- In a large number of cases, the employers are reluctant to address issues and the employees are by enlarge treated as orphans once the employment contract comes to an end.
- Most of the employers deliberately engage the workers for less than 5 years to escape the liability to pay gratuity.
- Responsibility of compensation/benefits is mostly accepted by principal employers, however, payment of gratuity is not taken care in most cases.
- In a substantial number of cases, closure compensation is not paid for a long time.
- Contractors mostly depend upon the principle employers for extension of contract.
- The principle employers in the guise of L1, squeeze money on contract for which service conditions of the employees are compromised.
- Employers are reluctant to help the workers/employees, they are in favour of large scale outsourcing as and when job is required.
- In most of the cases, the issues are settled and in some cases remain unresolved.
- So far they have not dealt with their issues directly. However, many workers have taken their advice over phone.
- They have been taking up their issues with the employers during formal as well as informal meetings. Though the employers are receptive to suggestions, they hardly implement the suggestions. There existed legal protection/coverage in the past in the form of

Standing Orders providing for not to have employees on FTC basis. But with the amendment in the IE(SO Act), the employers tend to go for FTC as a matter of routine.

- Multiple problems are faced in convincing the employers to comply with the statutory responsibilities and sometimes appropriate action is initiated as per provisions of the applicable labour law.
- In most of the cases, casual/contract/FTC employees demand regular employment, whereas employers are reluctant to give regular employment. Therefore, FTC is a better option as compared to contract labour, which provides more scope for exploitation and lesser social security.

The key issues and concerns related to various aspects of FTC employment, which are going to crop-up prominently in near future, the labour administrators anticipate the following: Issues/complaints relating to miss-utilization of FTC; Safeguarding job security of FTC workers; Ensuring minimum wages, Social Security Benefits and allowances to FTC workers; Ensuring same and similar wages and allowances to FTC workers at par with the workers doing the same and similar job on the principles of equal pay for equal work; Launching prosecution against defaulting employers, if they adopt unfair labour practices and victimization of FTC workers.

They further shared, that this may become major IR problem in future as unions are willing to take-up such issues in a stronger manner. The current trend is that whenever the employer submits the draft Standing Orders for certification, FTC clause will be there. In such circumstances, all effort is made by them to ensure that this clause is not there as far as possible. It is one kind of exploitation of labour by engaging the employees on FTC basis in/on regular/permanent nature of job. It is expected that in future there would be an increase in the industrial disputes both under Section 2(a) and 2(k) of the ID Act, on matters related to contracts. There will be more FTCs and employers would tend to exploit workers not only by paying them lesser wages but also by increasing hours of work and reducing facilities. Without legal backing, it would be difficult to render justice to these categories of workers.

The key safeguards to protect the interests of such employees shared by the labour administrators are as follows:

- The number/proportion of FTC employees in any organization should be fixed and this should not in any case be more than 20% of the total strength of the employees at any point of time.

- Recording of reasons for fixed-term employment in the offer of employment and providing continuous job in case of permanent and continuous work availability.
- The contract of FTC should be explicit with well defined terms of employment, clearly specifying minimum period of employment and it should not leave and scope for unintended interpretation.
- Parity in pay and service conditions of FTC employees with regular employees along with compulsory provision of annual increment.
- Evolving effective parameters/criteria for calculation of their proportionate salary and benefits along with a provision of job training and imparting required skills to FTC employees.
- There should be a provision of incentives for good performance.
- The provision of re-employment of the same workman if the vacancy of same nature of employment exists and provision of compulsory absorption/regularisation of FTE workmen, if their services are found to be satisfactory after completion of their contract.
- No termination during the FTC, except on disciplinary ground and defined notice period in case of earlier termination of contract.
- Due protection of the salary/wages of the FTC employees and provision of payment of lump-sum amount of two months' salary for every completed year of service to the employee towards the end of FTC for his subsistence during joblessness/unemployment.
- Extension of adequate social security measures like ESI, PF, Maternity and Paternity etc. irrespective of length of employment and salary. If required, laws should suitably be amended to rationalize the limitation period and salary for the purpose of coverage under these social security benefits.
- Mandatory issuance of experience certificate towards the end of Fixed-term Employment.
- Provision of extending proportionate gratuity benefit to FTC employees with less than five years of services by necessary amendment in the Payment of Gratuity Act, 1972.
- Incorporation of detailed provisions in the Standing Orders Act by making necessary amendments to properly benefit the FTC employees. Alternatively, a separate legislation be drafted for such employees or the CL(R&A) Act be amended suitably.
- Compulsory insurance coverage for meeting contingencies like death and permanent disablement etc. of not less than Rs.10,00,000/- on contributory basis.

- Provision of various kinds of leaves on a proportionate basis @ CL -7, Privileged Leave-12 and injury leave up to 3 months, per year
- Bonus/Ex-gratia/production cum service incentive @ 10% of the annual gross salary and social security benefits.
- In case, the services of the FTC workers come to an end by virtue of completion of contract period, but if the work still continues to exist in that case the management should be liable for prosecution for adopting unfair labour practice for victimizing the workers under the garb of FTE. In addition, the affected worker shall have the right to raise the ID under the provisions of the ID Act.
- Payment of severance compensation equivalent to an amount of at least 60 days' wages along with other terminal benefits as notice pay in case of termination of services of the FTC employee before the period indicated in FTC along with payment of bonus if due and other applicable social security benefits like PF, ESI etc.
- Opportunity to become permanent and preference to FTC workers for permanent positions if the FTC employees are employed for more than 3 years even intermittently and right to be absorbed.
- FTC workers should be made eligible for all statutory benefits proportional to the period of service rendered by them and be treated as permanent employees for all practical purposes
- Coverage under long term settlements as well as under section 25 F of the ID Act.
- Fixing of minimum wages for different categories of employees as close to the living wages as possible and same pay on par with the trade of the employee of the permanent category.
- In case of permanent establishments, minimum period of FTC to be at least 2 - 3 years.

6.4 SUMMING-UP: An analysis of various sections of this chapter clearly reveals that though various social partners have their own reasoning and arguments for being in favour or against the very concept of fixed-term employment, but all of them seem to agree that it should be allowed only for temporary, short-term, project based and contingent nature of jobs. Similarly, all the social partners also agree to the fact that the various interests of FTC employees need to be duly safeguarded by providing effective regulatory measures and mechanism for regulating their conditions of work and social security aspects.

CHAPTER 7
CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The organizations of different kind engage employees on a variety of contracts. Continuing/open-ended contracts are used when the employer expects the work to continue indefinitely. On the contrary, Fixed-term contracts (FTCs) are used when there is no continuing need. FTCs have existed in the labour market since long and serve various important purposes. This system of employment provides flexibility to enterprises to respond to changes in demand, replace temporarily absent workers or evaluate newly hired employees before offering them an open-ended (long term/permanent) contract. At times, it may also be an attractive employment option for workers. It can provide possibility to enter or reintegrate into the labour market, to gain work experience, to develop skills and to extend social and professional networks. This kind of employment arrangement may also be preferred by some workers over permanent contracts for example when work is combined with education. Young, low skilled and female workers are usually over represented amongst workers with FTCs.

Available data on the incidence of FTCs suggests significant variation in their use across countries ranging from 5 percent to around 35 percent. Further, the current trends indicate that proportion of FTCs is going to continue in future. FTCs are generally characterized by a lower level of employment protection and inadequate social security. The matter of concern, therefore, is that uncertain nature of fixed-term contracts can lead to crucial employment issues like, insecurity about employment, widening inequality between standard and non-standard workers in terms of remuneration, working conditions, social security and increased stress etc. All these aspects need to be effectively dealt with by appropriate policy measures.

Countries in various regions of world have, therefore, adopted regulatory policies to address the various crucial concerns of this important and substantial section of employees as per their labour market characteristics, available social sector measures & provisions and the general framework of labour law for addressing various employment relations and social security issues. However, any regulatory policy concerning this aspect cannot be static, rather it needs to be improved and strengthened over time based on the lessons drawn from good practices and policies prevailing in this regard. The concerns of various social partners having direct

interest/stakes in various issues pertaining to Fixed-Term Employment also need to be duly taken into account while formulating, improving and strengthening the regulatory measures.

Accordingly, this study has described in detail the key features of Labour Markets and Social Sector Provisioning; Regulatory Framework for Employment Relations; Measures pertaining to Social Security; and Legislative Measures for Regulation of Fixed-Term Employment Contracts in respect of various countries selected under it and attempted to make an analytical assessment of these aspects in an inter-country perspective for the purpose of arriving at various conclusions. In addition, the study, based on the information and opinions primarily collected through structured questionnaires, has also tried to gather the perceptions of the various social partners i.e. trade unions, employers organizations/representatives and the government officials both at the central and state level to improve one's own understanding about their concerns before venturing into offering recommendations in this regard. The brief highlights of the key aspects covered under various preceding chapters are described in the following sections.

An inter-country analysis of the labour market features reveals that though there are many differences in the labour and employment context of various countries selected under the study, there are also certain common features which make out a strong case for adopting appropriate policy and legal framework for regulation of FTCs. For example, in most of the countries a substantial majority (in the range of approximately 54% in Nigeria to 72% in South Korea and China) falls under the working age group of the population. This working population has also to support a substantial proportion (in the range of 27% in South Korea to over 46% in Nigeria) of the non- working age group population. Further, a substantial proportion of the youth in majority of the countries is unemployed (in the range of 5% in case of China to over 50% in case South Africa), a substantial proportion falls under the Poverty Line and more than half of the countries spend less than 10% of its GDP on health and some of these including India spend even less than 5%. The position with regard to percentage of GDP expenditure on education is all the more grim.

An inter-country evaluation of the legal measures pertaining to regulation of several aspects of employment relations and severance compensation in various countries covered under the study reveals that in most of the countries (except Germany), these measures are mainly restricted to the blue-collar employees and a substantial proportion of the employees falling under other categories has to take resort to either the general provisions of contract law or/and the collective bargaining agreements.

As regards the scope, extent, coverage and efficacy of various social security measures existing in various countries under the study, the analysis indicates that the social security for substantial proportion of population is contributory in nature and for availing the various benefits under these measures both the employers & employees have to contribute over a period of time. Further, the rate of contribution to be made is substantial, which the employers and employees can afford to make only when there is a longer employment relationship and per month earnings/payments are enough for making these contributions.

The analysis also reveals that though, in some of the countries, in respect of certain population, some of the aspects of social security such as: old-age, sickness, maternity, disability and unemployment are not linked to contribution but the benefits provided are quite meager and there are many restrictions/conditions to avail the same (e.g. the universal old-age pension and widow pension in India). Though, in the wake of ensuing assembly elections, some of the major political parties have recently announced to increase the state pension for various categories, but the same has still to materialize. Further, the quality of services under many of the social security schemes (such as medical and health) is far from satisfactory. In addition, at present due to rapid urbanization in most of the countries, one has to spend much more on housing, transportation, fuel and items of daily consumption as compared to earlier. All these factors cumulatively make out a strong case for long term employment as compared to FTC even though it may not be very remunerative till the country, reaches a stage when there is in place an effective social security system to address various insecurities faced by a person during his/her lifetime.

The major conclusions emanating from the review of the various legislative measures concerning different aspects of fixed-term employment in countries under the study indicate that almost in all the countries it is mandatory to make such contracts in writing which also should have objective/material justifications and if there are no material justifications the FTCs may be deemed to be an open-ended contract. Further, the provisions in most of the countries put a ceiling on maximum number of successive FTCs and cumulative duration of FTCs ranging from 2 – 5 successive FTCs and a maximum cumulative duration of 2 – 10 years. Though, in some countries, there is no such limit (in case of India, Nigeria and Canada) subject to the condition that there can't be any substantial difference in the treatment meted out to FTC employees in terms of wages and overall conditions of work as compared to the employees engaged on open-ended employment contract.

In addition, all the countries having regulatory measures for FTC make it mandatory to follow certain procedural requirements to enter into a valid FTC. The legislative measures also contain the provision to the effect that an employee, who has been under certain specified successive FTCs with the same employer over a specified time limit and having fulfilled certain specified conditions (e.g. not been guilty of breach of any of the terms of contract and not been subjected to disciplinary action), may request his/her employer to convert the FTC into an open-ended contract.

Finally, the regulatory measures concerning FTC in most of the countries also put prohibition on termination of such employee prior to the date specified in the FTC on grounds like: pregnancy, maternity leave, disability, trade union membership and activities, raising occupational health and security concerns, filing complaint against the employer engaged in any unlawful activity (whistle blowing) etc. and also provide for payment of compensation (of varying degree) for the same.

The critical evaluation of the views and perception of various social partners in the context of India, concerning several aspects of fixed-term employment in general and its regulation in particular reveals that first of all there is lack of consensus on the outright inclusion of the very concept of fixed-term contract as one of the categories of employment under the purview of permissible categories of employment. These social partners i.e. the employers and trade unions have their own reasoning and arguments for being in favour and against the introduction of fixed-term employment. However, there seems to be some consensus on the issue of allowing the same for temporary, short-term, project based and contingent nature of jobs. Similarly, all the social partners also agree to the fact that the various interests of FTC employees need to be duly safeguarded by providing effective regulatory measures and mechanism for regulating their conditions of work and social security aspects.

RECOMMENDATIONS

Based on the detailed and critical analysis of various aspects related to Fixed-Term Employment and the conclusions emerging from the same, some of the key policy recommendations are as follows:

1. The system of FTC should be restricted to well paid jobs and for jobs requiring higher levels of skills and expertise. It may also cover prescribed contractual jobs which are specific, time bound and target oriented.

2. There is a need to fix a percentage or capping on engagement of fixed-term employees in any organization to regulate the same. Further,

such employees should be provided same wages, annual increment and allowances like HRA, TA, medical allowance/health insurance, social security and other facilities at par with regular employees.

3. The measures for regulation of FTC should necessarily provide for objective/material justification(s) for contract of employment in the form of FTC rather than an open-ended employment contract, as already existing in many countries in the west with longer history and experience of FTCs.
4. The law should make it mandatory that every employment arrangement in the form of FTC for a period of one month and above would be in writing. Further, a maximum time limit (preferably 30 days) may be fixed for mandatory signing of the FTC, failing which there may be a presumption in favour of such employment contract being an open-ended.
5. At the very outset, it should be clearly and specifically indicated in the FTC employment that the same is an FTC, in the absence of which such kind of arrangement may be deemed to be an open-ended contractual arrangement.
6. The law should have a provision for an upper ceiling for successive number of FTCs with the same employer/organization as well as the maximum cumulative duration under various successive FTCs (as already existing in many countries). The reasonable ceiling in terms of successive FTCs may be 3 and the maximum cumulative duration may be, 5 to 6 years.
7. An employee having completed the maximum prescribed successive number of FTCs or/and cumulative duration with the same organization, be legally entitled for requesting the employer to convert the FTC into an open-ended contract subject to fulfilment of conditions like: satisfactory service, efficiency, qualification etc. and not having been involved in any major breach of term of employment and not faced any disciplinary action leading to the charges being proved against him/her.
8. There should be a clear legal provision prohibiting dismissal of FTC employees on grounds like: pregnancy, maternity leave, disability, trade union membership and activities, raising occupational health and security concerns, filing complaint against the employer engaged in any unlawful activity (whistle blowing) etc.
9. There should be due protection against the termination of an employee under FTC prior to the date specified in FTC on grounds like rationalization, downsizing etc. in the establishment/organization

and provision should be made for payment of adequate compensation (at least 60 days' of employee's wages) in such cases.

10. In order to ensure various social security benefits to the FTC employees, the govt. of India has introduced the concept of 'proportionate statutory benefits eligibility' to employees engaged on fixed-term employment basis on par with the permanent workmen by making an amendment in the Rules under the IE(SO) Act, 1946. It clearly provides that such workmen shall be eligible for all statutory benefits available to permanent workmen proportionately according to the period of service rendered by them even if their period of employment does not extend to the qualifying period of employment in the concerned statute. This provision needs to be effectively enforced.

11. Payment of Gratuity Act, 1972 needs to be amended to provide for proportional gratuity so that the FTC employees having put in the service of more than a year but less than five years are also entitled for gratuity.

12. The FTC employees should be given preference over others in case of job openings in the organization where they have rendered their services.

13. The FTC employees should be provided training opportunities to continuously upgrade their level of skills and should not in any way be treated less favourably at the workplace in terms of various facilities as compared to regular/permanent employees.

14. Some provision should also be made to adequately compensate FTC employees/workers against spells of waiting period between one job and the other. It may be in the form of unemployment benefit/insurance, which may be contributory in nature or may be provided for from the public fund at the central/provincial or local level as existing in countries like Russia, Germany, UK, France, South Korea, South Africa and Canada etc.

15. The employers/organisations utilizing the services of FTC employees should make all possible endeavours to help them in exploring the suitable employment opportunities from time to time within or outside their organization and especially when they are not hopeful of renewal of FTC towards its end.

16. The organisations engaging FTC employees in specified number & above should also put in place an effective Grievance Redressal Mechanism and its administration/human resources department should be sensitized and oriented from time to time towards the various issues and concerns of FTC employees.

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ISBN:978-93-82902-61-4

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(An Autonomous Body of Ministry of Labour and Employment, Government of India)
Sector 24, NOIDA-201301
Uttar Pradesh, India
Website: www.vvgnli.gov.in