



An Analysis of the Welfare and Social Security Regime of Casual Workers in India: Problems and Perspectives

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Abstract

The Indian labour market is multifaceted reflecting diversity in employment and workers. Broadly, the sector has been classified as organised/formal and unorganised/informal sectors. Wherein, informal employment is an integral fragment of the development of India and its predominance in the market reflects profound involvement in shaping the infrastructure and economy. The Casual Workers form part of the informal sector. These are the most deprived class of workers among all who are and have been socially and economically neglected. Neither do they have comprehensive protection under the labour laws, nor do they have specific legislation enacted for them which regulates their employment and safeguard their interest. Resultantly, there are several challenges that they encounter, like, there is no record-keeping mechanism for them to get acknowledged or recognised, they do not hold a contract averring the employment conditions, and their status of employment and unemployment is unknown. Additionally, they are not facilitated with the skills or training essential for employment in the organised sector, or for a permanent position in the establishment, measures concerning welfare facilities and social security are yet to be explored in a true sense. Nonetheless, there have been instances where the legislature introduced several schemes coupled with judicial pronouncements for the protection of casual workers and welfare. Through this study, the researcher intends to discuss the employment issues of casual labour and the other relative aspects whilst analysing the welfare and social security measures taken for casual workers.

Keywords- Casual Workers, Welfare, Social Security, Nature of Employment, Labour Laws, Exploitation of Labour.

Introduction

Industrial productivity is unswervingly associated with labour productivity, and it forms an imperative constituent of economic development. Substantially, the employment structure of the country affects and reflects the development of a society where labours are vital in strengthening the infrastructure of the country. The employment structure vicissitudes work

and the workers. Significantly, diversity in the employment and nature of work renders the labours to be in a constant struggle to cope up with the market fluctuations and their impact on survival. The Indian market is not an exception to this phenomenon. The Indian labour market is complex and dynamic, where the size and distribution of the workforce constantly fluctuate. As a result, improvement in the labour condition and relative aspects concerning health, safety, social security, education, skills, poverty, and lack of employment opportunities and job security etc. are imperative to be considered for facilitating and improving the employment prospects of the labourers and to sojourn the exploitation of labour.

The workers are broadly categorised into Organised/Formal and Unorganised/Informal sectors.¹ These unorganised workers are unprotected and more vulnerable to mutable economic challenges than the organised workers. The unorganised sector contains diverse forms of employment namely, casual workers, sweepers and scavengers, self-employed workers, home-based workers, gig, and platforms workers etc. The germane notion is that casual employment is the most insecure of them all. Casual employment is required to be organised in a manner that ensures certain benefits such as wage security, welfare, health, and social security measures. However, the current legal regime is not inclusive enough to regulate and protect the interest of casual workers. The new codes failed in providing the all-embracing interest of the workers according to the current digital market regime.

Understanding the Fundamentals

Casual workers can be said to be engaged in employment, which may be for a specific purpose or to perform a particular work.² A casual worker is *“a person casually engaged in others farm or non-farm enterprises (both household and non-household) and getting in return wage according to the terms of the daily or periodic work contract is a casual wage labour. This Category of Workers excludes Regular and Contract Workers.”*³

As per the study conducted by the Women in Informal Employment: Globalizing and Organizing (WIEGO) casual workers are defined as *“those employed in the enterprises of others and receiving wage on a daily or periodic work contract basis.”*⁴ Further, according to the International Labour Organisation (hereinafter ILO), *“Casual work is the engagement of workers on a very short term or on an occasional and intermittent basis, often for a specific number of hours, days or weeks, in return for a wage set by the terms of the daily or periodic work agreement. Casual work is a prominent feature of informal wage employment in low-*

income developing countries, but it has also emerged more recently in industrialized economies, particularly in jobs associated with the “on-demand,” “platform” or “gig” economy.”

However, the term casual worker has not been specifically and explicitly discoursed in any of the enactment. In the absence of a comprehensive statutory description, casual workers are difficult to conceptualise. Nonetheless, the reference can be taken from the Industrial Employment (Standing Orders) Central Rules, 1946, Section 2 (f) defines “A “casual workman” is a workman whose employment is of a casual nature.”⁵ The essence of the definition lies in the employment of casual nature, which has not been discussed under the said rules. Further, the Contract Labour (Regulation and Prohibition) Act of 1970, has also not included the casual worker under the horizon of the act, it reads as “Section (5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with Central Board or, as the case may be, a State Board, and its decision shall be final. Explanation.—For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature— (i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or (ii) if it is of a seasonal character and is performed for more than sixty days in a year.”⁶ The Occupational Safety, Health, and Working Conditions Code, 2020 reiterate the same provision of the Contract Labour (Regulation and Prohibition) Act of 1970 and the Code on Social Security, 2020 merely includes casual worker in the definition of wage worker,⁷ however, the codes fail to elaborate on the characteristics of casual nature of employment. Furthermore, the *Indian Railway Establishment Manual (Vol - II)* defines- “(I) Definition of Casual workers - Casual workers refers to labour whose employment is intermittent, Sporadic or extends over short period or continued from one work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual workers.”⁸ Consequently, till today no uniform definition has been recognized by the law to ascertain the casual nature of work and the workers.

Engagements of Casual Workers

One of the ILO’s studies suggests that the employment structure encompasses varied scales of employment and status, for example, Regular Protected, Unregular Protected, Self-employed and Casual Workers.⁹ The Casual Workers are primarily engaged across the sector

in employment concerning “Agriculture, Mining and Quarrying, Manufacturing, Electricity, Gas and Water Supply, Construction, Trade, Hotel and Restaurants, Transport, Storage and Communication, Finance, Business, Real Estate, Public Administration, Health and Education.”¹⁰ “Street Vendors and Market Traders, Waste Pickers, Informal Construction Workers, Informal Transport Workers”.¹¹

Often, the nature of work of these kinds relies on oral or implied terms and conditions instead of written contracts. According to a *Report on Employment in Informal Sector and Conditions of Informal Employment*, “About 93 percent of the casual workers do not have any written job contract; which implies more informality among them followed by contract workers (68.4 per cent)”.¹² Their activities and the duration of employment can be categorised into varied periods, for instance, they are hired for hours, a day, a week, or for a month.¹³ The element of time paucity and limited engagement with the establishment becomes crucial when it comes to availing the benefits accessible to the permanent, contractual, to a certain extent seasonal workers.

Welfare and Social Security Measures

Labour welfare and social security are broad concepts that entail wide-ranging services, facilities, and amenities, to be provided by the employer for the development of labours. The acumen behind the same is that employers are required to provide and maintained adequate standards and viable environment based on the gender necessities in all spectra of establishments. To accomplish the same national practices is crucial, vis-à-vis enact of laws and regulations, the appointment of competent authorities for acuity and consultation, providing advisory and promoting collective bargaining.¹⁴

Social security is an indispensable part of labour welfare, wherein, the assurance of social security prevents the workers from various insecurities of life including poverty and inequality. It aims to provide insurance and assistance, protect them from exploitation, and encourage them to achieve high efficiency and productivity. The impression of social uncertainties includes but is not limited to, income security, health care or sickness issues, protection from old age or unemployment, injuries or accidents or any kind of invalidity etc.¹⁵ Consequently, casual workers are in an insubstantial position where they encounter several adversities and by virtue of their nature of employment, they do not obtain the power to collectively bargain and seek protection under the labour laws.

Labour Standards and Analysis of the Problems

In India, the employment structure and its standard have incessantly been a subject of discourse. Substantially, the dubious economy, unemployment, poverty, employment prospects, governance and relative aspects have always been dynamic and indecisive, and it has a direct and indirect bearing on the labours. Numerous laws and rules have been enacted and implemented on the central and the state level to provide welfare and social security and to protect workers from the rise in the cost of living. However, the prevailing measures are yet to meet the *labour standards*,¹⁶ particularly, in the unorganised sector. As observed in the statistical brief published by *Women in Informal Employment: Globalizing and Organizing (WIEGO)* in the year 2020 states as- “*Employment in India is overwhelmingly informal: 90 per cent of all workers are employed under informal arrangements nationally; in urban areas and in Delhi, the proportion is 80 per cent.*”¹⁷ The most recent data issued in the *Economic Survey from 2021-2022* discusses the recent trend as follows¹⁸

Table 8: Formal-Informal Employment (ps+ss) across Organized and Unorganized Sector (in Crores)

Type of Employment	Organized	Unorganized	Total
2017-18			
Formal	4.43	0.28	4.70
Informal	4.62	37.79	42.43
Total	9.05	38.07	47.13
2018-19			
Formal	4.91	0.45	5.35
Informal	4.55	38.87	43.43
Total	9.46	39.32	48.78
2019-20			
Formal	5.09	0.80	5.89
Informal	4.46	43.19	47.64
Total	9.55	43.99	53.53

Source: Estimated using PLFS 2017-18, 2018-19 and 2019-20 Surveys.

Note: As per National Commission for Enterprises in Unorganized Sector (NCEUS) classification, “The unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers.” However, “informal workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment benefits /social security provided by the employers.” (NCEUS, 2007a, p.3).

The problem exists in the condition and nature of the employment of casual workers, viz, unwritten employment contracts, low wages, overtime work, bonuses issues, leaves-related aspects and specific social security measures.¹⁹ Needless to say, the casual workers are an unsecured and vulnerable class, they suffer from several hardships, primarily, they are hired for a temporary period, thus, deprivations of wage and no fixed income. Moreover, they do not have an employment guarantee, every so often, their terms and services are not specified through a contract, and the temporary nature of employment refrains them from availing any social security measures. Furthermore, they are unskilled or semiskilled workers, incapable of understanding the mannerism of the formal labour market. No record-keeping mechanism has been established exclusively to extend social security benefits to them. There are abundant

reasons exists that restrict earnings and promote uncertainty in their employment and prospects.²⁰ The problem exists in the very nature of informal employment, where commonly the workers are deprived of the status and incentives of employment, let alone permanent employment. Resultantly, casual workers suffer from good quality employment and security. *Niti Ayog* in the year 2022 in its discussion paper discussed the labour workforce and status of employment. It has been observed as mentioned²¹

Table 7: Distribution of workers among various occupation types, in million

Year	Sector	Self employed	Regular wage/salary	Casual labour
2017–18	Non-Agriculture	90.7	101.7	62.3
	Agriculture	147.4	2.5	51.4
	Total	238.1	104.1	113.8
2018–19	Non-Agriculture	96.4	108.9	64.1
	Agriculture	147.6	2.4	49.1
	Total	243.9	111.4	113.2
2019–20	Non-Agriculture	100.8	113.3	64.9
	Agriculture	173.3	4.1	56.0
	Total	274.1	117.3	120.9

Source: Same as in Table 2A.

Note: same as in Table 2A.

The composition of workers across the three categories has remained fairly stable, except a small change. One fourth of the total workers were employed as casual labour while 52.2 per cent were self-employed in the year 2017–18. In 2019–20, the proportion of casual labour declined to 23.6 per cent and the proportion of self-employed people increased to 53.50 per cent. Around 23 per cent of the total workers were engaged in regular wage or salaried employment.

Primarily, the provisional nature of work renders the workers underprivileged as compared to the workers in formal sectors, wherein the condition of the casual workers is worse among the informal sectors. The anguishes of casual workers are not restricted to occupation and wage protection but seldom they are overlooked and precluded from availing of other advances offered by the employer or even the state. For example, if the establishment (government or non-government) is going through a financial crisis, resulting in lay-off, retrenchment, transfer of undertaking or closure, primarily the employment of casual labour comes to an end and they cannot seek protection under the act. Thus, the measure ensuring the welfare and security ought to be taken for casual workers as that of permanent or contractual employees.

Moreover, casual employment entails migratory nature of work. where the workers are constantly searching for secured and high-recompense employment. Thus, such relocation for the job has a severe impact on their condition. The workers are deprived of necessities, such as shelter, food supplies, minimum and fair charges, and other job security-related aspects. The inadequate wage is inept for them to meet the minim standard of living.²² Furthermore, the labour force encountered dynamic disturbances and perils in their lives, and it was

witnessed by the entire country. Owing to the Covid-19 pandemic. Covid has caused destructive alteration in the condition of labour in general, wherein more specifically Casual workers. The pandemic rendered them jobless and homeless. *Indian Forum* in its journal studies the condition of the casual workers and it ponied out “It is our view that in the first round of the lockdown, it is the casual workers who have been affected the most.”²³ The employment and the conditions have often been unnoticed. The miseries of casual workers are aggravated owing to the significant impact of the Covid-19 pandemic followed by migration of the labours and low earnings or for some no earnings at all.²⁴ Another report on *State of Working India 2021*²⁵ has observed the impact of Covid-19 and the substantial risk on the earning-

	Employment	2019	2020	Change in earnings (%)
Monthly earnings fell for all employment categories during the pandemic	Casual/Daily wage worker	₹9,135	₹7,965	-13
	Self-employed	₹15,831	₹12,955	-18
	Temporary salaried	₹11,422	₹9,441	-17
	Permanent salaried	₹29,226	₹27,697	-5

Sources and notes: Authors' calculations based on CMIE-CPHS. Data are for the months of September-October of 2019 and 2020. Earnings includes income from wages and salaries and income from business for the self employed. Earnings refer to real average earnings. See Appendix Section 2 for details.

All this indicates the brittle economic construction and structural vulnerability of the causal workers. The *Ministry of Finance*, in its press release, discussed the welfare aspects of the workers as- “Impact of the COVID-19 pandemic on the Labour Market- COVID-19 has exposed the vulnerability of urban casual workers, who account for 11.2 per cent of urban workforce (All-India) as per Periodic Labour Force Survey (PLFS), January-March 2020. A significant proportion of them are supposed to be migrants who were impacted by the lockdown. About 63.19 lakh migrant workers travelled through Shramik Special trains from May-August 2020. With limited data available on inter-state migration and employment in informal sectors, it is difficult to figure the numbers of migrants who lost jobs and accommodation during the pandemic and returned home. Government of India has taken several initiatives for the welfare of workers during the pre-lockdown and lockdown period to mitigate the crisis.”²⁶ Hence, the existing excruciating problem reflects higher economic growth negatively impacting and leading casual workers to a perilous economic state.²⁷

Other than these, constant advancement of technological and economic development is resulting in a variation in the work. The digital age has birthed novel employment opportunities for job seekers. Novel employment is increasing in many spheres, consequently, encouraging casual employment.²⁸ However, this imposes an additional

challenge on the labours and the regulators to standardise employment and preserve the interest of the casual workers in the technologically advanced industrialised economy.²⁹

Legal Analysis and Interpretation

Casual employment is flexible and accessible and provides ease of entry and exit, which satisfies the temporary requirement of the employer and the employee. That is why the workers are engaged with private and government entities to perform work of seasonal or intermittent nature. Temporariness is the reason why they at times worked on the implied terms and conditions and refrained from the written contract. The private and government entities hire the workers for a short-term period and according to the implied or express terms and conditions of the employment mentioned under the Standing Order.³⁰ The casual workers do not hold separate statuses in any one of the labour legislations nor do they have exclusive regulations describing their employment conditions. Resultantly, there is hardly any record-keeping mechanism or welfare fund has been created to recognise the status of these workers, to get them registered under the same and to extend social security benefits to them.³¹

Labour Welfare

The concept of labour welfare demands decent working conditions, employment security, social security benefits, equal pay for equal work, equality in promotion and training etc. These all are the requirements to be guided and guarded by the employer, principal employer, trade unions and state. The laws are critical in harmonizing and securing the rights of the entities involved. To provide and facilitate the minimum labour standards, the role of each entity is crucial. Pertaining to casual workers, in the absence of welfare facilities workers are abstained from availing civil liberties. The plea of the casual workers was never observed during the nationalisation period. The vantage point was the report of the National Commission on Labour of the year 1969. The report elucidates on the informal working condition of the casual workers, which the commission observed as “245. (a) *There should be a better regulation of conditions of casual workers. A beginning should be made in this direction in all undertakings, public and private, through periodic review and consultations among representatives of Government, employers and workers, (b) If employment is discontinued for a short period and the worker is re-employed, this short period should not be treated as a break in service. After a casual worker completes a stipulated period of service he should be allowed the same benefits which a regular worker enjoys.*” The commission recognise the despair of the casual workers and commented on the employer's

reluctance in providing incentives and benefits to the casual workers, subsequently, the condition of the casual workers is derisory. The commission recommended that- *“Under the scheme, an official agency maintains a roster of casual workers. Placements in employment on any day are made according to a scheme agreed upon between the employer, workers and the agency which maintains the roster. A worker on the roster is required to call at the office which keeps it and is informed in advance whether he is required or not the next day. Permanent placements are made on the basis of seniority on the roster.”*³²

However, owing to the political, social, and economic condition of India and unsustainable growth, no concrete measures were espoused until the mid-1980s.^{33 34} The condition of the casual workers was quite poor. Subsequently, in the year 1986, the apex court in the *Shri Surinder Singh* case, firmly emphasised that- *“It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations which have been in existence for over 12 years.”*³⁵ Resultantly, in the year 1988, the policy of the government was revised concerning the engagement of casual workers in the Central Government office.³⁶ The government lay down the guidelines on matters related to the recruitment, wages, term and term of employment, regularisation, etc. of casual workers. However, these directives were not comprehensive. Primarily, because it was restricted to the central government employees. Additionally, it did not contain any other provisions on employment security and social security measures. Further, the guidelines lack in administering the due requirements enshrined thereunder.³⁷ Thus, the guidelines were inept as per the need and the structure of casual employment.

In this vein, the apex court, in the case of *Daily Rated Casual workers v. Union of India & others*³⁸ observed that *“The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labours on starving wages. It may be that the casual labours has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The Government should be a model employer.”* In the wake of globalisation Indian labour market witnessed significant fluctuation in formal and informal employment. *“Casualisation of labour got accentuated with liberalisation. Quality of employment deteriorated on that account. Real wages for casual labours increased in 1990's but the growth has been very slow.”*³⁹

Correspondingly, in pursuance of the judgement in the case of *Raj Kamal and others v. Union of India*, delivered on 16.2.1990⁴⁰, the Casual Labours (Grant of Temporary Status & Regularisation) Scheme of the Government of India, 1993 was formulated. This scheme was promulgated to grant temporary status to casual employees.⁴¹ The government periodically

issues schemes/guidelines concerning the recruitment and employment of casual workers. The schemes focused on the concerns raised in the courts vis-à-vis, employment conditions, deficiency, regularisation, meagre assistance etc.⁴² The schemes are also reviewed periodically mainly impelled by the annotations made by the courts.⁴³ Other than these, numerous periodical surveys are being conducted by the ministries and their agencies to quantify the workers, to further check the status of employment and also, to study the inconsistencies in the system.

Social Security measures

ILO's interpretation of the concept of Social Security is- *"Social security is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner."*⁴⁴ The notion behind social security is to protect workers from the inevitable circumstances and to mitigate the risk to their lives and survival. The Social Security legislation⁴⁵ serves as an embankment to ensure compliance. *"Looking to the large number of persons working in the organized/unorganized sector by passage of time, different social security legislations have been introduced in this largest democratic country, which can be divided into two broad categories, namely, the contributory and noncontributory. The contributory laws are those which provide for financing of the social security programmes by contributions paid by employees and employers and in some cases supplemented by contributions/grants from the Government. At the same time, we have major noncontributory laws such as the Employee's Compensation Act, 1923, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972 with which we are presently concerned. When we talk about social security legislations, two broad categories are social insurance legislation and social assistance legislation. In social insurance, benefits are generally made available to the insured persons under the condition of having paid the required contributions and fulfilling certain eligibility conditions and as regards social assistance, the beneficiaries receive benefits as a matter of right, but they do not have to make any contributions and to support thereof, the finance is made available either by the State or a source provided by the State/Central Government."*⁴⁶

In absence of general or specific social security schemes for casual workers, it renders them exposed to numerous exigencies of life and living. Often, the applicability of the benefits extended to them has been questioned in several cases. The problem lies in the very nature of temporary employment, *"Suppose certain fire took place in the establishment and the establishment has to engage certain employees for extinguishing the accidental fire for*

couple of hours."⁴⁷ Then, of course, the scheme of the act will not be applicable in such a situation and workers are disadvantaged to claim the benefits under the act.

In the case of *Regional Provident Fund Commissioner Andhra Pradesh v Shri T. S. Hariharan*⁴⁸ referring to the "Employee's Provident Fund Act, 1957, s. 1(3)(a) & (b),"⁴⁹ the question was whether casual workers to be included for determining number of employees- Minimum period of employment? The apex court observed- "Considering the language of Section 1 (3) (b) in the light of the foregoing discussion it appears to us that employment of a few persons on account of some emergency or for a very short period necessitated by some abnormal contingency which is not a regular feature of the business of the establishment and which does not reflect its business prosperity or its financial capacity and stability from which it can reasonably be concluded that the establishment can in the normal way bear the burden of contribution to-wards the provident fund under the Act would not be covered by this definition. The word "employment" must, therefore, be construed as employment in the regular course of business of the, establishment; such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the company. This must necessarily require determination of the question in each case on its own peculiar facts."

*Employees' State Insurance Corporation v. Suvarna Saw Mills*⁵⁰ "The definition of the word 'employee' contained in Section 2(9) of the Act does not make any difference between a casual or temporary or permanent employee. It is wide enough to include even a casual employee employed for a day for wages. Therefore, every person who is employed for wages on any work connected with the work of a factory or establishment to which the Act applies except those exempted by the definition, fall within the definition of the word 'employees'."

*Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka*⁵¹ the court discussed- "Managements and the Government agencies in particular should not allow workers to remain as casual workers or temporary employees for an unreasonably long period of time.... non-regularisation of temporary employees or casual workers for a long period is not a wise policy."

*Cotton Corporation and others v Union of India, and others*⁵² the grievance raised in this case was "the question before us is that whether such a casual workers/employee whose services are being engaged for certain job can be given the benefit of the Scheme or not."

The court observed that- "The ratio is that so far as the casual workers are concerned, they are not governed by the provisions of the Act. If they are not covered by the Act, therefore, likewise they are not covered by the Scheme as well." The court further added that- "Before

parting with the case, we may observe that a genuine difficulty can arise in the matter like the present one, that such a casual labour who is employed for a particular purpose for a particular time should be covered by the Scheme or not. Therefore, certain parameters should be laid down as to what should be the criteria to treat a particular employee as a casual workers/employee so as to remove any confusion either in the mind of the employer or the authorities implementing the provisions of the Act of 1952. But we leave it to the Central Government to clarify this position. However, till it is clarified, if any grievance arises then the parties can approach the Central Government under Section 19A of the Act and the Central Government shall determine the issue as to whether in the given case the employee was a casual or regular employee to which the Scheme shall cover.”

On the other hand, if the workers are engaged with the establishment for a longer period, then in such cases the social security benefit ought to be facilitated by the employers to the casual workers.

*Municipal Corporation of Delhi v Female Workers (Muster Roll)*⁵³ the question was whether the benefit of the Maternity Benefit Act was to be given to casual workers or workers employed on a daily wage basis. The apex court held that “*We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis.*”

*Royal Western India Turf Club Ltd. v. E.S.I. Corporation and Others*⁵⁴ “*The questions involved for decision in these appeals are whether casual workers are covered under definition of employee as defined in Section 2(9) of the Employees State Insurance Act, 1948?*”⁵⁵ The apex court held that- “*It is true that a casual employee may not be entitled to sickness benefit as pointed out in the case of Gnanambikai Mills (1974 Lab.IC 798)(Mad) (supra). But, in our opinion, that cannot be a ground for the view that the intention of the Act is that casual employees should not be brought within the purview of the Act. Apart from sickness benefit there are other benefits under the Act including disablement benefit to which a casual employee will be entitled. There may again be cases when casual employees are employed over the contribution period and, in such cases, they will be entitled to even the sickness benefit. In the circumstances, we hold that casual employees come within the purview of the Act.*”

*Union of India & others v Rakesh Kumar & others*⁵⁶ the court held that – “*i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till, he is regularised on a regular/temporary post for the purposes of calculation of pension. ii) the*

casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension. iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post.”

Presumably, casual workers, in general, are not eligible for any entitlement and privileges other than those statutorily admissible under the various Acts, such as Minimum Wage Act, Workmen's Compensation Act, etc. The eligible criterion is the applicability of the act, term of service, continues employment or the worker has attained the days prescribed by the employer. Nonetheless, the unemployment problem, short-term engagement and issues concerning regularisation of the service refrain the workers to enjoy the social security benefits.⁵⁷ Absorption of unorganised Labour in regular vacancies is gruelling, let alone casual workers' absorption of employment. There have been cases where casual employment was directed to be discontinued by the government order, however, the unfair practices of employing casual workers continued.⁵⁸ In this setup, bearing in mind labour legislation as beneficial legislation, the judges in most cases relying upon the facts and the circumstances of the case have constantly endeavoured to provide justice to a greater extent to the labours. Although, in the absence of specific statutory protection under the labour legislation, even the judiciary is unable to protect the interest of all casual labours explicitly related to welfare and social security.

Protection under the Labour Codes, 2020

Reform in labour laws is long-awaited. Ever since Liberalisation, Privatisation, and Globalisation struck in, the need for progressive labour legislation was felt. The proposed new codes are, the Code on Wages 2020, Industrial Relations Code 2020, Social Security Code 2020 and the Occupational Safety, Health, and Working Conditions Code 2020. All four codes are enacted to secure the interest of the workers, according to the contemporary social and economic conditions. Globalising economy and employment structure calls for legislation which can answer and satisfy the fundamental needs of the workers. Keeping in mind, the four codes have been endorsed by the government in the name of progressive reform. There are several pros and cons to the proposed labour codes. However, emphasising the worker's interest in the ongoing economic regime, the codes are incompetent in understanding the need of the employee/worker, the nature of work, welfare, and relative amenities. The code even though endeavoured to extend the benefits to all kinds of workers

and acknowledge the same in the definition provided under the Code on Social Security, Section 2 (90) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government, as the case may be;" The definition provided under the new codes fails to provide clarity on the nature of work, qualifying criteria for casual workers, and what kind of benefits they can avail. For example, the Industrial Code, of 2020, excludes the casual workers' rights of laidoff compensation⁵⁹ and exempts casual workers from temporary dismissal prohibition.⁶⁰ Nevertheless, the progress can be seen in the second schedule of the said code that provides unfair labour practices⁶¹ as the employer cannot employ any casual worker for an indefinite period with the purpose of depriving them of the status and privileges granted to the permanent workers. Although, the code is silent on the absorption period of the workers. Moreover, the third schedule provides Conditions of Service for Change for which due notice is required to be furnished, it has also excluded the casual from the ambit.⁶² The position of casual workers under the codes is perplexing. The ambiguity could have been avoided if the code specifies the engagement period of the casual workers and their nature of employment. Owing to the ambiguity in the proposed code, it is difficult to identify the extent of coverage of social security measures for casual workers as claimed by the government⁶³ or to follow the structured wage system for these workers and other benefits of employment.⁶⁴

Recommendations

Favourable working conditions and employment facilities in India are a matter of debate among scholars. Additionally, it is dreadful for the legislature to form a uniform policy and administer the same to regulate all kinds of occupation and employment conditions at a macro level. Nonetheless, the government and its agencies are obligated to work on economic and social welfare aspects to explore the possibilities of providing amenities and facilities that can be extended to all kinds of workers.

The legislature must study the conditions of various kinds of workers and define the term, nature, and kind of employment cogently so that employers are duty-bound to follow the same. Additionally, essential occupational education and training should be facilitated free of

cost on local and state levels with the help and involvement of non-Governmental organisations and other social agencies. A record-keeping mechanism is required to be built, maintained and to be administered by the local authorities to provide awareness of various schemes concerning insurance, injury compensation, loan, and other saving benefits. The government can further facilitate an outreach body to investigate the casual workers working conditions viz, employment contracts, work hours, leaves, overtime, injury and disease compensation, insurance, maternity benefits, and other welfare facilities. Separate welfare funds can also be set up to encourage workers to invest and save regardless of their hours of employment.

Conclusion and the way forward

Illiteracy, absence of skills and occupational training, temporary employment, unwritten agreements, and unawareness, are a hindrance to the rights and privileges of the workers obligated under the numerous labour legislations. The categorisation of casual labour according to their engagement with the establishment has to be explicitly agreed upon by the legislatures. Casual employment appears to foster by the advancement of technology. The contemporary digital age is giving birth to numerous employment opportunities, in such a scenario, the role of the legislator is crucial to control various kinds of employment in the digital/virtual market. The intermediaries nowadays are generating short-term casual employment. The Digital market is also turning into a digital industry, owing to the Covid-19 pandemic, the use of technology has increased, for example, India is one of the prominent holders in the market for flexing staffing that provides a platform for temporary employees, part-time employees etc.⁶⁵ In contrast, Covid-19 led numerous labours to be laidoff, retrenched and unemployed. Some of the employment has been transferred or closed. Thus, the hit was severe on the casual workers. As the other categories of workers relish the compensation regimes under the labour laws but not the casual workers. Therefore, the central and state government must overcome the problem of workers employed with digital platforms⁶⁶ along with the workers employed in industries and factories. All the stakeholders must consent to the uniform laws governing the employment of unorganised workers and provide them with the benefits of welfare schemes and revise the existing provisions according to the requirement of short- and long-term casual engagement. To fill the gap between formal and informal employment rigorous approach is vital to protect the interest of casual workers.

References

1. Ministry of Labour & Employment, *Worker and Employer* <https://labour.gov.in/unorganized-workers> (last visited March 06, 2023).
2. Vikalp Sharma, G.L. Meena and Others., *Analysis of Casual workers in Rajasthan vis-à-vis India* (AESSRA, 2010) Agricultural Economics and Social Science Research Association <https://ndpublisher.in/files/html/AnalysisofVegetableMarketingEfficiencyinPhekDistrictNagaland.html> (last visited March 07, 2023).
3. Ministry of Labour and Employment, *Quarterly Report on Economic Scenario* (Labour Bureau 2021) Government of India <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/jan/doc20221104101.pdf> (last visited March 08, 2023).
4. Govindan Raveendran and Joann Vanek, *Informal Workers in India: A Statistical Profile* (WIEGO, 2020) Women in Informal Employment: Globalizing and Organizing https://www.wiego.org/sites/default/files/publications/file/WIEGO_Statistical_Brief_N24_India.pdf (last visited March 07, 2023).
5. Industrial Employment (Standing Orders) Central Rules, 1946 <https://labour.gov.in/sites/default/files/industrialemploymentstandingorders1centralrules1946.pdf> (last visited May 04, 2023).
6. International Labour Organisation, *Non-Standard Employment Around the World: Understanding challenges, shaping prospects* (ILO 2016) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_534496.pdf (last visited March 07, 2023).
7. The Code on Social Security, 2020, Definitions 2- In this Code, unless the context otherwise requires,— (90) "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and the State Government, as the case may be; <https://www.indiacode.nic.in/bitstream/123456789/16823/1/a2020-36.pdf> (last visited May 04, 2023).
8. Indian Railway Establishment Manual (Vol - II), CHAPTER XX Casual workers [https://indianrailways.gov.in/railwayboard/uploads/codesmanual/est-manual-II/estbl-man2-chap20-p01-p07.htm#:~:text=\(I\)%20Definition%20of%20Casual%20labour,not%20ordinarily%20liable%20to%20transfer](https://indianrailways.gov.in/railwayboard/uploads/codesmanual/est-manual-II/estbl-man2-chap20-p01-p07.htm#:~:text=(I)%20Definition%20of%20Casual%20labour,not%20ordinarily%20liable%20to%20transfer) (last visited March 07, 2023).
9. International Labour Organisation, *Employment, Labour Force, and the Working Population in India*, (ILO Research Brief 2021), https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_775940.pdf (last visited February 21, 2023).
10. Ibid.
11. Supra note 6.

12. Daljeet Singh, *Report on Employment in Informal Sector and Conditions of Informal Employment* (Labour Bureau 2015) Ministry of Labour & Employment Labour Bureau Chandigarh <https://labour.gov.in/sites/default/files/Report%20vol%204%20final.pdf> (last visited March 07, 2023).
13. Ibid.
14. International Labour Organization, *Welfare Facilities Recommendation, 1956*, (ILC session 1956) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312440 (last visited March 08, 2023).
15. International Labour Organization, *Facts of Social Security* https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf (last accessed March 08, 2023).
16. International Labour Organisation, *Labour standards, Subjects covered by International Labour Standards* <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/lang--en/index.htm> (last visited 07 March 2023).
17. Supra note 6, at 11.
18. Ministry of Finance, *Economic Survey, 2021-2022*, (Department of Economic Affairs 2022) https://www.indiabudget.gov.in/economicsurvey/ebook_es2022/index.html#p=398 (last visited March 08, 2023).
19. Ministry of Statistics and Programme Implementation, *Annual Report on Periodic Labour Force Survey (PLFS) (July 2020 - June 2021)* (National Statistical Office 2022) https://dge.gov.in/dge/sites/default/files/2022-07/Annual_Report_PLFS_2020-21_0_0.pdf (last visited March 10, 2023).
20. Supra note 12, at 13.
21. Ramesh Chand and Jaspal Singh, *Workforce Changes and Employment Some Findings from PLFS Data Series* (NITI Aayog Discussion Paper 2022) https://www.niti.gov.in/sites/default/files/2022-04/Discussion_Paper_on_Workforce_05042022.pdf (last visited March 08, 2023).
22. Dr. W.N. SALVE, *Labour Rights and Labour Standards for Migrant Labour in India* <https://www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf> (last visited May 04, 2023).
23. Nomaan Majid, *How many casual workers in the cities have sought to go home?* (Indian Forum 2020) <https://www.theindiaforum.in/article/how-many-casual-workers-cities-have-sought-go-home> (last visited March 10, 2023).
24. *For reference-*
Radheshyam Jadhav, *Covid-19: Why casual workers and the self-employed are most likely to lose their work and incomes* (The Hindu, 2021) <https://www.thehindubusinessline.com/economy/covid-19-why-casual-workers-and-the-self-employed-are-most-likely-to-lose-their-work-and-incomes/article32101097.ece> (last visited March 10, 2023).
Sanjeeb Mukherjee, *Almost 92% casual workers didn't get wages during lockdown: SWAN survey* (Business Standard 2021) https://www.business-standard.com/article/economy-policy/almost-92-casual-workers-didn-t-receive-wages-during-lockdown-survey-121061601523_1.html (last visited March 08, 2023).
25. Azim Premji University, *State of Working India 2021: One year of Covid-19*, (Centre for Sustainable Employment 2021) https://cse.azimpremjiuniversity.edu.in/wp-content/uploads/2021/08/SWI2021_August_WEB.pdf (last visited March 10, 2023).
26. Ministry of Finance, *Years 2019 & 2020 are Landmark Years in History of Labour Reforms; 29 Central Labour Laws Amalgamated, Rationalized and Simplified into Four*

- Labour Codes* (Press Release 2021)
<https://pib.gov.in/PressReleasePage.aspx?PRID=1693213> (last visited March 10, 2023).
27. Suresh Chand Aggarwal, *The Status of Self-employed, Contract, and Gig Workers in India: Some Recent Changes* (IARIW 2022) Delhi University <https://iariw.org/wp-content/uploads/2022/07/Aggarwal-IARIW-2022.pdf> (last visited March 08, 2023).
28. Janine Berg, Marianne Furrer and Others, *Digital labour platforms and the future of work Towards decent work in the online world* (ILO 2018)
https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_645337.pdf (last visited March 08, 2023).
29. Niti Aayog, *India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work* (Policy Brief 2022)
https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf (last visited March 08, 2023).
30. Supra note 2.
31. Ministry of Labour & Employment, *Casual Workers* (Press Information Bureau 2012) Government of India <https://pib.gov.in/newsite/PrintRelease.aspx?relid=79432> (last visited March 11, 2023).
32. Ministry of Labour and Employment and Rehabilitation, *Report of The National Commission On Labour* (GOI 1969)
https://www.vvgnli.gov.in/sites/default/files/Report%20of%20the%20National%20Commission%20Labour_0.pdf (last visited March 19, 2023).
33. Stuart Corbridge, *The Political Economy of Development in India Since Independence* (Routledge 2009) Handbook of South Asian Politics
[https://eprints.lse.ac.uk/20381/1/The_political_economy_of_development_in_India_since_independence_\(author_final\).pdf](https://eprints.lse.ac.uk/20381/1/The_political_economy_of_development_in_India_since_independence_(author_final).pdf) (last visited March 19, 2023).
34. Arvind Panagariya, *India in the 1980s and 1990s: A Triumph of Reforms* (IMF 2005) International Monetary Fund Working Paper
<https://www.imf.org/external/pubs/ft/wp/2004/wp0443.pdf> (last visited March 19, 2023).
35. *Surinder Singh and another v Engineer-In-Chief, C.P.W.D. and others* (1986) AIR 1986 SC 584.
36. Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), *Recruitment of casual workers and persons on daily wages—Review of policy* (Government of India 1988) https://documents.doptcirculars.nic.in/D2/D02est/49014_2_86-Estt.C-07061988.pdf (last visited March 19, 2023).
37. Ibid.
38. *Daily Rated Casual workers v Union of India & Others* (1988) (1) SCR 598.
39. IGNOU, *Globalisation and Liberalisation* (eGyanKosh)
<https://egyankosh.ac.in/bitstream/123456789/21070/1/Unit-29.pdf> (last visited March 19, 2023).
40. *Raj Kamal & Others v Union of India* (1990) 16th February, 1990 of the CAT, Principal Bench, New Delhi.
41. Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Grant of temporary status and regularisation of casual workers - Formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, Judgment dated 16th February 1990 in the Case of *Raj Kamal & Others v UOI*. (Government of India 1993)
https://documents.doptcirculars.nic.in/D2/D02est/51016_2_90-Estt.C-10091993.pdf (last visited March 19, 2023).
42. Ibid.

43. See, for example, *P & T Department v. Union of India & Others.*, [1988] 1 SCC 122; *Dharwad District. P.W.D. Literate Daily Wage Employees Association & others v State of Karnataka & others* (1990) 1 SCR 544; *State of Haryana v Piara Singh and Others* (1992) 3 SCR 826; *Madhyamik Shiksha Parishad, U.P. v Anil Kumar Mishra and Others* (1994) SC 1638; *Secretary, State of Karnataka, and others v Uma Devi and Others* (2006) 4 SCC 1.
44. International Labour Organization, *Facts on Social Security* https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_067588.pdf (last visited March 19, 2023).
45. The workmen's Compensation Act, 1923; The Employees State Insurance Act, 1948; The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; The Maternity Benefit Act, 1961; and The Payment of Gratuity Act, 1970 etc.
46. *Maniben Maganbhai Bhariya v District Development Officer* (2022) SCC OnLine SC 507.
47. *Cotton Corporation and others v. Union of India, and others* (1993) 1 LLN 311; *Regional Provident Fund Commissioner Andhra Pradesh v Shri T. S. Hariharan* (1971) AIR 1519.
48. *Ibid.*
49. Section 1. Short title, extent, and application.
[(1) *This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.*]
[(3) *Subject to the provisions contained in section 16, it applies—*
(a) *to every establishment which is a factory engaged in any industry specified in Schedule I and in which 7 [twenty] or more persons are employed, and*
(b) *to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:*
https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf (last visited May 04, 2023).
50. (1980) 57 FJR 154; *Regional Director, Employees State Insurance Corporation v South India Flour Mills (P) Limited* (1986) AIR 1686.
51. (1990) 2 SCC 396; *Marathwada Agriculture University and others v Marathwada Krishi Vidyapith and others* (2007) 8 SCC 497.
52. *Supra* note 45.
53. (2000) 3 SCC 224.
54. (2016) (SCW) 1143.
55. Section 2. Definitions in this Act, unless there is anything repugnant in the subject or context, -
(9) *"employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-*
(i) *who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere; or*
(ii) *who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or*
(iii) *whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; [and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part,*

department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include]] -

(a) any member of [the Indian] naval, military or air forces; or

[(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]]:

PROVIDED that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf (last visited May 04, 2023).

56. (2017) 13 SCC 388.

57. *Union of India and others v Munshi Ram* (2022) SCC OnLine SC 1493.

58. *Promod Jha Others v State of Bihar & Others* (2003) SC 3 56; *Bhawani Singh v State & Others* LW 2003 (3) Raj 1755, 2002 (5) WLN 269; *Bajaj Auto Limited v R.P. Sawant And 401 Others*. (2000) IILLJ 17 Bom.

59. Industrial Relations Code 2020, Definition of continuous service. Rights of workers laidoff for compensation, etc. Section 67 <https://egazette.nic.in/WriteReadData/2020/222118.pdf> (last visited May 04, 2023).

60. Industrial Relations Code 2020, *Prohibition of lay-off*. Section 78 <https://egazette.nic.in/WriteReadData/2020/222118.pdf> (last visited May 04, 2023).

61. Industrial Relations Code 2020, Second Schedule, *Unfair Labour Practices I. On the Part of Employers and Trade Unions of Employers* <https://egazette.nic.in/WriteReadData/2020/222118.pdf> (last visited May 04, 2023).

62. Industrial Relations Code 2020, Third Schedule, *Conditions of Service for Change of which Notice is to be given* <https://egazette.nic.in/WriteReadData/2020/222118.pdf> (last visited May 04, 2023).

63. Ministry of Information and Broadcasting, *New Labour Code for New India* (Government of India) https://labour.gov.in/sites/default/files/Labour_Code_Eng.pdf (last visited March 23, 2023).

64. Ministry of Labour and Employment, *New Labour Code will help in creating an Aatma Nirbhar Bharat* (PIB 2022) The Press Information Bureau <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1853452> (last Visited March 23, 2023).

65. Ministry of Finance, *Years 2019 & 2020 are Landmark Years in History of Labour Reforms; 29 Central Labour Laws Amalgamated, Rationalized and Simplified into Four Labour Codes* (Press information Bureau, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1693213> (last visited February 23, 2023).

66. *Ibid.*