EMPLOYMENT & LABOR LAW

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UNIT- ONE

Introductory Remarks on Employment and Labour Law

📣 ..INTRODUCTION

» This unit will try to give you the introductory remarks for the course in general.

» Accordingly, you will be given highlights that enable you grasp the analysis made in the rest of the units

> defining the terms "employment law" and "labour law"

> look at the history of labour law

> "sources of labour law"

The meaning of Employment and Labor Law

Q. what is Employment law?

» is an area of law that regulates employment relationships

Q. what constitute employment relationships?

» employment relationship is deemed to exist between persons where one agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece work in return for wage.

» Employment relationship includes all such relationships as defined above irrespective of the sector of employment or the identity of the persons (be it government or private) involved in the relationship.

- Though employment relationship is as such a very broad term there are obvious separate legislations/ laws/ that are specifically aimed at regulating certain aspects of employment relationships.

- In other words, taking into account various factors such as the sector of employment, different legislations (laws) aimed at regulating specific employment relationships can be enacted.

- For instance, there is the "civil servants proclamation 1064/17" that regulates employment relationships mainly between government institutions & its civil servants,

- there is also "the labor proclamation "that regulates employment relationships in the industrial sector, and so on.

- Employment law is, therefore a very broad name that refers to all those areas of laws which are made to regulate the different aspects of employment relationships.

- "employment law" is an umbrella term that represents vast area of laws which are made to regulate any aspect of employment relationships.
- In this context, there is no as such a single or unified legislation (law) named employment law.
- When we come to labor law, it refers to an area of law that governs certain employment relationships.
- As compared to employment law which is interested in all employment relationships; labor law is narrow in scope.
- This is because employment relations that are the subjects of labor law are only those which are found mainly in the industrial sector

- labor law is also known as "**the law of Industrial Relations".**
- Therefore, unlike employment law, labor law is not interested in all employment relationships, as so many of such relationships are outside the ambit of this law.
- Labor law is, thus, concerned with employment relationships that arise mainly within the industrial sector.
- Such relationships, in other words, can be named as labor relationships.
- Industry for the purpose defining labor relationships doesn't solely refer to the manufacturing sector.
- It rather denotes the profit making sectors of the economy such as tourism, banks, insurance, hotels, etc in addition to the manufacturing sector.
- So, broader meaning it has.

1.2 The Raison d'être and Historical Background of Labour Law

- why Labor Law/ what factors triggered the state to come up with the labor Law?
- under this part,the primary factors that triggered states to come up with domestic labour laws, and the long journeys and historical incidents they went through up to that stage will be examined.
- There exist three important stakeholders in employment relationships. they are:-
  - + state
  - + the employer &
  - + the employee.

- During the conclusion of the contract, the employee who is going to render his physical or intellectual service during their terms of engagement comes with his/her labour and

- the employer who seeks such service comes with his money which, obviously, is going to be paid for the employee in the form of wage or salary.

- This, in other words, means on the **supply** side of such labour market one observes labour and it is capital (income) that stands on the demand side

- **Thus, for employment relationship to exist free labour, labour which is entitled to enter into a free contractual agreement, should be there.**

- This makes our discussions of the history of employment relationships and the necessary regulatory machinery for such relationships mandatory

- **because employment law revolves around the evolution of free labour.**

- Besides, for labour law is a **law of industrial relations** our understanding of the history enables us to appreciate the evolution of the industries themselves.

- The following few slides would therefore be devoted to the closer look at the emergence of ***free labour and industries.***

» In history, there were different social relationships in the past:

- ✓ the **slave** owning society,
- ✓ ***feudalism***,
- ✓ ***capitalism*** and
- ✓ the ***socialist*** society.

The slave owing society

- In this society we have **slaves and slave owners.**
- Their relationship was governed by the system in such a manner that slaves are slaves by status and slave owners are given a higher rank.
- As slaves are deemed as properties, in fact as speaking properties, of their masters **one can't think of free labour in that society.**
- Slaves were not even **subjects of the law** as they were not deemed as **persons** in the eyes of the law.
- Since there was no free labour that bargains with capital, one can't imagine employment relations to exist in that society.
- Therefore, ***in the slave owning society there was no employment law and even no need of having such a law, as there is nothing to be regulated by it.***

Feudalism

- During the feudalist society instead of owning human beings, men started to own land.
- As the slave is no more subject to transactions of sale or exchange, one can say that a **qualitative change** has occurred during this society.
- Since the slave had upgraded its status to be the **drams of a "person; he became** the subject of the law as a **tenant**, and the principal actors on the scene became the tenant and his land-lord.
- Though there was a relatively better situation in terms of the livelihood of the tenant, unfortunately, **he was not lucky enough to decide on his labour**
- In the then society, **let alone freely bargaining with his labour, the tenant was not in a position even to choose his master**.
- ***As a resultant effect of all these it was unthinkable to get an employment relationship that is an outcome of freedom of contract.***
- **Hence, there was no employment law.**

Capitalism

- Under the **womb** of feudalism, capitalism seeds started to grow.
- The capitalism ideology which is mainly characterized by liberal democracy principles has recognized so many principles for its fellow citizens,
- to mention,
  - ✓ freedom of expression,
  - ✓ freedom of movement,
  - ✓ freedom of contract principles
  - ✓ the market economy principles and so on.

- As a corollary to such developments there happened **transformation in various sectors of the economy which started to become profit making as opposed to the previous ones that were characterized by making for subsistence consumption and very minimal profit.**

- In the agricultural sector there was mechanization of farming which required vast land.

- This land was obtained by evicting the peasants (tenants) from their lands;

- and these people once evicted remained with nothing but their labour.

- In the manufacturing sector, as an outcome of the then upraised **free market economy dogma** as every one can reasonably expect, there were losers and winners of the competition among handicrafts.

- Just like the situations that happened to their peasant counterparts those who could not survive the change were left only with their inborn asset, i.e. their labour.

- The scenario in the business sector was not a different one.

- Business men who end up as losers of the ***unregulated race had lost their capital and remained with their labour***.

- ***Do you see how free labour and industries which are the sole inputs of employment relations evolved?***

- ***How these inputs had come together and started to undertake contractual engagements?***

- ✓ Though agriculture took the mechanized form, **we can’t think of it to be hundred percent mechanized,**
- ✓ hence, on the part of capital there was still a need to employ labour.
- ✓ In the manufacturing and business sectors on the other hand when capital owners begun to expand their undertakings and their business enterprises by the accumulation of profits, family members labour was found to be inadequate to respond to the change.
- ✓ There also arose a need to employ extra labour.

- Besides such need for employment of extra labour,
- we had a large free labor which had no option but to sell its labor.
- **So, capital and labour became keen to bargain and establish employment relationships.**
- Employment no longer is a status as in the slave owning and feudal society.
- It's rather a **contract**.
- The employee can choose his employer and successfully terminate his contract since he has something that can move with him freely i.e. labour.

» As a capitalist principle, under this relationship the ***working conditions were to be freely agreed in the contact.***

» These include:

- The wage of labour,
- Various leaves
- Working hours per day,
- Duration of employment and
- Safe working conditions.

➢ Besides, every aspect of their relation is to be established based on **their agreement in the contract.**

➢ ***For such labour and capital mixture is an economic affair, the state can't interfere in such relationship.***

➢ It is there only to **enforce the contract**, if and when a dispute arises.

- Though this was the then assumption, freedom of contract principle has brought so many problems.
- During that period, capital owners were ***few in number*** compared to the huge number of labour.
- Labour had as its aim eating for today, it was also ***bargaining individually.***
- All these gave labour no option to bargain, and made it weak in this bargaining.
- In effect, *labour was made to freely adhere to the terms the capital owner stipulates in the contract.*
- The employer usually proposes for the worker for
  - ✓ minimum wage,
  - ✓ for the employment contract to last so long as they agree,
  - ✓ for longer hours per day and
  - ✓ for voluntary assumption of employment risk
    - ✓ i.e. whenever the employee sustains employment injury the possible risk to be considered as had been foreseen by the employee.
- ✓ The employee agrees to these terms with no hesitation.

- Ultimately, **low wage** started to subject the employee to longer working hours per day to earn more,
- and this led the employee to over exhaustion and finally to employment injury.
- But, the employee had no remedy even to get benefits for the injury he sustains at work due to his prior agreement for voluntary assumption of risk.
- There was also a severe problem with regard employment security since termination by will is there in their agreement.

- The cumulative effect of all these was demonstrated by the excessive accumulation of wealth of the capital owner/ employer at the expense of the employee.
- The wage that should have been paid to the employee went to capital;
- and lack of governing employment injury also played its own role in the boom of the wealth of the capital owner.
- This brought polarization of living standard:
  - few become richer and richer and the majority becomes poorer and poorer.
  - ***The resultant effect of freedom of contract which led the employee to lower living and working conditions triggered anger and dissatisfaction on the part of the working class.***

» **Employees then started to express their anger and dissatisfaction in various ways,**

- ✓ such as by destroying the means of production and
- ✓ showing down production.
- ✓ But, these ways of struggle was not effective as such, since it was held in a disorganized manner.
- ✓ Instead, as it was easily detectable, it led the employees to employment insecurity.

» However, employees did not yet frustrate. They took lessons from their mistakes and continued their struggle by raising economic questions:

- > increase in wage,
- > limitation in working hours per day,
- > employment security and safely working conditions.

- these demands are directly the reflections of the outcomes of the problems due to ***freedom of contract.***
- These were the relatively organized demands of the working class.
- **In some countries they managed to get some concessions.**
- For instance, regarding the demand for better wage, capital accepted some margin of increment of wage.
- But, the increase was included in the price of every commodity.
- In effect, the increase in wage of the employees didn't change the working nor living condition of the employees.
- So, no much development in this respect;
- net outcome became almost zero if not negative.

Marxist Ideology

- Following the working classes anger and dissatisfaction, which culminated in the demand for betterment in terms of employment conditions as well as in the life of the employees,
- there came out the Marxist Ideology which went further and came up with an extreme thought.
- This ideology **agitated the working class not only for better life conditions but for the seizure of power to the proletariat.**
- Accordingly, economic reforms are only provisional to deal away with such problems once and for all.
- **Hence, economic measures, according to this thought are only means to the mandatory end of the worker's seizure of political power.**

- Tuned by this assumption, struggles were held in various parts of the world especially in Eastern Europe,
- though no satisfactory results were obtained until 1917 G.C.
- In this regard, **the October 1917 Russian Revolution was the successful one to be taken as a turning point in the history of the evolution of employment laws.**

- This revolution declared the dictatorship of the proletariat in Russia.
- So as to protect the interests of the working class, so many radical measures were taken:
- the most important transformation being the ***nationalization of the means of production.***
- **Capital**, they said, is an accumulation of unpaid wage that should have gone to the to the employee;
- so decided all the means of production to be handed to the working class who is the legitimate owner of “capital”,
- hence, nationalization.

- **This unexpected occurrence in Russia posed fear and frustration in the west.**
- They thought their respective workers would take a lesson from outside and revolt against the system.
- Therefore, they had to look for a possible solution to avert such likely disaster.
- As a way-out, they conspired to take two measures of primary and secondary importance;
  - + if possible to crush the Russian Revolution;
  - + if not at least to hold it there within the territory of Russia.

- Later on, as the west come to know that the first solution is infeasible,
- they preferred to adhere to the alternative **containment policy** and to resolve the problem through various measures.
- These measures, which were aiming at ***containing the revolution as it is and where it is***, as one can reasonably expect,
- were measures that tried to give a better protections to the employees so that the workers do not at least raise the issue of assumption of political power.

- Hence, immediately after two years of the Russian Revolution in **1919 the International Labour Organization (ILO) was founded**,
- and begun to take care through its slogan of ***"Distributing Justice in Equitable Manner"***.
- Formerly, share of capital was lions share and that of labour was less.
- So to distributing capital the way was giving concessions, which could be achieved by the intervention of the state in the contractual terms of the employer and the employee.
- Upon its establishment the ILO took the primary mission of providing **guidelines** that member states employ as inputs for measures they take in order to avert the problem of the free market economy brought.
- Don't forget! In the labour market which is an interaction of labour and capital we had no equal market powers
- i.e. demand and supply factors that determine the different working conditions such as level of wage.

- But for such market to operate well we should have an equal bargaining power on the supply and demand sides of the transaction.
- Under this market we were not fortunate to observe labour appropriately dealing, with capital.
- And this ways an indicator of the fact that the free market principle was not operating well.
- This triggered ***a need for the intervention of state in the contract between the employer and the employee.***

- Accordingly, ILO member states came to enact separate laws that deal with employment relations so as to limit the freedom of the parties
- in view of industrial peace and welfare by backing the weaker party i.e Labour.
- **These domestic laws called *labour laws* incorporated minimum working conditions that the employee must be entitled to,**
- on the basis of ILOs guidelines that are usually developed in the form of conventions and recommendations.
- So, it was after all these ups and downs that labour law emerged.
- Is labor law a fruit of the workers' struggle, or is it simply a law that is given by the blessing of the rulers of the various ILO member states?

The Emergence and Development of Employment Law in Ethiopia

- Labour r/n in Ethiopia has been very low
- Discouraging societal attitudes toward jobs
- All the remaining occupations excluding priesthood were demoted lower class
- Metal work/Artisan/ linked with low reputation
- prevailing official Imperial position towards labour and labourers was positive b/c
- Minilik tried to discourage insultation of artisans in 1908 by law: it amounts to insulting emperor but no social revolution

- The religious rules and holidays were unfavourable to industrial activity
- Until 1942 slavery had legal protection discouraging free labor r/n through contracting and rule of law
- 1931 H/selasie partial position: law states slave who wished to be free' and not to all slaves
- freedom was not automatic but procedural subject to judge discretion

» Turning point: 1942 abolition of the legal status of slavery that one can speak of labour development in Ethiopia as a freeperson capable of freely contracting has been an essential precondition.

Sources of labour Law

» These are legal instruments that would have impact on regulating labour relations,

» and /or in resolving labour disputes of and when the latter arise.

» we have public acts (instruments)

» and private acts (instruments) that could be employed for the regulation of labour relations.

- by ***public acts***, for the purpose we are referring to those legal instruments which are **outcomes of public deliberation**;
- the public being represented by the **law maker.**
- ***Private acts***, on the other hand are legal instruments which evolve from both or either of the parties to the contract of employment; and
- we see no or minimum state intervention during the birth of such instruments.

Public Acts as sources of law

» Public acts themselves could be further dichotomized as international public acts and municipal (national) public acts.

> ***International public instruments*** – as their naming implies these are laws where in states' participation is involved at their stages of enactment.

> i.Such international acts are in majority of cases the International Labour Organization's (ILO) instruments, which are conventions and' recommendations.

National / Municipal Public Acts

- These are Legal instrument that are handed down by the sovereign power of a certain state.
- These include constitution, proclamation, regulations, directives etc.

a.FDRE Constitution: Art. 42 of the constitution which recognize the Right to Association, the right to strike, non-discrimination on employment and equal pay for female workers and minimum labour conditions has direct impact of labour relations.

b. Labour Proclamation No. 377/2003: is another source of law that provides for detailed provisions on the constitutional principles including those given under Art. 42 of the FDRE constitution.

- ✓ As the enactment of labour laws is a federal competence pursuant to Art. 55(3)of the FDRE constitution, we don't have regional labour laws.

c.Directives of the Ministry of Labour and Social Affairs-

- ✓ These directives are laws which are outlined by the executive staff for the proper implementation of the labour proclamation.
- ✓ The ministry is empowered to do so by Art. 170 of the labour proclamation.

Private Instruments as Sources of Law

- These are to be made by private parties, i.e. non-state actors.
- Those private actors in the relationship are the employer and the workers individually or collectively.
- These instruments would therefore include
  - ✓ contracts of employment,
  - ✓ collective agreements and
  - ✓ work rules.

UNIT – TWO

Scope of Application of The Labour Proclamation

- what kinds of employment relationships labour law intends to govern?
- Doesn't apply to all employment relations.
- It only applies to employment relations between an employer and a worker. art.3(1)
- Therefore, our discussion on the scope of coverage of the law is more or less an examination of the principle that defines employer-worker relationships and,
- then the identification of those relationships that fall under the principle part but are excluded by exclusion part of the law.

- Such task in it self imposes further duties on us.
- The first duty is to define who a worker is.
- Under such discussion we will evaluate the definition given by the proclamation, and then we will try to make a clear distinction between a worker and other similar terms like agents and independent contractors.
- The next step to understand employer worker relations will be to identify the meaning of employer in the eyes of the law.

- Worker employer relationships minus excluded worker employer relationships = scope of coverage of the proclamation.
- However, worker employer relationship = worker (definition: + distinction :) + employer (definition)
- Therefore, [(worker (defn.+ distincn.)+ Employer (defn.)] Minus Excluded worker employer r/ships = scope of coverage of the procl.
- (W + distn) + E] – Exclusion = coverage of procl. 1156/2011

Employer – Worker Relationships

- In employment relationships there is always an employee and an employer.
- But, labour law does not regulate each and every employment relationships.
- **It normally regulates employment relationships established between a worker and an employer with in an industrial sector.**
- Other employment relationships are basically excluded from the ambit of labour law.
- **It is if and only if the person who is an employee can be considered as a "worker" that the labour law will be applicable to him.**
- Thus, in this section, our focus would be to understand the meaning of a worker, by looking at the definition as given by the proclamation and by making a distinction between a worker and other similar terms in accordance with Article 4 sub article 1 of the Labour Proclamation.

Definition of a worker

- see art 3(1) & 2(3) of Proc. No.1159/2011
  - incomplete definition
  - it cross refers to Article 4
  - see art 4(1)
- element of Article 4 sub-article 1 is a worker must be
  - a natural or physical person.
  - one who renders physical or intellectual services to e.
  - under the authority of the employer
    - direction element must be fulfilled for a person to be deemed as a worker
  - duration of contractual engagement must be concluded for a definite or indefinite time or piece work
  - Besides all these the person is regarded as a worker if and only if the wage element is satisfied.

- we did not yet get a complete definition for the term “worker”
- It is actually very difficult to get a full-fledged definition from the cumulative reading of Article 4 and Article 2(3) of the Proclamation.
- This is because; to be deemed as a worker the person must be one who renders service for his employer.
- So, even if elements of the cited provisions are met, we can not be sure that such person is a worker unless his relationship is with an employer.
- Thus, so as to have a complete definition for the term “worker” we are also expected to have a clear understanding of who an employer is.
- This issue will be raised immediately after we make a distinction between a worker , an agent, and an independent contractor.

Distinction between a Worker and Other Similar Terms

- a worker is defined as a physical person that renders service for an employer on the basis of an employment contract .
- However, there are some other persons that fulfill some or many of the elements of a worker without being workers, and that give service for another party.
- Therefore, How is an employee or a worker different from an agent, or a contractor because all render service for another party?

Worker vs. Agent

- Source of Authority
  - The source of authority of the agent could be a law or contract,
  - whereas the source of employment relationship or the worker’s source of authority is only a contract
- Under whose name the service is rendered?
- Wage
- Whereas a worker is essentially a physical person, an agent could be a legal person or a physical person.

Worker vs. Contractor

- how is client – contractor relationship different from its worker- employer counterpart?
- see Art. 2610 of the Civil Code of Ethiopia
- there are so many features that distinguish the independent contractor from the worker or the agent.
  - ✓ the direction element.
  - ✓ A contractor could be physical or legal person as the case may be.

The Meaning of an Employer

- see art.2(1) of the procn.
- does not take in to consideration the number of persons (a person) or (an undertaking) should employ for it to be deemed as an employer and ultimately to be governed by our labour law.
- do you think that it is fair to require a man or a relatively small undertaking employing 1 or 2 persons to be considered as an employer and requiring him to give the worker all the benefits the Proclamation provides?
- Undertaking is also defined under art.2(2)

» Thus, an employer can be a physical/natural person or an entity such as Business Company, factory and the like.

» When U see art.2(2) listing activities that are to be performed by such entity they are:-

economic in their nature; &

some even tend to be profit making activities.

» What kinds of activities are those which fall under the category "*any other lawful activity*" for the purpose of defining a person or an undertaking and then an employer?

» Is this expression referring to any activity /lawful/ with no need to have an ***economic nature or profit purpose?***

- Concerning this issue there are **two arguments** forwarded by Ethiopian lawyers.

- the phrase "any other lawful activity" should be construed to mean activities with nature similar to the prior listing of the law.

- matters of the same kind as the preceding particular words.

- So, on the basis of the **illustrative listing**, activities which are only economic in nature and profit oriented should be regarded as lawful activities for the purpose of defining an undertaking under Article 2(2).

- Others, on the other hand, say so long as the activity performed by an entity is a lawful one, and unless it is excluded by the exclusion part of the Proclamation,
- such entity should be considered as an undertaking.
- Hence, in order to fall under Article 2(2) it is sufficient for the activity of an entity to be a lawful one,
- it does not matter whether such activity is of a profit nature or not.
- Supporters of the second argument also invoke Art. 3(2) & (3) which deal with the exclusion of some employment relations from the scope of the Labor Proclamation.
- When we examine some of the exclusions made by these provisions of the law, we get some excluded relationships wherein the employer is not involved in profit generating activities.
- Therefore, as the exclusion under Art. 3 mentions some non-profit activities; one can say that the definition has thought of all activities.

» ***considering the historical back ground of labour law and the primary goals labour laws aim at which interpretation seems sound?***

...Scope of Application

- in principle the Labour Proclamation is applicable to **employment relationship of a worker and an employer with in an industrial sector.**
- see art.3(1) of the proc.
- But this does not mean that all employment relationships of this kind fall under the ambit of the proclamation.
- there are various employment relationships that are excluded from the application of labour law,
- we can safely conclude that employment law and labour are different in the Ethiopian Legal System.
- Employment relations are wider as the legislator excludes some sorts of labour relations from being governed by labour law.
- So, labour law /relation is only one segment of employment law / relation.

Exclusion under the 2011 Labour Proclamation

Divided into two broad classes:

- ✓ **as outright exclusions and**
- ✓ **conditional exclusions.**

- ✓ The first class includes employment relations that are automatically excluded by the proclamation, and hence by no means can they be governed by this proclamation.
- ✓ In other words, such contracts are excluded from the scope of labour law with no need of waiting for the occurrence or otherwise of any situation / condition.
- ✓ For the latter class of exclusions the exclusion applies upon the fulfillment of the attached conditions.
- ✓ Hence, until the specific condition the proclamation sets for their exclusion is satisfied, such employment relations are to be governed by the 2011 Labour Proclamation.

Outright exclusions

- The scope of application of the proclamation is defined by Article 3.
- Under art.3.1, **the law provides that the "proclamation shall be applicable to employment relations based on a contract of employment between a worker and an employer".**
- But under Art.3(2), the law excludes some lists of employment relationships from the coverage of the Proclamation.
- They are *automatically excluded from the ambit of labour law.*
- In other words, ***labour law does not regulate these relationships in any conditions.***

1.Contracts for the purpose of upbringing, treatment, care or rehabilitation

- Irrespective of the existence of employment contract between the service provider and the employer, labour law would not regulate their relationship. why?
- As the purpose of these relations is not tuned by **profit motive of the employer**, the law maker has opted for their unconditional exclusion.
  - ✓ relationship between a guardian/tutor and his/her minor/child.
  - ✓ the rehabilitation scheme for prisoners in prison

2. Contracts for the purpose of educating or training

- see art. 3(2)(b) of the procn.
- if an employment contract is concluded for the purpose of **educating** or **training** a person, the relationship between the educator or the trainer and the student or trainee is not to be governed by labour law,
- unless the engagement is **one of apprenticeship**.
- Here, we observe three categories of relations as provided by the law.
- There are
  - ✓ **students** who are getting education in the school,
  - ✓ **trainees** who are learning by doing or practicing and
  - ✓ ***apprentices*** who undergo certain training while rendering service to an employer whose day to day activities are our side of training.

Student:

- When we consider the case of students and trainees and their relations with schools and trainers, both students and trainees are there to acquire knowledge or skill.
- Hence, the service they render for the employer is only incidental.
- To put it differently, the end being the acquisition of knowledge and skill, the rendition of service is only a means to such end.
- For instance, students may sometimes undertake some projects which may in effect give some economic benefits to their education.
- But such service, if considered as part of the curriculum, can not be considered as one among the employment relationships which are to be regulated by labour law.

Trainee:

- The same holds true for services rendered by trainees.
- Trainees normally focus on the practical skills of the training program.
- They are learning by doing according to the guidance of their trainer.
- Hence trainers are likely to fetch certain economic benefits from the works of their trainees.
- But, in so far as this is part of the training programme, the services rendered by the trainees would not trigger the applicability of the labour law to govern the parties' employment relationships if any.

Apprenticeship :

- When it comes to the case of apprentices, the nature of the services they render are quite different from those of **students** and **trainees**.
- Apprentices are persons who undergo certain trainings while rendering services to their employers.
- The employer is duty bound not only to pay wages for the apprentices but also to enable them acquire the skills that the services require.
- As the purpose of the employer/undertaking is to do some other businesses rather than giving training, it also employs other workers who are there only to render service.
- Thus, labour law intends to regulate the relationships of the employer both with the apprentices and other workers.
- However, due to their special nature contracts of apprenticeship are governed by their own separate provisions of the Labour Proclamation, starting from Art. 48 up to Art.52 of the proclamation.

3.Members of Management Staff

- see Art.3 (2) (c)
- for a person to be deemed as a manager he *must have a managerial power* given either by the law, or by delegation of the employer.
- Therefore, irrespective of *actual exercise* of managerial power, *one's entitlement to exercise such power is sufficient to consider one as a member to the management staff.*
- The law goes further and enumerates some activities that are deemed as managerial functions, for the purpose of defining the management staff and then for exclusion.

- Managerial function under the pervious amended Procn. No.496/2006, art.2(1) is defined to mean one's activity of:

  + **laying down and executing management policies of the undertaking, and / of.**
  + **hiring transferring, suspending, laying off, assigning or taking disciplinary measures against workers.**

Art 3 (2)(e)

- With regard to the legal service head of an undertaking, managerial power consists of recommending measures to be taken by the employer regarding managerial issues using his independent judgment in the interest of the employer.
- It is if and only if the legal service head has such powers that he is deemed as a member to the management staff. Otherwise, he is simply not.
- Generally, managerial employees have the power in policy making, in hiring and firing of employees, in taking disciplinary measures, in demoting or promoting employees and are involved in operational and strategic planning instead of routine activities.
- If some one is involved in all or many of these activities he would be said to have a managerial post, otherwise simply not.

- So not title, but ***content*** would be seen.
- But, we could still face cases of doubt as one may exercise some of the functions only.
- Where the situation doesn't squarely fit to the exception i.e. the exclusion, *the benefit of doubt should be for the worker*,
- since exclusions are exceptions and in principles of interpretation exceptions should be interpreted restrictively (narrowly) not liberally.
- So it would be better to consider this kind of relationship as covered by the Labour Proclamation.
- Having an understanding of the major roles managers & lawyers play in an undertaking, **why such staffs are excluded from the protective umbrella of Labour law?**

- the exclusion of members of the management staff is closely tied with the notion of trade unionism in labour relations.

- Trade unions are associations (organizations) of workers which are established by workers so as to protect their collective rights and interests from encroachment by any one including the employer.

- The underlining principles of trade unionism, independence, autonomy and impartiality, are therefore reflections of the basic function of trade unions.

- Hence, trade unions must be independent and are supposed to pass decisions representing their members, with no interference by the employer.

- To this end, trade union members must have a homogenous interest.
- For the interest of the management staff is closer to the interests of the employer and not to that of the workers, members of the management staff don't have a homogenous interest with the rank and file.
- This heterogeneity of interest, in effect, is likely to defeat the underlying principles of trade unionism and
- beyond all it would pose a threat on the very birth of trade unions.
- This in turn is likely to make the function of trade unions impotent.

4. Domestic Servants/Personal service

- see art.3(2)(d) of the procn.
- Domestic servants are workers who have an employment relationship with their employer in order to give services in a house-hold and not in business place.

- Bear in mind, it is not the nature of the service, it's rather the question **to whom the worker renders service**, that matters in defining their relationships.

- This is because, similar services like those given by the domestic worker can be given in other enterprises that are **included under the coverage of labour law**.

***Contracts of personal service*: Art 3(2)(d)**

- ✓ ***Contracts of personal service for non-profit making purposes***
- ✓ ***Yet, there is no regulation***
- ✓ ***This includes House servant, personal guard, family driver and gardener***
- ✓ ***They are governed by Art 2601-2604 of civil code even if it is difficult to say these articles provide proper protection.***
- ✓ ***However there is exception of exception in Ethiopian"s Oversea employment proclamation No 923/2015 Art 71 which such personal service are subject to labour proclamation***

5. Public Servants

- see art. 3(2)(e) of the procn.
- this category of employees is inclusive of all employees of the executive, legislative and the judicial tires of the government machinery.
- these employees include:
  - + members of the Armed Force,
  - + members of the Police Force,
  - + members of judges of courts of law,
  - + prosecutors, and
  - + employees of state administration.
  - > the ground for the exclusion of these employees is the existence of special laws governing the relationship of the employees and their employer.
  - > **Why these employees are excluded from the coverage of labour law and are made subjects of special laws?**

» for historical and policy reason

> Historically, to be a public servant was a privilege instead of a disadvantage throughout a time.

> Instead of exploitation there was a privilege in this area.

> Public servants were not, in need of the protection of the labour law, which was there to back the weaker party (the worker) in labour relations.

> Hence, special laws they had.

- From policy perspectives, the exclusion of the public servants could be justified by public interest concern and the purposes labour law is meant to render.

- To regulate the public service by the Labour Proclamation means to give the public servants all the rights the proclamation recognizes for each and every worker.

- Among such rights we get the right to freely bargain and the right to strike of workers.

- But, this area is not an area where you can bargain.

- You can resign if you feel that you are at a disadvantage; since there is a huge policy concern behind the public service.
- It requires continuity by its very nature, and may not be an area of bargaining.
- Even if we allow bargaining in this area, the bargaining may not work well, because of the stronger bargaining position of not the employer, but the worker.
- As an example, we can take the Armed Force.

- Due to all these reasons they have special laws, and hence, no need to give additional protection by the Labour Proclamation.

- So, almost in every nation labour law doesn't cover the public servants.

But who are they?

- The identification of members of the armed force, the police force, judges of courts of law and public prosecutors is not that an headache.

- Who employees of state Administration are? may, however, bring sort of problem when the state begin to involve in economic activities.

- Employees of state include: employees of state administration and employees of state enterprises.
- The proclamation excludes only members of state administration, and employees of state enterprises are still subjects of labour law.
- But it does not clearly provide the difference between the two categories of employees in government owned institutions.
- It just provides that employees of state administration are excluded.
- Therefore, in order to have a clear picture of the excluded employees, we are forced to focus on the identification of the difference between an "undertaking" and "state administration",
- since employees of state undertakings are not parts of the exclusion.
- The difference between an "undertaking" and a "state administration" lies on their nature and the primary roles to be played by these government institutions.

» Here are certain yardsticks to be employed for the differentiation of these two kind institutions. These are:

» Powers of the Institution

+ **State administration organs have normally supervision or regulatory powers, as opposed to state enterprises which are there with business purpose.**

» The Manner of Giving Service

+ **Institutions that are part of state administration do not operate under quid pro quo principle.**

+ **Quid pro quo principle is a principle that dictates something for something.**

+ **Business enterprises, on the other hand, operate under the quid pro quo principle, and**

+ **therefore require an equivalent price for what they are giving be it goods or a service.**

» Manner of Establishment of the Institution

- Both state administration offices and state enterprises are established by legal instruments such as proclamations or regulations.
- However, there is a difference between the two in the manner of **their financing**.
- State administration offices are financed by government budget in the form of annual budget.
- Whereas, a state enterprise does not expect some money in the form of annual budget for it's financing.
- It would only be provided with some cash or fixed asset in the form of capital at the start of its business, and no annual budget allocation or expenditure to a state enterprise.

6.Independent contractors

» see art.3(2)(f) of the procn.

Conditional exclusion

» *Working in **diplomatic** or **international organization**: Art 3(3)(a)*

✓ *Unless the Council of Ministers by regulations decides, the labour proclamation shall not be applicable .*

✓ *There is no issued regulation regarding to this point.*

✓ *Who is international organization? Does it include international multi corporations?*

✓ *Ethiopia is a signatory to United Nation Charter; hence any Ethiopian who employed In UN or organization under UN is not governed by labour proclamation.*

- see art.3(3) (b) of the procn.
- which category of employment relation of religious organization with their employees is excuded?
  - **spiritual**
  - **secular**
- ***Spiritual service means a service which is performed only to discharge functions directly related with spiritual activities religious organization. Art 2/1 of the regulation.***

- regarding the relationship of religious organizations with their employees in the secular activities, there may not be a problem with the applicability of the Labour Law for their regulation

Religious or charity employees

- ✓ ***The council of minister to make a regulation which stipulates inapplicability of the proclamation on religious or charity organization.***
- ***Accordingly regulation 342/2015 is issued.***
- ✓ ***Per to the regulation Art 3(1) The Proclamation shall not be applicable with respect to a person who gives spiritual service in a religious organization.***
- ✓ ***Spiritual and administrative or spiritual and charitable activities, simultaneously, in a religious organization***

- ✓ ***Collective bargaining is not allowed to religious or charity organization.***