

Employment & Labour Law

Lecture Note

by Admasu A.

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Chapter One:- General Introductory Remarks

1.1. Def'n & Nature of EL/LL

- ❖ Challenges of defining EL- b/c of its broader scope covering diverging r/ps & legisl'ns.
- ❖ But EL- is usually described as branch of general/positive law- governing the various aspects of the emplr-employee r/ps(special r/p).
- ❖ It regulates a series of complex E.R/ps based on EK: formation, the rights&oblig'ns of the parties, the effects of such r/p(performance, suspension, termination & its conseqs), basic cond'ns of work(MWCs), collective r/ns & dispute settlement mechanisms.

Introd'n...

- ❖ The r/p may exist both in public or private domain- established w/r for economic/non-economic reasons.
- ❖ It may manifest itself individually or collectively aspect.
- ❖ Imp't regimes of EL:- labour law, civil service law, many other regimes governing E.R/ps in.....
- ❖ Labour law & Civil service law regimes constitute major EL in Eth.
- ❖ **Labour Law**- is one major category/sub-set of EL- mainly governing E.R/ps in the private sector & NG-entities(NGOs, assoc'ns, unions, Pb enterprises, etc.

Introd'n...

- ❖ **Lab-law:-** that part of law w/c regulates the industrial & collective lab.r/ps in the private sector.
- ❖ It is the body of rules...w/c regulates the rights & duties of persons performing or accepting the work...
- ❖ It also govern E.R/ps in **Pb entities engaged in eco./bus. activities**- Ex. Public enterprises...
- ❖ Lab-law: is a unified/single system in Eth...
- ❖ An E.r/n under lab law is a **tri-partite/triangular dimension**- involving emplr, emplee & gov't (even at ILO level). Why gov't presence needed? Vs. freedom of K pp.

Introd'n...

- ❖ **Civil Service Law:-** is another regime of EL governing the various aspects of E.r/ns:
 - in the state adm'n/pb adm'n/
 - admve agencies/gov't inst'ns-
 - at federal or regional level-
 - a dual system reg'n.
- ❖ It has predominantly individual E.r/n.....
CER missing why so?

Introd'n...

The need for EL/LL: Purpose/objective/function

- ❖ E.r/n is fundamentally a k'al r/n & subject to pps & rules of K in general.
- ❖ Thus, it needs legal f/work for its formation, proper operation & termination.
- ❖ Labour is often sold under special disadvantage. (Marshall).
- ❖ Law is used as a force counteracting the **inequality of bargaining power** inherent in the emplr-employee r/p.
- ❖ It has broader political, eco., developmental & social dimension

Introd'n...

- ❖ **E.r/n has antagonistic interests:-**
Emplr-behind **maximization of profits** &
Emplee behind improving their **material & physical cond'ns**.
- ❖ So EL/LL plays the **role of preservation & promotion of industrial peace-** by balancing competing interests of capital & labour.
- ❖ It has also strong implication for **pps of transparency, accountability** of gov't & the prov'n of **quality & effve public services**.

Introd'n...

1.2. Development/History of EL/LL

- Develop't of EL/LL has its own perspective esp in the area of labour law.
- **Pre-industrial period:** Lack of free labor & capital negotiation / bargaining- system of **slavery & land-based feudal system.**
- Also dependent on family labour for its operation.
- EL/esp LL dev't had close r/n with **industrial period- increase for demand of labour for large scale industrial establishments.**

Introd'n...

- **Traditional view of lab-r/n:** Considered as eco-r/n & left to the **agreement of the parties**- under freedom of K (justified under **doc. of laissez faire**).
- **Lab-r/n** to be regulated **by market forces & free bargaining**... treated as contract to sell or lease **services in return for remuneration**(conception of labor as a commodity).
- But this app was ultimately challenged by **ILO Philadelphia Declar'n of 1944**.

Introd'n...

- **Role of gov't:-** Enforcement of the **promises of the parties**(re-affirmed in the decision of **US Sup-court-** where **-In *Lochner vs. New York (1905)***, the Court struck down a New York law ***limiting hours of work*** in bakeries to ten hrs a day on the ground that it [the law] interfered with the freedom of contract between employers and employees. Read!
- However **freedom of contract b/n economic unequals** would not bring about mutually acceptable outcomes.....

Introd'n...

- Such often result in subjecting labour to ***E/instability***, excessively **low wages** and **long working hours** coupled with **unsafe and unhealthy** working conditions/environment.
- B/c of such an ***inequitable outcomes & labour discontent***(indv or collective)- demanded for state intervention in the labour-capital r/n.
- State/gov't began to intervene in private E.r/ns- by determining **minimum w/cond'ns/guarantees** at workplace- the shift to **doc of welfare state**.

Introd'n...

- The dev't of **socialist ideology** vs capitalist system in Europe & others...had also some role in....EL/LL... ***social rights movement!***
- Hence, among labour standards dev'ped at national levels:- Limit'n of w/hrs, E/security, E/safety & health, Benefits of E/injury, Sickness & other Paid leave benefits, etc.
- Later on **int'nally coordinated efforts** were needed:- lead to the ***establishment of ILO under the T.V.(1919)***.
- This provided with **permanent int'nal & institutional mode** of dealing with labour protection....at the global level

Introd'n...

- **Unique to ILO:-** Though set up as IGO, it has included private actors (representatives of trade unions and employers' associations) within its core membership (**Art. 3 of ILO Const'n**). Read!
- According to the **preamble of the ILO Constitution**, the need for **int'nal cooperation** & establ't of ILO was desired to address the **three social and economic concerns of the time:-** '*social injustice*'; '*social revolution*(social unrest)' and '*social dumping*'. What are they? Describe!

Introd'n...

- **The above 3 pillars of ILO addressed the tripartite interests & concerns of the 3 imp't actors** in labor r/ns- i.e. employees, employers & the government.
- So how can you ***evaluate the impact of ILO*** in the protection & promotion of labour rights?
- **Ethiopia** became the **member of ILO since 1923....** Incorporated into its laws some major instruments/ standrds emanating from ILO.....see the ILO index on status of ratification.....

Introd'n...

At National Level:- The Case of Eth.

- Dev'p of EL/LL had more or less similar pattern in Eth even if came late due to.....
- It was an **outcome of a slow and prolonged economic and social transformation.**
- Ethiopian labour development was very much associated with the emergence of **industries and industrial production systems.**
- ***Social, cultural & legal cond'ns*** were not also conducive for LL dev'p....despise/outcast both trade and manual work in Eth.

Introd'n...

- **A case in point:-** Minilek's adoption of law on such negative social attitude(1908).
- **Victory of Adwa(1896)** & emergence of capital mode of production then after.....
- In Ethiopia, **railway, telecommunication and banking services** were the earliest economic establishments- w/c attracted appreciable numbers of labourers from the countryside.
- The emergence and subsequent development of **urban centers-** including AA & DD.

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Introd'n...

- The **unfavorable legal environment** at the time that was responsible for hindering the development of labour relations in Ethiopia.
- **Slavery** was an entrenched and legally recognized social relation in the country until it was **abolished by law in 1942 &** was incompatible with the emergence of labour relations.

Introd'n...

- Due to long **absence of statutory f/work, 'contractual freedom'** became the legal basis for the parties' relationship-problematic!!

Among legislative measures:-

- **The 1931 first Const'n of Eth** and a Proc'n to abolish slavery (1931)-
- **Slavery abolition proclamation** of 1942 (no.22/42).

Introd'n...

- The **Factories' proclamation of 1944** (no.58/44)- limited intervention on safety & health issues in factories...
- **The 1955 Rev. Const'n**- recognized freedom of occupation & assoc'n;
- **The 1950s-1960s**- the period of codif'n & introd'n of modern codes:

The 1960 Civ. Code was imp't legal instrument providing rules on:

- ✓ General K(arts.1675ff);

Introd'n...

- ✓ **'Contracts for the Performance of Services'** (Title XVI arts.2509ff)- provided for minimum labour conditions, no term'n of EK w/o good cause, social entitlements in the form of paid leaves, prevention EI rules, etc.
- ✓ **Missing in the Civil Code:-** the issue of unionization, collective bargaining & dispute settlement mechanism;
- ✓ **'Contract of work & labour** (arts. 2610ff);

Introd'n...

- ✓ **The 1st specialized labour legisl'n in Eth:** was adopted in the form of Decree in 1962 & latter became **Lab-R/n-Proc. No.210/1963**.
- ✓ **Proc-no.210/63-** provided for collective labour aspect, LDR system(LRB) & other MLCs.....

Military Rule: The Derg Regime(1974ff)

- ❖ Abrogation of LRP 210/63 & replace by the famous **LP-no.64/1975;**
- ❖ It brought a shift in ideology- **socialist** oriented;
- ❖ More focus on E/security....
- ❖ Abolished **LRB** & created **labor specialized court;**

Introd'n...

During TGE:

- ❖ A new **LP-no.42/1993** was adopted;
- ❖ More of **market-oriented law** & attempted to balance capital-labour interest protection;
- ❖ Later replaced by another famous **LP-no.377/2003** & its 2 amending proc'ns- some changes introduced;

Current lab-law:

- ❖ The adoption of **Proc. No. 1156/2019**- unified all amend'ts & filled some ongoing gaps in.....
- ❖ Also introduced some new rules on.....

Introd'n...

In the area of Civil Service Law

- Unlike Lab-law, no much ups downs.....
- Primarily based on **gov'tal decrees, orders, reg'ns, legal notices & circulars** (mostly subordinate legisl'ns).
- The **1st Public servants law** was issued in 1961(Order No. 23/1961).
- A **Reg'n** was issued to implement the Order Reg.no.1/1961).
- Followed by a series of latter additions in law... like 262/2002, 515/2007, 1064/2017....

Introd'n...

1.3. Sources of EL/LL

- **Sources:** any legal instruments/documents regulating E.r/ns;
- It could be **National** or **international** sources.
- **Intern'al sources:** Conv'ns/treaties, recommend'ns, other declaratory insts;
- **National sources:** could be either public or private in nature & origin;
- **Public sources:-** const'n, proc'ns, reg'n, directives, decisions of FSC(by 454/2005),

Introd'n...

- **Private sources:** Insts of private origin w/r bilateral or unilateral but binding the parties such as KE, CA, WRs, etc
- Private sources are more imp't under lab.law than CSL.....

Hierarchy of applc'n of multiple sources

- ✓ The rule of **general hierarchy of law** not applicable here.
- ✓ Rather guided by the pp of the **more favorable/benefit** to the disadv party in the r/n....

Introd'n...

1.4. Scope of Application of EL/LL

- Essence of determining scope of appl'n of EL/LL;

Key terms/concepts:

- **worker/employee** (Art.2(3)LP- always physical person..
 - **employer/undertaking** (art.2(1&2)LP... type of undertak.
 - **public/civil servant** (art.2(1)CSP),
 - **gov't inst'n** (art.2(3) CSP) Vs. Pb enterprise
 - **KE** (art.4LP) Vs. letter of appointment(art.21CSP).
- **EL basically applies to E.r/ns**- based on EK- but not to all types of E.r/ns.....some excluded!
 - **All E.r/ps originate from EK**- basic tool for E.r/ns- special K(See art.4(1)LP).

Introd'n...

- As type of K, EK need to **fulfill all validity requ'ts** for the making of K in general.

But EK has still basic defining elements: Art. 4LP

i. The necessity of agreement of the parties (voly engag't).

ii. Performance of work- rendering personal service

iii. Under the authority/direction/control...etc. of the emplr- both process & result-oriented.

iv. Duration of engag't(EK)- **indefinite** or **definite** period or for **piece work** (arts.9 & 10 LP).

v. Wage/remuneration (in cash or in kind)- onerous transaction(arts. 55ffLP).

Introd'n...

- If the above requ'ts are **fulfilled together**, there will exist E.R/n(Emplr-Employee r/ns)... a ***special type of relation***.
- But EL/LL have their own ***scope of appl'ns***, that is, **some E.R/ns may be excluded** from the ambit of labor law or civil service law- called the **concept of exclusions**(See arts. 3LP & 2(1&2) CSP).
- In EL/LL, **inclusion is the rule & exclusion is an exception** (See Art. 3LP & 2CSP).

Introd'n...

The Concept of Exclusion:

➤ Steps in the determination of scope of appl'n of lab.law/CS-law:-

1st stage:- W/r there exist emplr-employee r/n(KE-E.R/n) or not.....based on the previous elements.

2nd stage:- If yes to the 1st stage, then w/r such r/p falls under the ambit of or excluded from certain EL/LL regime.

Introd'n...

Exclusions under Ethiopian laws

- **Civil Code(art.2513)-** excluded pb servants& state employees.
- **Public servants order of 1961-** excluded some state employees, police & armed forces, judges, ministers, parliamentarians,....
- **Labor R/n Proc. of 1963-** excluded M/staff, D/servants, agr.employees, pb servants,...
- **Labor Proc. of 1975-** police & armed forces, judges, prosecutors & registrars, state employees, D/servants, M/staff,...

Introd'n...

- ***Labor Proc. No. 42 of 1993***- has more or less similar list of exclusions to that of Lab.Proc. 377/2003 & 1156/2019.

Exclusions may be of 2 types:

1. automatic/outright/unconditional(art.3(2)LP); &
2. conditional/potential(art.3(3)LP) exclusions.

A. Common types/lists of unconditional exclusions under current labour law include:

- i. Ks for the purpose of upbringing, treatment, care or rehabilitation-* 3(2/a);
E.g. tutor-minor r/p, doctor-patient r/p, prisoner-prison adm'n r/n, etc

Introd'n...

ii. ***Ks for the purpose of educating or training other than apprentices-*** 3(2/b)&48ff LP; E.g. R/ns b/n academic/training inst'ns & their students/trainees,

iii. Managerial employees(MEs)- 3(2/c)- is one of the famous labor law exclusions- but we have some interesting issues in r/n to exclusion of MEs....

- ✓ What is the purpose for ME exclusion?
- ✓ Who are MEs & how determined? Source of managerial power(by law or delegation) & the actual/real power/function exercised!
- ✓ What if there is doubt on ME status? Doubtful status

Introd'n...

- ✓ What will be the fate of MEs? How their rights & interests are protected?
- ✚ See some **decisions of the FSC on MEs status** determination, protection of their rights & rules governing MEs in Eth.!!!

iv. Ks relating to independent contractors- 3(2/f) LP & 2610ff Civ.C.

- Who are Indep't Krs & how they are similar to & differ from employees in E.R/n? See Arts. 2610 Vs. 4LP!
- **Indep't Kr**: a person who, under a **contract of service**, performs a **work in consideration of pay't** at **his own business risk** or professional responsibility.

Introd'n...

- **Similarity**: the prov'n of services(work) & pay't of remuneration...
- **Major differences** b/n **K.E(4LP)** & that of **K of work & labour(2610)**- or **Emplr-Emlope r/n Vs. Client-Contractor r/n** such as: **multiple test criteria** used by...
 - ✓ Working at his own responsibility/risk- direction/ supervision/control test.
 - ✓ Provision of means & tools of production....
 - ✓ Nature of service given- personal vs. delegated!
 - ✓ Duration of service/engag't- longer vs. shorter!
 - ✓ Organizational/integrity test-
 - ✓ Intention of the parties

Introd'n...

v. Ks for personal service-D/servants:- 3(2/d)

- ✓ What do you think would be the rational for such exclusion & will that be a good legis've app.?
- ✓ What are the legal means of protection for such groups in the country? K, 2601ff,

vi. Other exclusions- 3(2/e)....Read why so??

B. Conditional exclusions under LP: 3(3)

- A category of promised exclusion upon fulfillment of some cond'ns: making of separate domestic laws or conclusion of int'nal treaties.
- So determine appl'n of LP to Eth employees working in embassies, consular offices & int'nal organz'ns!

Introd'n...

- Also the ***status of employees in religious or charitable organz'ns:***
3(3/b)- how LP apply to them?

Exclusions under CSP:- See arts. 2(1&3) CSP

- ❖ What are the major exclusions under CSP?
- ❖ How it differs from the list of exclusions under the LP?