

EMPLOYMENT LAW

CHAPTER I:

INTRODUCTION TO 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”

1) Meaning of Employment & Labour 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 of 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.

2) Justifications 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 owning 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 contract.***
- » 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
 - ✓ slowing down production.
 - ✓ But, these ways of struggle were 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?

Emergence & Development 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 free person 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 source 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.

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

National/Municipal 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

SUMMARY

- Labour Law presuppose free labour.
- Free labour is manifestation of freedom of contract & free movement of persons that is accompanied by industrial era (capitalism).
- Abolishment of slavery & tenancy - (*Proc.22/1942 abolished slavery (of course in 1931 an attempt was made by the Emperor – slaves who want to be free can assert this claim before a judge) + the Dergue regime abolished tenancy*).
- Employment Law = a set of rules governing an 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**.

Sources of Employment Law: International & National sources

- ILO
- National & Regional laws: FDRE Constitution, Labour & Civil servants Proclamation & Regulations; Directives of MoLSA & Federal & Regional Civil Servants Commissions
- Federal Supreme Court Cassation Division Decisions (by virtue of Pro. 454/2005)
- Private Contracts
- Work Rules

- What the constitution says about labour?
- Art.

- **As of 2006 Ethiopia ratified 21 ILO Conventions some of which are:**
- ✓ **Forced Labour Convention, 1930(No.29) in 2003;**
- ✓ **Freedom of Association and Protection of the Right to Organize Convention,1948(No.87) in 1963;**
- ✓ **Employment Service Convention,1948(No.88) in 1963;**
- ✓ **Right to Organize and Collective Bargaining Convention,1949(No.98) in 1963;**
- ✓ **Abolition of Forced Labour Convention,1957(No.105) in 1999;**
- ✓ **Minimum Age Convention,1973(No.138) in 1999;**
- ✓ **Occupational Safety and Health Convention,1981(No.156) in 1991;**
- ✓ **Termination of Employment Convention,1982(No.158) in 1991;**
- ✓ **Private Employment Agencies Convention,1997(No.181) in 1991.**