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NLU DELHI

LABOUR LAW INSIGHTS

Decoding Labour Discourse: Insights, Updates, and Analysis

CLLRA NEWSLETTER | VOLUME I | ISSUE V | DECEMBER 2023

JUDGMENTS | POLICY UPDATES | NEWS | ARTICLES | OPPORTUNITIES

CENTRE FOR LABOUR LAW RESEARCH AND ADVOCACY

CLLRA

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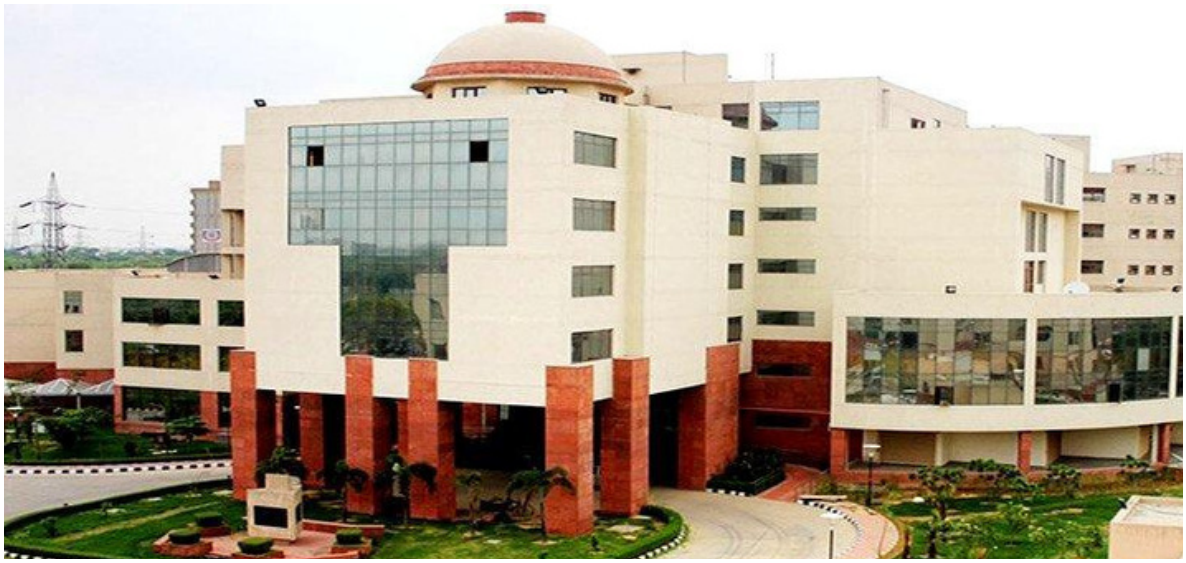

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ABOUT CLLRA

The Centre for Labour Law Research and Advocacy (CLLRA) was established in August 2022 at the National Law University Delhi (NLUD) to revitalize Labour Law research in the context of evolving work structures and legal frameworks. The Centre focuses on a 'bottom-up' approach to address livelihood issues and aims to bring about social change and improve the quality of life for the most neglected sections of working people in India through the Rule of Law. The three-tiered team of CLLRA contains Institutional Patrons, an Advisory Board and a Centre Management team under the supervision of Dr. Sophy K.J., Director of CLLRA. The Centre's pedagogy is the use of “Praxis” i.e., the use of “Theory’ and “Practice”, always ensuring that one informs the other. Hence there will always be special efforts to listen to problems and insights that emerge from the grassroots and to specialised scholars from relevant social sciences with a critical mind. The Centre is open to learning and using lessons derived from International standards, Comparative jurisprudence, Constitutional law, Statutory law, case law and experiential learning. CLLRA remains particularly sensitive to deriving insights from the ‘feminist movement’ in the struggle against patriarchy, the movement of ‘persons with disabilities’, the ‘child rights movement’, and especially the social movements of the excluded and marginalised people, to seriously internalise different perspectives and contribute substantially to the realisation of an inclusive society.

EDITOR’S NOTE

This Newsletter, titled ‘Labour Law Insights’, started as there is a need for renewed thinking to reinvigorate Labour Law in the context of debates on new work, new employment relations and new legal frameworks. The lack of exchange and sharing of information on labour law and policy updates through a consistent medium has created a vacuum in the assimilation of knowledge around the discipline. This Newsletter attempts to fill in this gap by bringing forth important judicial discourse, legislative updates, scholarly discussions and information on labour to the readers. It aims to reach a wider audience, inclusive of both students and researchers and therefore, opportunities for career/future learning are also included in the Newsletter. At the very outset, it is necessary to clarify that in today’s context when we say ‘labour’, we must take it to mean the entire ‘workforce’ in our society. The Centre will strive to study conditions in which all working people can live with dignity. There is an increasing need to study various anti-poverty and social justice measures with labour-related entitlements so that the workforce can access a package of measures which contributes to their enhanced quality of life. The 'Labour Law Insights' newsletter has four primary objectives:

(i) disseminating legal knowledge by conveying developments in Indian labour laws,
(ii) elucidating precedent through curated case laws,
(iii) cultivating awareness about legal rights and safety among the workforce, and
(iv) fostering scholarly discourse on labour law topics.

The Newsletter commits to providing an informative platform that enhances understanding of labour laws and their profound impact on the Indian labour landscape. Hope you will read and write to us at cllra@nludelhi.ac.in with your feedback.

Best regards,
Sophy

NEWSLETTER

LABOUR LAW INSIGHTS

Decoding Labour Discourse: Insights, Updates, and Analysis

LANDMARK LABOUR JUDGEMENTS

Supreme Court

Appointment can not made over the vacancies

VIVEK KAISTH AND ANOTHER V. THE STATE OF HIMACHAL PRADESH AND OTHERS

Court: Supreme Court of India Citation: **Civil Appeal No**.6233-6234 of 2023

Facts: Appointments in the Himachal Pradesh PSC for 8 vacancies for magistrates was made through advertisement. Out of the 8, 6 were 'existing vacancies' and 2 were anticipated vacancies. Afterwards, the list of the 8 names was released. However, the names of the 2 appellants were only published after the Government Circular. The HC quashed these appointments as illegal, after which the current appeal was filed.

Judgment: The SC held the appointments as illegal, holding that appointments by the State Commissions cannot be made over the vacancies which have been advertised. Vacancies that did not exist or could not be anticipated at the time of advertisement can only be filled by future applicants. However, considering the interests of public policy and the fact that the magistrates have already served for 10 years, the SC refused to unseat them.

VACANCIES THAT DID NOT EXIST OR COULD NOT BE ANTICIPATED AT THE TIME OF ADVERTISEMENT CAN ONLY BE FILLED BY FUTURE APPLICANTS

UNION OF INDIA V. D.G.O.F. EMPLOYEES ASSN.

PARITY IN PAY SCALE

Court: Supreme Court of India **Citation:** 2023 SCC Online SC 1471

Facts: The Respondents were employed in the Headquarters of the Ordnance Factory Board as administrative staff and sought upgradation of their salary to similarly placed employees in the Central Secretariat Service ('CSS') and equivalent posts in the Armed Forces Headquarters Civil Service Cadre, and other similar Headquarter cadres. The HC held that the respondents were treated as equals to the above cadres and therefore should enjoy equal pay.

Judgment: The SC held that parity in pay scales should not be allowed for the two sets of employees when there was no comparison at all, in which case it should be left to expert bodies such as the Pay Commission. However, when the employees were similarly placed in similar organizations, then the distinction in pay would be arbitrary and irrational, as it was in the present case. The SC did not interfere with the HC judgment and allowed the parity in pay.

PARITY IN PAY SCALES SHOULD NOT BE ALLOWED FOR THE TWO SETS OF EMPLOYEES WHEN THERE WAS NO COMPARISON AT ALL

Relaxation in Qualification by State

RECRUITMENT ADVERTISEMENT CAN NOT RESERVE THE STATE'S POWER TO RELAX ELIGIBILITY QUALIFICATION

ANKITA THAKUR V. H.P. STAFF SELECTION COMMISSION

Court: Supreme Court of India **Citation:** 2023 SCC OnLine SC 1472

Facts: The Himachal Pradesh Subordinate Services Selection Board invited applications for appointments to various posts. The recruitment advertisement required the candidates to fulfill all the requirements including diploma/certificates from registered institutes. Due to ambiguity in this wording, the State relaxed the scope of such institutes, leading to more eligible candidates. A petition was filed against those candidates who had lost in merit due to the increase in eligible candidates due to relaxation of the rules. The HC upheld the relaxation and dismissed the petition.

Judgment: In this case, the Supreme Court held that the state had to provide enough notice if the recruiting guidelines are changed. Though the state has power to relax the eligibility criteria, the same cannot be done mid-stream without giving wide publicity of such change. A number of petitions against the Himachal Pradesh High Court's ruling, which supported the State Government's decision to relax the qualifying conditions for the position of Junior Office Assistant (JOA), were being heard by the two-judge bench made up of Justices Hrishikesh Roy and Manoj Misra. The High Court cited the previous mandated qualifications' ambiguity and vagueness as justification for maintaining the aforementioned relaxation. Supreme Court disagree with the High Court view and thus overturn it.

Deemed Voluntary Retirement

MASTER-SERVANT RELATIONSHIP CONTINUES DURING SUSPENSION PERIOD, WORKMAN TO FOLLOW ALL RULES GOVERNING POST

U.P. SINGH V. PUNJAB NATIONAL BANK

Court: Supreme Court **Citation:** Civil Appeal No. 5494 of 2013

Facts: The petitioner, a bank employee, faced suspension and subsequent disciplinary action due to disorderly behavior. After an enquiry, he was punished with the stoppage of increments and advised to report to another branch. Failing to do so, he was deemed to have voluntarily retired. The petitioner contested, arguing that order was illegal, citing issues with reinstatement conditions, transfer distance, lack of subsistence allowance, and the timing of the transfer. The bank emphasized the employee's misbehavior and non-compliance, justifying the disciplinary actions. Despite an initial ruling in favor of the petitioner by the Tribunal, the High Court, in a writ petition, reversed the decision, a verdict upheld in an intra-court appeal.

Judgment: Supreme Court bench of Justices Hima Kohli and Rajesh Bindal addressed the matter of deeming voluntary retirement in a Bipartite Agreement. The court emphasized that a master-servant relationship persists during suspension, and the worker is obliged to adhere to contractual obligations.

High Court

Recruitment of Drivers must be through transparent process

TAMIL NADU STATE TRANSPORT EMPLOYEES' FEDERATION V. GOVERNMENT OF TAMIL NADU

Court: Madras High Court **Citation:** W.P.No.31458 of 2023

Facts: The TN State Transport Employees' Federation challenged the decision of the transport authorities to engage drivers and conductors through a third-party manpower agency to manage the bus operations. The federation contended that they had already entered into an agreement with the transport authorities, which provided that all direct recruitments would be done by the transport management through the Employment Exchange and not through any other way. Thus, by adopting a new recruitment procedure of outsourcing, the authorities were violating the terms of this mutual agreement.

Judgment: The Madras HC upheld the agreement that was entered into between the transport authorities and the federation. It observed that when two categories of drivers were employed, one being mass employed through outsourcing companies and other being directly employed, it would also violate the principle of equality enshrined in the Constitution. The transport authorities contended that labour unrest was a perennial problem when utilizing direct recruitments, however the Court stressed that though labour unions were usually looked upon with contempt as if they exist to hamper smooth functioning, labour unions in actuality serve an essential purpose in a democratic set up. The court thus advised the authorities to adopt a more transparent and easier process to recruit drivers instead of venturing into the outsourcing mode through man power agencies.

AUTHORITIES TO ADOPT A MORE TRANSPARENT AND EASIER PROCESS TO RECRUIT DRIVERS INSTEAD OF VENTURING INTO THE OUTSOURCING MODE THROUGH MAN POWER AGENCIES.

Compensation for unfair termination

KIRAN P. PAWAR V. BATA INDIA LTD.

Court: Bombay High Court **Citation:** Writ Petition No. 5862 of 2018

Facts: In 2007, Bata, a footwear manufacturing company, decided to operate its showrooms all seven days of the week with extended hours. The Maharashtra State Government permitted this only on the condition that a weekly holiday would be given to each employee and the showrooms would close at 9:30 pm.

Bata, in response, prepared a separate duty chart for each employee that would allow them to open its stores 24/7. Some of its salespersons opposed this sudden change in working hours and refused to comply with the new chart, because of which they were subsequently terminated.

Judgment: The Court held that these employee's were unfairly terminated and awarded them compensation. Further, the Court examined the various provisions relating to 'sales-persons' as 'workmen' and observed that usually salespeople would not come under the Industrial Disputes Act. However, in this case, recognizing that these workers were also in charge of cash handling, keeping records of stock and preparing memos along with other work, their multifaceted roles went beyond merely being sales-people and thus they were considered employees under the Act.

The Court directed Bata to provide a lump-sum of approximately 75% of the back wages to each employee for the last 16 years.

THE COURT DIRECTED BATA TO PROVIDE A LUMP-SUM OF APPROXIMATEL Y 75% OF THE BACK WAGES TO EACH EMPLOYEE FOR THE LAST 16 YEARS FOR UNFAIR TERMINATION.

Discrimination against Women in employment

KUSH KALRA V UNION OF INDIA & ORS

COURT DIRECTED CISF TO AMEND ITS RECRUITMENT RULES TO ALLOW FOR RECRUITMENT OF WOMEN AS DRIVERS WITHIN 6 MONTHS

Court: Delhi High Court **Citation:** W.P.(C) 4186/2018

Facts: The writ petition was filed seeking a writ of mandamus to the Central Industrial Security Force (CISF) to allow recruitment of women as Constable (Drivers) and Constable (Driver-Cum-Pump Operator) in the fire services, at par with men in the CISF.

Judgment: The petition contended that the exclusion was not based on any rational criteria or reasonable justification and therefore, amounted to discriminatory practices. The Court, keeping in mind that the matter had been pending for over 5 years, directed the CISF to amend its Recruitment Rules to allow for recruitment of women as drivers within 6 months, i.e. on 15th July, 2024.

THIRUMAAVALAVAN V. STATE OF T.N.

SC / ST & Women Representation in Law officer posts

Court: Madras High Court **Citation:** W.P. No. 14582 of 2017

Facts: The writ petition was filed against the “Appointment of Law Officers of High Court of Madras and its Bench at Madurai (Appointment) Rules, 2017” which sought directions from the High Court to frame new rules to ensure adequate representation to women, SC/STs and Minorities in the appointment of law officers, as the existing Rules did not provide for this reservation in appointment and were therefore liable to be quashed.

Judgment: The Court noted that the relationship between an advocate and his client is of active confidence and trust, and therefore the government is bound to select only the most capable persons. Thus, it held that merit ought to be the sole consideration in selection of Law Officers. It further stated that the relationship between the government and the Law Officer is purely professional, and the Law Officer is not a servant of the government and does not hold any civil post. Therefore, their appointment is totally up to the discretion of the government and thus, Article 16(4) of the Constitution would not apply. The Court upheld the Rules and stated that neither vertical nor horizontal reservation is required to be provided while appointing Law Officer.

NEITHER VERTICAL NOR HORIZONTAL RESERVATION IS REQUIRED TO BE PROVIDED WHILE APPOINTING LAW OFFICER.

Disability pension and Employment

SHAKUNTALA DEVI V. STATE OF UP AND 2 ORS.

COURT ORDERED GOVERNMENT TO PAY THE ARREARS AMOUNT WITH INTEREST DUE TO THE DELAY CAUSED BY THE GOVERNMENT’S INACTION TO PAY DISABILITY PENSION TO PERSON’S WIDOW

Court: Allahabad High Court **Citation:** 2023: AHC:196401

Facts: The petitioner’s husband was employed in the government service and passed away in 2020 due to paralysis. After his passing, the widow filed for pension and other related paperwork, but was unable to obtain this sum in full, after which she filed the present petition before the High Court.

Judgment: The Court relied on the Rights of Persons with Disabilities Act, 2016 and emphasized its prohibition on employment discrimination against people with disabilities. Since paralysis was a form of disability, it fell under the provisions of the Act. The High Court stated that as the petitioner's husband was suffering from paralysis and was not in a position of fit physical condition to attend the office, such a person would definitely be entitled to pay from the State which is to act as a model employer. Hence, the petitioner's husband was fully entitled to payment for the period of medical leave in which he could not attend due to paralysis. The Court ordered the government to pay the arrears amount with interest due to the delay caused by the government’s inaction.

Termination without hearing

FEROZ AHMED SHEIKH VS UNION TERRITORY OF J&K

Court: High Court of J&K **Citation:** WP(C) No. 2260/2022

Facts: The petitioners were engaged on a contingency basis in the J&K Handicrafts Corporation. Their services were abruptly terminated after allegations of misconduct by the Anti-Corruption Bureau. They challenged their termination, contending that they had been given no opportunity to be heard.

Judgment: The Court noted that the order of termination was based on allegations that effectively cast a stigma on the petitioners, impacting their reputation and future prospects. In such cases, terminating employment without affording a chance to the petitioners to defend themselves and without a proper inquiry, would violate the principles of natural justice. The Court quashed the termination order and directed the Corporation to reinstate the petitioners.

TERMINATION WITHOUT AFFORDING A CHANCE TO THE PETITIONERS TO DEFEND THEMSELVES AND WITHOUT A PROPER INQUIRY, WOULD VIOLATE THE PRINCIPLES OF NATURAL JUSTICE.

Disclosure of criminal history for employment

BINEET SINGH BISHT V. UNION OF INDIA AND ANR.

Court: Delhi High Court **Citation:** W.P.(C) 5250/2018

Facts: The plea was moved by a Sub-Inspector who had joined the Indo-Tibetan Police Force but was subsequently terminated as he had concealed the facts relating to criminal cases that were pending against him at the time.

Judgment: The HC observed that there was no room for an individual who sought employment in armed forces by concealing facts about his criminal antecedents. It further emphasized that there has to be strict obedience towards disclosures of criminal histories by anyone seeking employment in disciplined forces. The Court dismissed the plea and upheld the termination of the Sub-Inspector

THERE HAS TO BE STRICT OBEDIENCE TOWARDS DISCLOSURES OF CRIMINAL HISTORIES BY ANYONE SEEKING EMPLOYMENT IN DISCIPLINED FORCES.

Maternity Leave and Employment

DR. ATHIRA P. V. STATE OF KERALA & ORS.

Court: High Court of Kerala **Citation:** OP(KAT) NO. 507 OF 2023

Facts: The pleas were filed by two lady doctors who had become mothers while undergoing their postgraduation, due to which their compulsory senior residency programme commenced late and would be completed only by mid-January 2024. During this time, the Kerala State Public Service Commission advertised for the post of Assistant Professor which required a period of one year of experience as a Resident after acquiring post-graduation. Since the petitioners were not able to apply for the notified post since they did not have the prescribed qualifications at the time of application, they sought relief from the High Court.

Judgment: The Court observed that biological differences such as motherhood might lead to indirect discrimination towards women. Emphasizing that gender equality has to be realistic and based on practical factors, it observed that there might be situations that arise because women were not able to respond on account of the time frame. It thus observed that if the last date for submitting experience of the residency programme was extended for those who had been affected by maternity leave, that hurdle faced by women could have been easily addressed. The Court had passed an interim through which the petitioners could apply to the post, which it now made absolute.

BIOLOGICAL DIFFERENCES SUCH AS MOTHERHOOD MIGHT LEAD TO INDIRECT DISCRIMINATION TOWARDS WOMEN

Reservation policy to locals

IMT INDUSTRIAL ASSOCIATION AND ANOTHER V. STATE OF HARYANA AND ANOTHER

Court: High Court of Punjab and Haryana **Citation:** 2023: PHHC:145649-DB

Facts: The Haryana government had passed the Haryana State Employment of Local Candidates Act, 2020, which provides 75% reservation for domicile of Haryana in private sector jobs having a monthly salary of less than Rs 30,000. The constitutionality of the aforementioned law was challenged in this case.

Judgment: The Court declared the law unconstitutional, observing that Article 35 of the Constitution bars the Legislature of the State to make any laws in matters under Article 16(3), which is available only to the Parliament. It would also violate the right to equality under Article 14 as it discriminates between people of different states and the right to freely move and practice any profession under Article 19(1)(d) and Article 19(1)(g) respectively. The Court further stated that the reservation policy to locals only was discriminatory and would 'build a wall around the state'.

The High Court held that it was not open to State Legislatures to direct the private employer to employ from any one state and this would go against the spirit of oneness envisaged by the Constitution.

IT WAS NOT OPEN TO STATE LEGISLATURES TO DIRECT THE PRIVATE EMPLOYER TO EMPLOY FROM ANY ONE STATE AND THIS WOULD GO AGAINST THE SPIRIT OF ONENESS ENVISAGED BY THE CONSTITUTION.

Compassionate Employment to Riots Victims

BAL AMRIT SINGH V. UOI & ORS.

Court: High Court of Punjab and Haryana **Citation:** 2023: PHHC:157268

Facts: The father of the petitioner had allegedly died in the 1984 Operation Blue Star and sought compassionate employment on the basis of a circular issued by the Government granting compassionate appointment to the dependent family members of the persons killed in terrorism/riots.

Judgment: The Court found that the petitioner had attained majority in 1998 and subsequently his case had been rejected. Since a period of more than 20 years had passed, compassionate employment could not be offered as the goal of such a mode of employment is to address the immediate financial difficulties of the family of the deceased, which can no longer be said to be subsisting today. Thus, the Court dismissed the writ petition on account of efflux of time.

COMPASSIONATE EMPLOYMENT NOT BE OFFERED AS THE GOAL OF SUCH A MODE OF EMPLOYMENT IS TO ADDRESS THE IMMEDIATE FINANCIAL DIFFICULTIES OF THE FAMILY OF THE DECEASED

International Cases

Riders as Employee

LABOUR PROSECUTOR V DELIVEROO, BELGIUM (BELGIUM)

COURT HELD THAT RIDERS OF DELIVEROO SHOULD BE CLASSIFIED AS EMPLOYEES.

Court: Labour Tribunal of Brussels **Citation:** 2021/014148

Facts: The labour prosecutor requested for the requalification of the riders of the Deliveroo as 'employees', which is a home-delivery service in which drivers sign up independently. The company contended that the Deliveroo drivers were self-employed as they had the freedom to organize their work and working hours, as well as the lack of precise instructions from the company.

Judgment: The Court held that the terms of the employment relationship were inconsistent with that of an independent employment relationship and held that they should be classified as employees, therefore providing them access to employee benefits such as sick leave, a fixed salary and paid vacation.

CEDERMAN V OLEOCHEM PROJECT MANAGEMENT (AUSTRALIA)

Constructive Dismissal

Court: Fair Work Commission **Citation:** [2023] FWC 2892

Facts: The Director of the company consistently asked the petitioner to attend medical assessments and threatened her with disciplinary action if she did not attend such assessments. He ignored the medical evidence she had provided and harassed her about her evidence about her medical leave. The petitioner then resigned from the post.

Judgment: The Commission determined that the petitioner did not resign voluntarily but was forced to do so by the cumulative conduct engaged in by the Director, noting that some of the Director's conduct 'bordered on egregious' and 'demonstrated a wilful blindness to the petitioner's circumstances.' The Court thus enumerated the concept of 'constructive dismissal', holding that the petitioner did not resign out of her own free will but was rather terminated due to the behaviour of the employer.

COURT ENUMERATED THE CONCEPT OF 'CONSTRUCTIVE DISMISSAL', HOLDING THAT THE PETITIONER DID NOT RESIGN OUT OF HER OWN FREE WILL

Consultation in a redundancy situation

HAYCOCKS V ADP RPO UK LTD (UK)

CONSULTATION IN A REDUNDANCY SITUATION SHOULD TAKE PLACE AT A FORMATIVE STAGE

Court: Employment Appellate Tribunal **Citation:** [2023] EAT 129

Facts: The claimant was made redundant after scoring the lowest result on a work test in comparison to his colleagues. He complained that the dismissal was procedurally unfair, with the criteria used being entirely subjective. He complained that he had not been given information about the scores in order to challenge the scoring, and further was only given information about the scores after he had been dismissed.

Judgment: The tribunal allowed the appeal, holding that an important general principle is that consultation in a redundancy situation should take place at a formative stage where an employee or representative is given adequate information and time to respond and where genuine consideration is given to the response. In this case, the claimant was not allowed to challenge his dismissal or respond to it, and therefore it was unfair and arbitrary.

POLICY AND LEGISLATIVE UPDATES

EMPLOYEES STATE INSURANCE CORPORATION EXTENDS MEDICAL SERVICES PAN INDIA

The portability of Employees State Insurance Corporation of India (ESI) service delivery across India has been expanded by an office letter dated November 13, 2023, with reference number U-13/14/ATR/ESIC/38/2021/01(1076). As a consequence, under the Dhanwanthri module, beneficiaries and insured individuals under ESImay can receive medical consultations and medication issuance from any hospital or dispensary in India, regardless of the dispensary designated on their beneficiary card. Additionally, medications for chronic illnesses may be prescribed for a maximum of ninety days based on need.

UPLOADING OF DETAILS AND DOCUMENTS ON THE WEBSITE BY CONTRACTORS AND PRINCIPAL EMPLOYERS UNDER CLRA MADE NOT MANDATORY

Contractors using contract labor were obliged to post information about the type of worker, salaries, and statutory records on their official website in accordance with previous directives from the Office of the Commissioner (Labour), Government of the NCT of Delhi. If the contractor doesn't have a website of his own, the major employer had to submit it to his website before the contractor could upload it. Furthermore, the relevant registering/licensing official had to receive physical copies of all necessary documentation.

In light of the current "Ease of Doing Business" framework and in an effort to reduce compliances that burden employers and impede business processes, the Department Committee has reviewed this requirement and, via an Office Order dated November 10th, 2023, bearing F. No.: DLC (HQ-II)/CLA/2022/5633-5635, recommended that it not be mandatory. Nonetheless, registration and application processing under the Contract Labour (Regulation and Abolition) Act, 1970 must precisely adhere to the Act's requirements and any rules derived from them.

ESI ISSUED GUIDELINES FOR SETTING UP IN-HOUSE HAEMODIALYSIS FACILITIES

Employees State Insurance Corporation (“ESIC”) has issued guidelines, through an Office Letter dated November 10th, 2023, bearing No.: U-16015/18/2023-Med-I (488707) for developing in-house haemodialysis facilities under the Pradhan Mantri National Dialysis Programme (PMNDP) in ESIC hospitals for providing better care and integrated service delivery for critical patients and overall beneficiary satisfaction.

The key recommendations for the development of in-house dialysis are as follows:

- Each hospital must identify the total number of patients who have registered for dialysis services and work out the total number of dialysis machines required based on patient load.
- The Broad Specialty department shall initiate the process of an in-house dialysis unit and post-doctors/residents as per the needs.
- Standard guidelines for setting up of Haemodialysis unit are to be followed.
- While a nephrologist is recommended for hospitals with up to 200 beds, for hospitals with more than 200 beds, it is mandatory to have their own nephrologist and development of in-house dialysis services.
- The minimum staff pattern for a proposed dialysis unit includes nephrologist, dialysis doctors, dialysis technicians, dialysis nurses, dialysis attendants, medical social worker, dietician and sweepers.
- The staff shall bear the prescribed training and undertake the job responsibilities, auditing and updating as required, from time to time.

EMPLOYEES STATE INSURANCE CORPORATION OF INDIA ISSUES GUIDELINES FOR THE HOME DELIVERY OF DRUGS AND HOME SAMPLE COLLECTIONS

In order to reduce long travel and undue hardships for availing medical facilities suffered by beneficiaries, the Employees State Insurance Corporation ("ESIC") has through a circular dated November 3rd, 2023, bearing No.: V-14/11/15/2014/Med. It has extended the facility of home delivery of drugs and home sample collection to entitled insured persons and beneficiaries and framed guidelines for its implementation. Some imperative features are as follows:

A) Delivery of drugs:

- Eligibility: It is applicable to all senior citizens (above 60 years) with chronic illnesses entitled to treatment with ESIC, receiving consultations from hospitals and prescribed medicines for more than 30 days. Further, all beneficiaries, ESIC employees and their dependents, pensioners seeking teleconsultation through e-sanjeevani / dhanwantri for chronic ailments requiring medicines for 30 days or more.
- Hospitals must float a bid on GeM portal for hiring of services for doorstep delivery of drugs inclusive of packaging, collection and electronic information to the beneficiary through SMS/Whatsapp regarding dispatch of drugs and confirmation of delivery to them.
- After consultation, the treating doctor will generate an online prescription for the beneficiary concerned. If desirous of home delivery, the eligible patient can click home delivery option on prescription page. The drugs should be delivered within a maximum of 48 hours (excluding the day of prescription).

B) Home Sample Collection:

- Eligibility: All insured persons and ESIC employees above 40 years are eligible for home sample collection enrolment facility once a year. Further, all senior citizens and their spouses above 60 years are eligible to avail such facility once a year.
- The services are offered only in identified districts decided by the Dean/MS of concerned hospitals. The services may be availed by eligible beneficiaries through AAA+ app. A nodal office for monitoring sample collection, quality control and report dispatch shall be designated in respect of each concerned hospital. Further, the hospital shall also develop its own SOP basis local needs, process flow requirements, guidance from vendors and grievance redressal.

MANIPUR NOTIFIES MANIPUR SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 2021

Through a notification dated November 2, 2023, and bearing No. 2/29/2021-Leg/L, the Manipur government has issued the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2021. It will be regarded as having gone into effect on June 29, 2021, and it will apply to all stores and businesses that have ten or more employees. The aforementioned Act unifies and modifies legislation concerning the regulation of employment and related topics, such as establishment registration, employer responsibilities, leave and holiday policies, and welfare provisions.

ADDITION OF PAYMENT BANK ACCOUNTS FOR PAYMENT OF EPF BENEFITS TO SUBSCRIBERS

In a circular dated November 1, 2023, the Employees Provident Fund Organization announced that the Reserve Bank of India had added two payment banks, Paytm Payments Bank Limited and Airtel Payments Bank Limited, to the second schedule of the Reserve Bank of India Act, 1934. The circular had File No.: BKG/1/2021-BKG/C-32521/181. As a result, among other banks, Regional and Zonal Officers have been urged to settle EPF benefit payments through them.

UNION GOVERNMENT TO AMEND SEZ RULES TO PERMIT HYBRID WORK MODEL

The Union Government has issued a notification dated November 7th,2023 for amending Special Economic Zones Rules, 2006 by substituting rule 43-A. These amendments shall come into force on the date of their publication in the Official Gazette. Some of the key amendments are as follows:

- A Unit may permit employees who are of IT & ITES sectors, temporarily incapacitated, travelling and working offsite to work from any place outside the Special Economic Zone basis its requirements. Such permission shall be applicable up to December31st, 2024.
- Hybrid work facility may cover all the employees of the Unit. Moreover, the Development Commission must be intimated by the Unit through e-mail on or before the date of permitting hybrid work facility.
- The list of employees who have been permitted hybrid work shall be maintained by the Unit and submitted for verification whenever required by the Development Commissioner.
- The Unit may provide duty free goods such as laptops etc., for hybrid work to the employees and the same shall be allowed to be taken out of the Special Economic Zone on a temporary basis; and
- The Unit shall appropriately account for the export revenue with respect to products and services resulting from the work for which hybrid work is permitted.

REPLY FROM EMPLOYERS FOR REGISTRATION OF EMPLOYEES UNDER ESI

The Employees' State Insurance Corporation has reiterated, through office circular dated November 6th,2023 bearing No.: P-11/12/Misc./SST Misuse/2019-Rev-II that, in compliance with extant guidelines for registration of employees, the employer is required to submit relevant reply/records within 15 days of issue of show cause notice in the prescribed proforma to the concerned authority.

After verifying the records, the authority can accept the date of appointment declared by the employer. Accordingly, the employer can file contributions of the employees from the date of appointment. All cases where the employer has submitted a request with requisite documents may be processed within 7 days.

PRODUCTION OR DISTRIBUTION OF FUEL GASES NOTIFIED AS PUBLIC UTILITY SERVICE

Through notification bearing No. S.O.4879(E), the Central Government has declared that services involved in the processing, production, or distribution of fuel gases (coal gas, natural gas, and the like) are public utility services for the purposes of the Industrial Disputes Act, 1947. This notification is valid for six months from the date of notification, which is November 9th, 2023.

AMENDMENT TO JAMMU AND KASHMIR BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) RULES, 2006

The Government of Jammu and Kashmir has brought about following significant amendments to Jammu and Kashmir Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Rules, 2006 through notification dated November 7th,2023:

- Beneficiary's children shall be entitled to financial assistance from the Board in the form of scholarship, stipulated for each class/course, as applicable.

- The Board shall provide financial assistance of INR 50,000 for the marriage of a construction worker or his/her dependent real sons and daughters. Such assistance shall be restricted to two dependents only.

An application for financial assistance shall be submitted along with the requisite documents, at least 3 months prior to the actual date of marriage or within 2 months from the actual date when the marriage has taken place.

ANNUAL SUBMISSION OF LIFE CERTIFICATE UNDER EMPLOYEES' PENSION SCHEME, 1995

A guideline for submitting a life or remarriage certificate once a year under the Employees' Pension Scheme, 1995, to maintain one's pension has been released by the Employees' Provident Fund Organization (EPFO). A life certificate can be filed once a year via a variety of channels, including the Umang app, common service centers, and banks that are permitted to receive pension payments under the relevant scheme. The certificate is valid for a year from the date of submission. If the pensioner passes away after September 1, 2014, the widow or widower will get half of the approved amount as of the date of death, with a minimum pension of INR 1000. Further, along with such widow pension 25% pension shall be payable to 2 children till age of 25 years and 75% pension in case of orphan children.

MINISTRY OF LABOUR AND EMPLOYMENT RELEASES HANDBOOK ON CONVERGENCE

In order to achieve convergence at the field level through cooperative efforts among verticals for information exchange, grievance redressal, and awareness creation with respect to various services of the Ministry and its organizations, the Ministry of Labour and Employment has released a Handbook on the Convergence of various organizations under it. It lays out detailed SOPs for updating the Ministry's digital office map, holding monthly cross-functional team meetings in each State or Union Territory, having ministry personnel and bureau heads provide tours, and engaging in outreach programs for both organized and unorganized sectors.

PUNJAB & HARYANA HIGH COURT DECLARES 75% RESERVATION IN PRIVATE SECTOR JOBS IN HARYANA TO LOCALS AS UNCONSTITUTIONAL

The Haryana government passed the Haryana State Employment of Local candidates Act, 2020, requiring companies in the state to employ 75% of local applicants. Employers operating as a business, society, trust, limited liability partnership, partnership firm, or any individual paying salary, wages, or other compensation to ten or more workers are covered by this policy (apart from the federal or state governments and any entities under their ownership). The aforementioned Act was challenged before the Punjab and Haryana High Court in nine separate writ petitions, CWP nos. 26573 of 2021 and other related matters, for violating the rights to equal employment, residence, and settlement under Article 14 and for imposing arbitrary and unreasonable restrictions on the right to engage in business and trade under Article 19. Subsequently, the court held the said Act unconstitutional and violative of Part-III of the Constitution of India.

TRANSFER OF ACCOUNTS AFTER MEMBER'S DEATH FOR CALCULATION OF ASSURANCE BENEFIT UNDER EDLI SCHEME, 1976

By letter dated November 25, 2023, with No.: Pension/EDLI Matters/2023/2168, the Employees' Provident Fund has reaffirmed that, upon notification, the Regional Provident Fund Commissioner may arrange for account transfer without requiring the submission of a transfer application and settle the account of the deceased member in the event that the provident fund account has not been transferred during the member's lifetime for any reason. According to recent EDLI Scheme modifications, continuous service with two distinct organizations for a full year will be taken into account when determining EDLI rewards. It would, however, depend on the deceased's prior membership being transferred to the current PF account. Therefore, in order to guarantee that the family of the deceased worker does not lose out on any eligible EDLI benefits, it is essential to make sure that past membership under a UAN is verified, flagged, and merged to the current PF account.

DESK DISPATCHES

The Argument for Recognition of a New Occupational Lifestyle

Vatsal Jindel, Research Intern, CLLRA

Introduction

I begin this blog with three case studies. These three case studies are informed by my personal experiences and interactions. The purpose of this text is to submit that there exists an emerging and distinct occupational lifestyle of mobile workers. This text by arguing for their distinctiveness want to work towards recognition for the same. The author hopes that such a recognition shall enable more effective welfare and regulatory policies to be designed for the people occupying such a category.

Therefore, after having presented the case studies, I seek to examine how we may conceptualize the occupational lifestyles (OL) described therein. In doing so, I shall first examine if the subject occupational lifestyle fits in the label of 'migrants' or 'nomads'. Following this I shall discuss how this OL is distinct from these concepts. In the concluding part of this text, I shall discuss the need for a new category/term for them.

I am aware of the perils of labels and of categorization. The imperial project of labelling people into neat categories has ended up creating categories and reinforcing where there were none. The aim of this text, however, is to examine whether a distinct category of occupational lifestyles exists. If it does, I believe that labelling it will have the function of recognition of their distinct occupational requirements and perils, thus allowing for specialized regulatory and welfare policies.

Part 1

Case Studies

A. The Travelling Apiarists

It was on one such drives through Himachal Pradesh that we first noticed some aluminum or "tin" boxes, as they are often colloquially called, strewn across some grasslands. The boxes were bee hives. They were recently unloaded there at the grassland from a goods carrier that was still stationed there. The bee keeper, living there in a tent narrated that he had come from Sawai Madhopur for the oncoming flowering season of various fruit trees that are abundant in this region.

In a trip to Ramnagar, it was a private orchard where the hives had been kept. The bees provide for more pollination and better yield of fruits while they feed on the nectar of the bloom – creating a symbiotic relation not only between the insect and the tree but also the apiarist and the orchard keeper. They move to/from regions of Rajasthan and other places where there are mustard farms. After feasting on mustard blooms in the year end months, they move northward to Uttrakhand and Himachal to feast on blooms of fruits like Lychee, Apple, Apricots, Peaches and Almonds. They proceed then to Kashmir on a quest to make one of the most precious non-wild honey - Saffron honey. Finally, they move back to where they started - the mustard growing regions. During intervening periods of no-blooms, such as monsoon and late summer, the bees are fed on sugar syrup.

B. The Melon Farmers

In Bassi, we met a man clad in white kurta, and a mehndi colored beard. He had come all the way from Uttar Pradesh. As we learned, there are some farmers who move from Uttar Pradesh in winters to plant Melons and some other Zaid (or intermediary period) crops in areas like these. Here, lands are either left uncultivated during the Rabi season or are used to cultivate low-water crops like Mustard that do not require irrigation, after which they are left fallow till the main Khareef. The intervening period between the Rabi and the Khareef season is the Zaid season when cultivation is generally not done in arid areas.

The farming of such crops in this period is therefore beneficial not just to the incoming farmers but also the local ones. The group of farmers comes annually to such areas to farm on lands they have contract to farm at. They share their revenue and return back to work on their own lands during the Khareef season.

C. And so on

Many more examples can be taken for such periodical movement of people, including the shawl salesmen from Kashmir that most of us from urban areas must have witnessed returning annually to our homes. The modern day substitute of the famed Kabuliwala. If we remove the 'periodical' and replace it with 'continual' or 'semi-continual', we may also include professions like Truck Drivers – who are on the road for most of the year with no permanent shelter, and go 'home' only occasionally.

Part II

Categorization

In this part, I shall fist examine how these mobile people are not migrants. This will be followed by a query into if they can be considered nomadic and the difficulties in doing so.

A. Migrants?

Long term or Permanent migration does not involve movement but is shifting residence to a different location. It may generally also involve the movement of the family of the

migrating worker. Therefore this is clearly different from the aforementioned occupational category.

Migration occur on account of various externalities. Permanent migration has may have several triggers, including climatic variations[1] and regional economic depression. Short term migration may be seasonal or daily or for other periods and on account of various socio-economic factors.[2] Temporary migration may also turn into permanent migration on persistence of its triggering factors.[3]

Migration particularly is distinct from the afore-discussed category as follows. The work that migrants may do does not itself entail travel. It may be carried out stationed at a fixed place. However, it is done after travelling to some other place because of possibly greater demand of that work at that place.

The aforementioned categories of people travel because their work itself entails travel. The work cannot be done stationed at a particular place. For example, the bee-keepers cannot carry out their profession stationed at any particular place throughout the year. The melon farmer cannot farm melons at the place of their residence as their land there is already being cultivated. They also cannot lease another piece of land in their vicinity for the same reason. They need another place where the land is generally fallow at that time of the year.

Thus they do not travel in order to find work but for their work. The work that they do cannot be done at a single place. They, unlike possibly migrants, also do not stay at any place of their 'travel' for long periods of time but stay a considerable period of time places other than their family or 'fixed' accommodation.

Thus, while migrants travel largely due to economic, security, or political reasons and do work that ordinarily can be done within their vicinity. They also often find work after migrating. Even if they migrate after having acquired work at their destination, travelling is not inherent in the work itself – the person concerned just out the demand for the work at a place not near their own. [4]

We may also, for convenience, try and examine within this section the difference between people whose work involves business trips and those with the subject OL. The former are largely individuals who are sedentary but need to travel for generally white-collar work. The time spent away from home per trip and having a notional place of usual residence may be important in this regard.

B. Nomads?

For a category of people so ancient, global and impactful, the term 'nomads' notoriously escapes any agreement on its meanings and margins. An example on the foundational level of the meaning of the term is as follows. There have been proponents for the use of the term to refer to those living a mobile way of life independent of its economic specificity (such as hunters or gatherers). On the other hand, some describe nomads as extensive and mobile pastoralists.

Nomads in the second category either have nothing in connection to agriculture or are occupied in it in a limited degree, undertaking it purely as a secondary or supplementary activity. There have been arguments about the breadth of the term 'nomad' and whether even to include both the aforementioned categories into this label.[5]

i.Who are Nomads?

Nomadism is defined in Britannica as a way of life of peoples who do not live continually in the same place but move cyclically or periodically. [6] It classifies nomads into three general types. The pastoral nomads, the tinkerers and traders, and the hunters-gatherers nomads.

Khazanov puts down five pointers of economic essence of pastoral nomadism.

"*(1) Pastoralism is the predominant form of economic activity. (2) Its extensive character connected with the maintenance of herds all year round on a system of free-range grazing without stables. (3) Periodic mobility in accordance with the demands of pastoral economy within the boundaries of specific grazing territories, or between these territories (as opposed to migrations). (4) The participation in pastoral mobility of all or the majority of the population (as opposed, for example, to the management of herds on distant pastures by specialist herdsmen, into which only a minority is involved in pastoral migrations). (5) The orientation of production towards the requirements of subsistence (as opposed to the capitalist ranch or dairy farming of today)*"[7] [Emphasis added]

Even in conceiving this restrictive meaning of the term, Khazanov could not ignore the element of temporal changes and need of flexibility in conception. He observes that, "*This fifth characteristic today no longer applies, or applies only in part to certain groups of pastoral nomads which have been drawn into the world market system; but it was fairly characteristic of pastoral nomadism in the past, although even then pastoral nomadism was not economically self-sufficient*."[8]

Britannica also expounds that these occupational groups do not live in the same place and move from one place to another cyclically or periodically (with exceptions).

A simple refection on studies on nomadism and the groups generally considered to be nomadic allows one to condense certain other elements that are essential to labelling a group as nomadic.

- Firstly, these groups have a distinct social or cultural identity.
- Secondly, it is the entire family or group that travels and not just individuals belonging to those groups.
- Thirdly, they as a group as well as members of the group may form economic relations or understandings with sedentary peoples who reside along the path of their movement.
- It is apparent that that the occupational groups that do fall within either the broad or the narrow conception of nomadism are those involving the level of technology from the either the period between the Neolithic and I

Industrial Ages or purely Neolithic Age.

It is to be noted, of course, that none of these are watertight, necessary nor sufficient conditions for being considered nomads. These are just elements that may be useful markers of identifying the essence of an occupational group. As Khazanov, despite his restrictive conception, observes,

"I would like to stress again that definitions, categories, typologies, and classifications should never become the end of a study, or a purely semantic exercise. They are only its analytical tool, reflecting somewhat the methodological approaches undertaken. Their value depends not so much on their precision, which is almost always disputable, but on how adequately they serve the specific goals of the investigation."[9]

ii. Are the occupational groups discussed in the case studies nomads?

The examples of travelling occupational groups, as discussed, above face, in my opinion, some distinct challenges in being clubbed under the label of nomads. The first two of these seem to be the most vital.

First is the question of having a distinct social or cultural identity. It is not apparent whether the people who follow such OL constitute a distinct socio-cultural group or identity, nor whether are these hereditary occupations. Without this, they cannot be termed nomadic due to the cultural weightage of the term.

Second is the lack of mobility of the entire family or the community. The groups discussed may have fixed accommodations where their families might stay. On the other hand, nomadic people travel in groups comprising entire family or different units of community. People who follow OLs as described above tend to be male members who are mobile and move, with the rest of the family being stationary.

Thirdly, people having the described OL do not have 'relations' with sedentary people as it would entail a greater degree of separation of lifestyle. Their lifestyle, except the fact of their individual mobility, is similar to that of sedentary people. They, therefore, are not sufficiently separated from the sedentary society in order to have a 'relation' with them.

Further, as the case studies illustrate, this category is not linked to any specific set of activities in contrast to nomadism. They include food producing activities, food extracting activities, mixture of both, or something unrelated – like service activities. The technology used also includes those of the industrial age and later.

iii. Neo – Nomads: A Possible Alternate Term?

Thus considering the possible difficulty at this time in labelling the subject OL as nomadic, one might argue for a term such as 'neo-nomad'. One might argue in favour of adopting this term by asserting that this creates categorization qualified and differentiated on account of the prefix. This term may represent the neoliberal pressures on mobile OL while differentiating it from nomadism.

'Neo-nomad' presently, however, is a term that has been used interchangeably with digital or global nomads. They are said to "stand as a counterpoint to migration studies, which have predominantly relied on a primarily utilitarian and essentialized definition of mobile subjects."[10] While I have not perused the plethora of literature on this issue, a cursory read at a seminal paper[11] on this topic raises some issues.

Much like the said 'neo-nomads', such a label seems to romanticize and appropriate the distinct socio-cultural category of nomadism as already discussed above. While there are attempts at arguing that these neo- nomads comprise of a "culture", "nomadism" carries with it a much weightier cultural and academic baggage. It, as discussed above, refers to a socio-culturally distinct group of people whose occupational lifestyle involves mobility.

Neo-nomads here refer to a group of people who can afford to and travel continuously for leisure. This is despite their work and surrounding (sedentary) community, by joining a "cultural community" that is a varied group of people who live similarly. There is no hereditary profession, no particular profession, no necessary periodicity, and the presence of possibility of an easy exit.

The unease of such inclusion is reflected through observations such as that they "embody a specific type of agency informed by cultural motivations that defy economic rationale". Further, "Mobility is thus second nature to global nomads, as traveling actualizes both the economic and cultural features of their charismatic, exotically self-fashioned lifestyles."

It is this same cultural and academic baggage and significance of the term 'nomads' that is a challenge in labelling our subject OLs as "neo-nomads", despite the prefix. The appropriateness of the term would need to be assessed against our subject OLs. Even the term 'Neo-nomad' may be applied only in case our subject OLs comprise a distinct socio-cultural category of OL.

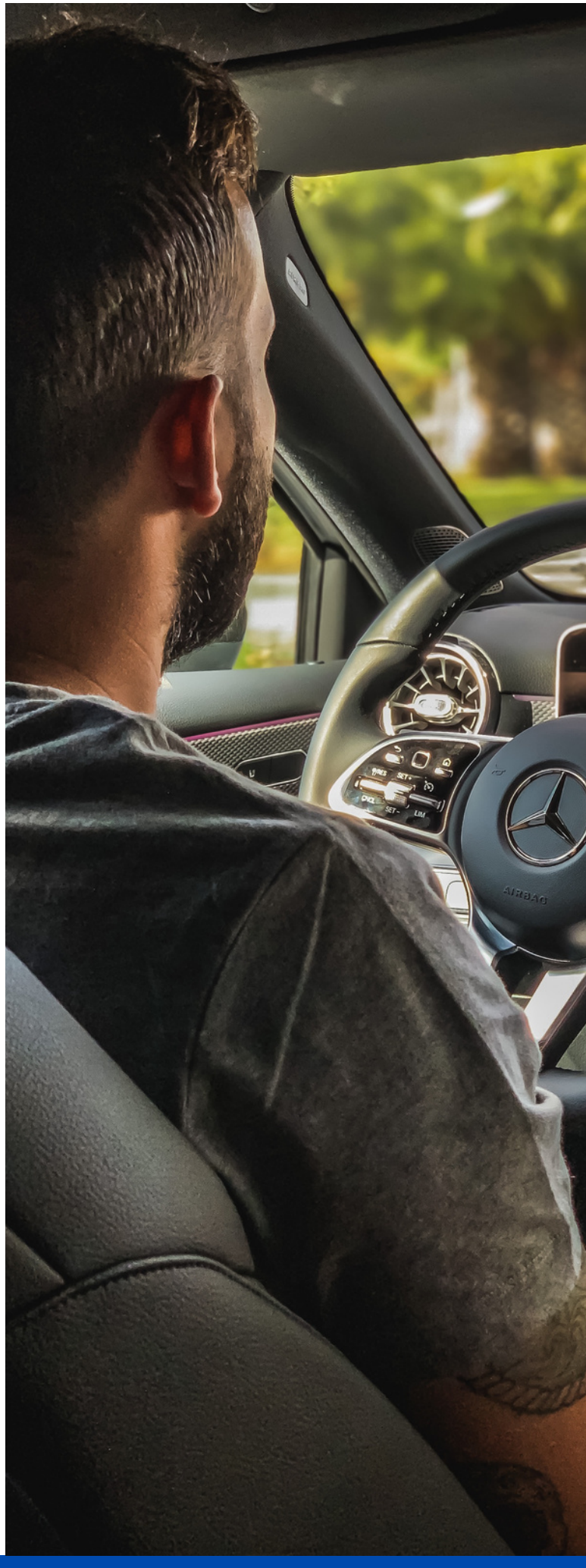
However, it is also submitted that subject to this consideration, the term is more appropriate to refer to the OLs discussed in this piece. This is in comparison to the aforementioned application of the term, and especially coming from a third world framework. The people having these OLs, on account of neo-liberal pressures, have evolved their OLs to find to find and carry out work that their skills allow them to do, while adapting to contemporary practical needs.

Conclusion

From the discussions above, it is apparent that the classifications of 'nomads' or 'migrant' do not properly include some occupational groups in which mobility is an essential part of the work. It is not certain if these occupations have any social or cultural identity or comprise of one. Furthermore, on account of the pressures of post-industrialist or neo-liberal economies – in the period of which these groups emerged- the entire families or 'communities' are not mobile. There indeed is all kinds of families.

If the label of nomadism is imposed on these occupational groupings, there is a likelihood of confusion on account of the historical baggage the term is accompanied with. ‘Nomad’ is a distinct socio-cultural category, a distinct occupational framework, and an umbrella term for a particular way of life.
While not certain, even if the aforementioned case studies do prove to constitute a distinct socio-cultural category, the groups in the aforementioned must be delineated from nomads.

This delineation is on account of the changes and adaptations in lifestyles (as compared to nomads, as well as migrants and sedentary workers) that they have made on account of their neo-liberal or Industrial age emergences, and the accompanying pressures. Therefore, a distinct category for recognition of such an Occupational Lifestyle is necessary.



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Employment Contracts Shouldn't Overwhelm Commercial Courts: Sanjay Kumar vs. Elior India

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Court: Karnataka High Court

Case: Sanjay Kumar v Elior India.

1. Introduction:

The recent judgment by the Hon'ble Karnataka High Court in the case of Sanjay Kumar v. Elior India Food Services LLP brings to light a crucial aspect of commercial disputes arising from employment contracts. In the context of industrial disputes based on terms of employment, it's essential to distinguish between labor arbitration under the Industrial Disputes Act (ID Act) and commercial arbitration.

Under the Industrial Disputes Act, labor arbitration is primarily governed by the agreement to arbitrate between the parties involved. This means that the parties voluntarily agree to submit their disputes to arbitration, providing a mechanism for resolving conflicts related to employment terms. The ID Act sets out the framework for addressing industrial disputes, and the arbitration process is guided by the terms established through mutual agreement.

Now, contrasting this with commercial arbitration, the key difference lies in the nature of disputes. While industrial disputes revolve around employment-related matters governed by the ID Act, commercial arbitration typically deals with disputes arising from business and commercial transactions. Commercial arbitration is often conducted based on the terms specified in commercial contracts, and the Arbitration and Conciliation Act, 1996, governs such proceedings.

This case addresses the jurisdiction of commercial courts in dealing with disputes that emanate from employment agreements. The petitioner, Mr. Sanjay Kumar, sought to restrain the Commercial Court from proceeding further in the matter, raising significant questions regarding the definition of commercial disputes and the jurisdiction of the Commercial Court.

2. Background:

The petitioner was initially hired by Elior India Food Services LLP (referred to as "the firm") and thereafter became a partner and minor partner with a particular share in the firm. Due to the petitioner's conduct and omissions, the firm launched an investigation by submitting a charge sheet on 10-05-2022. In response to these procedures, the petitioner filed a Commercial Arbitration Application [1] before the Commercial Court on 13-05-2021, alleging Section 9 of the Arbitration and Conciliation Act, 1996, and citing an arbitration clause in the employment agreement.

The firm terminated the petitioner's employment while the Section 9[2] application was pending. The petitioner invoked arbitration under Section 21 of the Act on 08-06-2021 and served notice on the firm. However, during the Section 21 procedures, the application under Section 9 filed before the Commercial Court was dismissed. The petitioner then filed a commercial appeal[3] before the Court, but it was similarly dismissed on 22-10-2021 by a Division Bench, which upheld the lower Court's decision. The petitioner did not contest the Division Bench's decision.

A three-member Arbitral Tribunal was formed in accordance with the Employment Agreement's arbitration clause. The Arbitral Tribunal had its first hearing on December 8, 2021, at which the parties were represented and the Tribunal directed the completion of pleadings. The Arbitral Tribunal issued an order on December 15, 2022, in response to the claimant's application under Section 17[4] of the Act.

In response to this order, the firm filed a Commercial Miscellaneous Application [5] before the Commercial Court, to which the petitioner objected, arguing that the Commercial Court lacked jurisdiction. In an order dated 30-01-2023, the Commercial Court asked the petitioner's counsel to give a copy of the objections filed and decided to hear the matter on both jurisdiction and merits, scheduling it for 01-02-2023. This order, which ruled that the case will be heard on both jurisdiction and merits, spurred the petitioner to file the current petition with the Court.

3. Case Analysis: Analyzing the Jurisdictional Conundrum

The case of Sanjay Kumar v. Elior India Food Services LLP delves into crucial questions surrounding the nature of a dispute arising from an employment agreement, the jurisdiction of the Commercial Court, and the implications of the petitioner's actions in filing a Commercial Arbitration Application. The petitioner contended that the Commercial Court lacked jurisdiction, asserting that the dispute, as per Section 2(1)(c) of the Commercial Courts Act, did not qualify as a commercial dispute. The central issue revolved around whether a dispute rooted in an employment agreement fell within the scope of a commercial dispute. The petitioner's counsel argued that the court should determine jurisdiction at the outset, emphasizing the need to decide this matter before

delving into the merits of the case.

In response, the petitioner's counsel vehemently asserted that labeling an employment contract as a provision of services should not automatically categorize it as a commercial dispute. They argued that errors in jurisdiction, even if consented to, should not confer jurisdiction upon a court. Furthermore, they highlighted that the dispute brought before the Arbitral Tribunal did not align with the definition of a commercial dispute outlined in Section 2(1)(c) of the Commercial Courts Act.

Contrary to these contentions, the respondent argued that the petitioner had invoked Section 9 of the Arbitration and Conciliation Act before the Commercial Court, a move that ended in dismissal. The petitioner's subsequent appeal against this dismissal also proved unsuccessful. The respondent contended that by actively participating in these proceedings, the petitioner had effectively acquiesced to the jurisdiction of the Commercial Court. Additionally, the respondent maintained that the dispute, arising from an Employment Agreement, inherently qualified as a commercial dispute due to its connection with the provision of services.

Justice M. Nagaprasanna delivered a decisive judgment, asserting that merely characterizing an employment contract as a provision of services did not automatically transform it into a commercial dispute. The Court, in alignment with the Commercial Courts Act's objective, emphasized that categorizing every employment agreement as a commercial dispute would overwhelm the commercial courts, contradicting their intended purpose. The judgment drew on the precedent set by the Supreme Court in the case of Ambalal Sarabhai Enterprises Limited v KS Infraspace LLP[6], highlighting the need for commercial courts to focus on cases directly related to commercial disputes rather than being swayed by the sheer value or a desire for swift settlements. The Court's emphasis on the non-binding nature of jurisdiction erroneously invoked without objection reinforced the principles of fair legal proceedings.

4. Critical Appraisal:

a) I certainly agree with J. M Nagaprasanna and even in my opinion the decision of the High Court is consistent with the objective of the Commercial Court Act. If every employment agreement of the kind that is the subject matter in this case is brought within the ambit of commercial dispute, it would then be opening a pandora's box or will be opening flood gates of litigation before the commercial court/s that would clog the courts. Thus, it would defeat the very reason why the commercial Court was constituted.

b) This judgment is a landmark decision as it distinguishes the term 'commercial dispute' from the dispute related to 'employment contract'. Further, the Court righty in this case held that merely because a party invokes the wrong jurisdiction and a determination is made by the Court without parties objecting to it, jurisdiction will not become binding on subsequent proceeding. This decision also emphasizes that employment contract cannot be given colour of commercial dispute otherwise it will clog commercial courts.

5. Conclusion:

The High Court's decision in this case is noteworthy as it distinguishes between a 'commercial dispute' and a dispute arising from an 'employment contract.' It underscores that treating every employment agreement as a commercial dispute would overwhelm commercial courts, defeating the purpose for which they were established. The judgment establishes that jurisdiction, once erroneously invoked and determined without objection, does not become binding in subsequent proceedings. This decision contributes significantly to the clarity of the scope of commercial disputes and the jurisdiction of commercial courts in India.

6. References

[1] Com.AA.No.88 of 2021

[2] Section 9, Arbitration and Conciliation Act, 1996

[3] Com.A.P.No.161 of 2021

[4] Section 17, Arbitration and Conciliation Act, 1996

[5] Commercial M.A.No.1 of 2023

[6] 2019 Latest Caselaw 945 SC

The "Industry" Conundrum

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The question about the definition of the term 'industry' in the Industrial Disputes Act has plagued the courts for more than 4 decades now. In 1978, Supreme Court gave a vagarious opinion on the same in Bangalore Water Supply case[1]. Establishing the triple test for identifying whether an entity qualifies for industry and expanding the definition of the term "industry", it seemed to have solved the problem that was dealt by a string of cases in the Safdarjung[2], Solicitors[3], Gymkhana[4], Delhi University[5] and Dhanrajgirji Hospital case[6].

However, in 2005 a 5-judge bench in Jai Bir Singh case[7] heavily criticised the nuances involved in Bangalore Water Supply case and referred the matter to a larger bench of seven judges which subsequently referred the matter to a larger bench of 9 judges.

This article puts forward the contention that defining the contours of the term "industry" ultimately falls on the shoulder of the Legislature. For the same, a deconstructive analysis of the Bangalore Water Supply case is unavoidable.

Bangalore Water Supply case can be criticised on three grounds: Firstly, it has resulted in a quixotic expansion of the term industry which has included virtually everything in its fold; Secondly, the judgement suffers from lack of deliberation shown by different opinions delivered at different points of time and lastly, the question on the nature of its consensus itself shows how weak its jurisprudence is.

Quixotic Expansion

The opinion of Justice V.R. Krishna Iyer (on behalf of himself, Bhagwati and Desai JJ)[8] opens up by noticing the changes that the industries had gone through and how the laws regarding the same cannot remain stagnant, which to some level shows the liberal ideology towards which the judgement was going to be moulded, and rightly so. This can be shown in one of his observations:

"In a world of relativity where law and life interlace, a search for absolutes is self-condemned exercise legal concepts, ergo, are relativist and to miss this rule of change and developmental stage is to interpret oneself into error"[9]

Further in the judgement it is observed that India as a developing country is keen to preserve the smooth flow of goods and services while making sure that it does not come at the cost of exploitation of employees.[10]

The use of the word "undertaking" between business and trade, and manufacture implies that the aim of the legislators was to include the even those establishments which were falling outside the dimension of trade and business, this is further supported by the latter part of definition which refers to "calling, service, employment or industrial occupation or avocation of workmen.

Taking this as its foundational basis the judgement included municipalities, hospitals, charitable institutions and clubs in the definition of the term "industry", thereby, expanding to such extents that virtually the only thing which can be exempted from the definition are entities which might fall under the "sovereign functions" of the state. While this liberal expansion may seem like a good decision on paper it certainly does not do any practical favours for maintaining industrial peace and harmony. The biggest counter that this contention faces is the dual aim of the act itself, of maintaining industrial peace and ensuring labour welfare.

The expanded definition will definitely ensure labour welfare but will unfortunately disrupt the industrial peace to unprecedent levels. Which it did, a statistical analysis show that industrial disputes reached their peak in 1978 the year in which the case was decided and in 1982.[11]

A contemporary anachronistic criticism the judgement might face is that since 1978, the aim of the Indian economy has changed. Focusing more on foreign investment, post 1991 liberalisation the employer's perspective also has to be taken into consideration. Taking Justice Iyer's observation regarding relativist nature of law and life into consideration it would only be fair to argue that the expanded definition which has been put into the labour field of law will only unnecessarily hamper the smooth flow of goods and services and that the interests of employers also have to be protected.
In denouement, the reasoning put forward by Justice Krishna Iyer is sound and cogent from the 1978 perspective keeping in mind the welfare of labour as our priority. However, in the contemporary world it falls short and disguises itself behind the garb of liberal interpretation when in reality it is insouciant towards the interest of employers.

Lack of Deliberation

In a judgement of this magnitude, which would've decided the fate of industries in one of the fastest growing economies, not only some sort of deliberation but rather a deliberation involving jurisprudential erudition would've been expected. Such deliberation was needed and could only have justified the ground-breaking outcome of the case.

The importance of such deliberation has also been recently highlighted in Trimurthi Fragrances v. Govt of NCT of Delhi[12]. However, there is no such rule mandating judges to engage in such a deliberation,[13] and if there is no rule as

such then how can we be sure that such a deliberation is in fact happening? To substantiate further, Justice M.H Beg was set to retire on February 22nd 1978, and the bench delivered the judgement on 21st February dismissing the appeal. The conclusion in regard of the appeal was unanimous but J. Chandrachud, J. Jaswant Singh and J. Tulzapurkar reserved their judgement for later. If the opinions were not delved into then question of deliberation is bootless. [14]

However, even at this stage it can be argued that maybe some sort of a deliberation happened behind the scenes between judges. Unfortunately, Justice M.H. Beg himself states that due to immediate retirement the next day he did not have enough time to delve into discussion of various judgements including those of "sovereign functions". The judgement of the remaining judges came after the retirement of Justice M.H. Beg.[15]

In short, the judgement kept sovereign functions defined as "inalienable function from constitutional government" outside the scope of "industry" without deliberation. What is pertinent to note is that the definition of "sovereign functions" itself was nebulous and was being still decided on in a string of cases: Vidyavati[16], Kasturilal[17], Rudul sah[18] and several others.
However, how can a case that lacked deliberation hold the legal ground of foundational importance regarding industrial disputes? The only logical answer is that it cannot.

A Specious Unanimity

While all the judges agreed on the decision of dismissing the appeals, consensus on the definition of the term was not strong enough to produce a cogent definition of "industry" to be euphemistic.

While V.R. Krishna Iyer (on behalf of himself, Bhagwati and Desai JJ) used the doctrine of Noscitur a sociis to interpret the definition others did not, it states that "it is known from its associates", it is a rule of interpretation that suggests that the meaning of a particular word or phrase should be determined by the words that surround it. In other words, the meaning of a word can be inferred from the context in which it is used. As a matter of fact, Justice Beg rendered it inapplicable in the case.[19]

Justice Iyer stated the definition of the term "industry" can be restricted and those sovereign functions which can be regarded as "inalienable" can be taken out of the purview of the term.

However, Justice Beg did not agree with it and had reservations about the use of the term "sovereign" and instead preferred to use the term "governmental functions" as only those functions which are governed by separate rules and constitutional provisions under article 310 and 311 are exempted.

Justice Chandrachud on the other hand stated that all kinds of organized activities giving rise to employer and employee relationship are covered by the wide definition of 'industry'. Justice Jaswant and Justice Tulzapurkar were the only ones who outrightly dissented. To conclude, out of a 7-judge bench, 3 judges agreed on a particular definition of industry, two agreed partially on it and 2 dissented. Then what is the majority decision or rather opinion regarding the definition of "industry" in the case? Unless article 145(5) is overlooked the split verdict makes complete sense regarding the definition of "industry".

Contemporary Exigencies

In Jai Bir Singh case [20] a five-judge bench referred the subject of Bangalore Water Supply for reconsideration. It had criticised the Bangalore water supply judgement for being too vagarious, lacking unanimity and for not deliberating on issues properly. The concerned larger bench of seven judges [21], referred the matter to a nine-judge bench by virtue of the Jai Bir Singh case.[22]

On October 12, 2023, seven judge bench passed an order, wherein, Union of India was impleaded as a party at the request of our Solicitor General, Tushar Mehta, as appearing on behalf of appellants. Further, the matter was listed for third week of march in 2024 before an appropriate bench.
Jai Bir Singh itself was a five-judge bench and should've been bound by the decision of Bangalore Water supply case which was presided over by 7 judges. However, exactly by what decision or rather definition should the judges have been bound when there was no unanimity per se.

What can be further observed from the present circumstances is that one of the issues that the 9-judge bench is faced with is "Whether the majority judgment in the Bangalore Water Supply case was a unanimous judgment?"[23]

The very fact that such a question on the nature of the judgement is being put forward to a larger bench itself highlights the complex nature of the judgement, highly opinionated all the while radically lacking of any sort of objective measurement.

The criticism done by the Jai Bir Singh case was not groundless neither was it against the doctrine of stare decisis. It operated correctly by highlighting the weak points of Bangalore Water Supply and was not bound by a decision which had no consensus. How can the subsequent benches or even industrial entities be expected to follow a decision which itself was not completely agreed upon in the case.

Policy Exigency

Defining the term "industry" is in essence a policy decision that has to be taken by the legislature and not the judiciary. Legislative inaction of the same has pushed the judiciary in a

state of inanition regarding this issue. The very fact that even after 7 cases has dealt with the issue of defining the term “industry”, yet again, a new 9 judge bench has to be constituted to resolve the matter, highlights the need of a cogent legislation. Even in Bangalore Water Supply Justice Chandrachud highlights this point by stating that “I consider, with great respect, that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. The Parliament; must step in and legislate in a manner which will leave no doubt as to its intention. That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels.”[24]

The same is further substantiated by the conclusion of Justice Jaswant Singh and Justice Tulzapurkar. Both Justices dissented from the views of Justice Krishna Iyer regarding charitable institutions of category 2 and 3 falling out of the purview of the term “industry”. They concluded that-

“*….it is high time that the Legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops up from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger benches of this Court to be, constituted which are driven to the necessity of evolving a working formula to cover particular cases.*”[25]

The only consensus which was reached in Bangalore Water Supply was the requirement of Legislature stepping in and resolving the problem with a comprehensive bill. Instead, the same issue has been referred to a larger bench of 9 judges.

Conclusion

The Bangalore Water supply case is filled with cogent reasoning and felicitous arguments to supplant the expansion of the definition of the word industry. However, for some reason the conclusion does not seem feasible.

Perhaps because what is ubiquitous in the judgment is not reason-based expansion but rather an ideological based one. This ideological expansion of definition has led to a precarious position where no binding consensus is reached amongst the judges.

While this article has largely been a criticism of the case, I’d like to point out an impressive point of view elucidated upon by Justice MH Beg regarding exclusion of entities that falls within “sovereign functions” of the state.

Justice Krishna Iyer kept those functions out of the purview of the definition of the term industry which are inalienable to the working of the constitutional government.

However, Justice Beg disagreed with the usage of the phrase “sovereign functions”, the reason that he gave was that it operated on a plane of its own, the activities that the issue is concerned with are felicitously represented by the term “governmental”.

As per Section 2 (p) sub clause (2) (2) of Industrial Relation Code, 2020,[26] activity of the government relatable to sovereign functions will be excluded to that definition. Indian jurisprudence behind the concept of “sovereign functions” is not only weak but it has also not been properly formed by the courts. To include such a phrase in the definition of industry would open the same to litigation regarding the definition of the same. Whether such contention was deduced by the Justice is a matter of speculation.

But, a careful analysis of Justice MH Beg’s opinion would’ve stopped the legislators from using the phrase “sovereign functions”.

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DOMESTIC LABOUR LAW NEWS

ADVOCATING EQUALITY: NATIONAL CONFERENCE IN DELHI PROPELS DEMAND FOR PRIVATE SECTOR RESERVATION

The All-India Independent Scheduled Castes Association (AIISCA) conducted a national conference in New Delhi addressing the rising privatization of resources, emphasizing the need for reservation in the private sector. Speakers including Rajya Sabha MP Prof. Manoj Jha and AIISCA President Dr. Rahul Sonpimple highlighted the bias in employment opportunities at higher levels and the persistent lack of representation for marginalized communities. Professor Sumeet Mhaskar advocated government intervention through reservations, scholarships, and aids to ensure equal opportunities. AIISCA aims to unite scheduled caste communities and address financial obstacles, particularly focusing on the impact of privatization on marginalized groups.....Scan QR to read more.

17.3 LAKH WORKERS ADDED UNDER ESIC IN OCTOBER 2023: MINISTRY OF LABOUR

In October 2023, India's Employees' State Insurance Scheme witnessed the addition of 17.3 lakh new employees, with 8.25 lakh, or 47.76%, falling in the age group of 25 years and below. The provisional data also indicated registration of 3.31 lakh female members and 51 transgender employees, showcasing the scheme's commitment to inclusivity. Additionally, 23,468 new establishments were registered, expanding the social security coverage. The Employees' State Insurance Corporation addresses sickness, maternity, disability, and employment injury-related deaths, providing medical care to insured individuals and their families.....Scan QR to read more.

ALL-INDIA CONSUMER PRICE INDEX NUMBERS FOR AGRICULTURAL AND RURAL LABOURERS OCTOBER, 2023

In October 2023, India's Consumer Price Index for Agricultural Labourers (CPI-AL) and Rural Labourers (CPI-RL) increased by 15 and 14 points, reaching 1241 and 1251 points, respectively. The surge was driven by a significant contribution from the food group, particularly rice, wheat atta, pulses, vegetables, milk, onion, chillies, and mixed spices. All states witnessed an upward trend, with Tamil Nadu topping the indexes. Jammu & Kashmir experienced the maximum increase in both CPI-AL and CPI-RL, leading to point-to-point inflation rates of 7.08% and 6.92%, respectively. Food inflation stood at 8.42%.....Scan QR to read more.

INDIA'S BANK UNIONS AGREE TO 17% SALARY HIKE BUT DEMAND A 5-DAY WORK WEEK

Indian Banks Association (IBA) and bank unions have agreed on a 17% annual salary increase for a five-year period, effective from November 1, 2022. However, unions demand that all Saturdays be declared public holidays before signing the final wage agreement.

The annual pay slip expenses for FY22 across public sector banks, including State Bank of India, would total around Rs 12,449 crore. The proposed pay scales involve merging dearness allowance, and a loading of 3% would be added. The final agreement is pending the decision on declaring all Saturdays as holidays for banks.....Scan QR to read more.

HARYANA GOVT PLANS TO SEND 10,000 CONSTRUCTION WORKERS TO ISRAEL DRAWS FLAK — 'WAR-AFFECTED AREA'

The Haryana Kaushal Rozgar Nigam (HKRN) has advertised 10,000 positions in Israel for skilled workers, including shuttering carpenters, iron benders, ceramic tile setters, and plasterers. The monthly salary for workers with relevant skills is over Rs 1.55 lakh, and the contract period does not exceed 63 months. The move aims to facilitate employment opportunities for workers in Israel, sparking both support and criticism.....Scan QR to read more.

INDIA MAY MISS INTERNATIONAL TARGET OF ELIMINATING CHILD LABOUR BY 2025

A parliamentary standing committee on labor, textiles, and skill development, submitted its 52nd report on the 'National Policy on Child Laborers', stating that it's "practically not possible" to eliminate child labor by 2025. The report emphasizes devising a systematic action plan-based policy to meet international commitments, suggesting more stringent laws with increased penalties and stricter punishments for employers and violators. The committee's concern arises from the recurrence of child labor even after rescue, urging the government to take effective measures for eradication.....Scan QR to read more.

INDIA IS A LABOUR-RICH COUNTRY WITH ENOUGH INSTITUTIONAL MATURITY; CAN GET TO 8% GROWTH

NITI Aayog Vice-Chairman Suman Bery stated that India has the potential to achieve 8% growth, highlighting the country's abundance of labor and the institutional maturity of its functioning democracy. However, he cautioned about regional disparities, emphasizing the need for political management to address historical economic disparities between northern and southern India. Bery emphasized that economic growth is crucial for equity and improving living standards in India, which, despite being the fastest-growing major economy, has the lowest per capita income in the G20.....Scan QR to read more.

AS TOLD TO PARLIAMENT (DECEMBER 21, 2023): LABOUR FORCE INDICATORS IN 2022-23 ARE BETTER THAN PRE-COVID PERIOD

Union Minister of State for Labour and Employment Rameshwar Teli informed Rajya Sabha that employment for individuals aged 15 and above in India increased to 56% in 2022-23, compared to 50.9% in 2019-20. The estimated unemployment rate decreased from 4.8% in 2019-20 to 3.2% in 2022-23. Teli noted that these labor force indicators are better than the pre-COVID period. Additional updates on wildlife, air pollution, dam safety, and Swachh Bharat Mission were also provided.....Scan QR to read more.

GIG WORKERS: THE NEED TO REGULATE THE UNREGULATED

Current regulations, both at the union and state levels, have failed to address the needs of gig workers effectively. While efforts like the Rajasthan Act and the film "Zwigato" shed light on their challenges, solutions remain insufficiently discussed and implemented. The Social Security Code's proper execution may resolve part of the issue, but the other half requires strengthened worker associations, democratic attention to solutions, ongoing legal decisions, and internal mechanisms within aggregators for transparent resolution of workers' concerns.....Scan QR to read more.

INTERNATIONAL LABOUR LAW NEWS

ILO LAUNCHES FIRST GLOBAL REPORT ON PUBLIC EMPLOYMENT SERVICES AND ACTIVE LABOUR MARKET POLICIES FOR TRANSITIONS

In the context of worldwide labour markets emerging from the COVID-19 crisis to an environment of geopolitical instability and rapid change, this global report has a dual focus:

1) to highlight trends and developments in the organization, structure, and governance of public employment services (PES) and active labour market policies (ALMPs), and
2) to examine the design of their service offers and delivery mechanisms.

The report is intended for PES policymakers and practitioners, offering insights from international experiences to inform their policy decisions; and for academia and researchers, as a contribution to cutting edge knowledge on the subject.....Scan QR to Read more.

SAUDI LABOUR MARKET REFORMS PIVOTAL FOR ADVANCING SOCIAL JUSTICE AND DEVELOPMENT IN THE KINGDOM

ILO Director-General Gilbert F. Houngbo has concluded an official visit to Saudi Arabia, to meet with national and international constituents, and attend the Global Labour Market Conference (GLMC) in Riyadh. He said “In realization of its 2030 Vision, Saudi Arabia has launched numerous labour market reform initiatives, resulting in rapidly falling unemployment rates, strengthened labour rights, increased labour force participation rates including for women, and other positive indicators.”.....Scan QR to read more.

DESPITE A LOWER UNEMPLOYMENT RATE IN 2023, RECOVERY OF LABOUR MARKETS IN LATIN AMERICA AND THE CARIBBEAN IS STILL INSUFFICIENT

The labour markets in Latin America and the Caribbean, almost four years after the outbreak of the COVID-19 pandemic, show a full recovery in their employment rates. However, these are still characterized by the persistence of gender gaps, youth unemployment, informality, and loss of purchasing power of wages, the ILO Regional Office said today when it presented the 2023 edition of its Labour Overview report. During the presentation of the 2023 Labour Overview, ILO Regional Director for Latin America and the Caribbean, Claudia Coenjaerts, noted that "the decline in the purchasing power of wages, both minimum and average, is a challenge that has a negative impact on the life quality of Latin American and Caribbean families. Despite the recovery in employment, the mass of total labour incomes is still below pre-pandemic levels". In the international context, -characterized by moderate global growth and high inflation- Latin America and Caribbean economies have experienced a widespread recovery, although they still face a complex macroeconomic scenario.

The world economy is projected to grow by 2.9 per cent in 2023 and, in our region, growth is expected to be 2.3 per cent, according to the IMF, and 2.2 per cent, according to ECLAC, for the same period. "While these rates indicate a recovery, they are below the levels reached in 2022", Coenjaerts said. This year, the dynamics of the labour market in Latin America and the Caribbean were characterized by an increase of less than 1 percent in the regional employment rate. Participation, on the other hand, decreased slightly compared to the previous year (62.3 percent in 2023 compared to 62.5 percent in 2022) and, finally, an average unemployment rate of 6.5 percent.....Scan QR to read more.

INDIA MAY MISS INTERNATIONAL TARGET OF ELIMINATING CHILD LABOUR BY 2025

A parliamentary standing committee on labour, textiles and skill development in its 52nd report on 'National Policy on Child Labourers' has said that it was "practically not possible" to meet the international commitment to eliminating child labour by 2025.

The panel took into account the current prevalence of child labour to reach its conclusion. The report was recently submitted in Parliament. The committee has impressed upon the Ministry of Labour and Employment to take up the elimination of child labour in a mission mode by devising a systematic action plan-based policy to meet international commitments.....Scan QR to read more.

UPDATE ON VARIOUS EU EMPLOYMENT DIRECTIVES

A number of workplace-related EU Directives have passed their implementing deadline (by Member States) over the last year or are currently progressing through the EU legislative process. These include finalised Directives on a national minimum wage, transparent and predictable working conditions, work-life balance, gender diversity in the boardroom, whistleblowing, corporate sustainability reporting, and pay transparency, together with draft Directives on platform workers, AI and corporate sustainability due diligence.....Scan QR to read.

CHANGES AHEAD FOR SOME EU-DERIVED EMPLOYMENT LAW

The Retained (Revocation and Reform) Act aims to reduce the continuing influence of EU law in the UK. That Act lists a number of EU-derived laws that will be revoked on 31 December 2023 (with limited impact on mainstream employment law), as well as changing the status and potential interpretation of EU retained law, including court procedure. The Government has pursued modest changes to date to:

- TUPE consultation - businesses with fewer than 50 people and transfers affecting less than 10 employees may consult directly with affected employees, if there are no employee representatives in place.
- working time records - Employers will remain obliged to keep records which demonstrate their compliance with the Working Time Regulations but will not have to keep a record of each worker's daily working hours if they are able to demonstrate compliance without doing so; and
- holiday entitlement - A clearer definition of normal remuneration will set out what types of payment should be included when calculating the rate of holiday pay for the original four weeks derived from EU legislation. For leave years starting on or after 1 April 2024 for part-year and irregular hours workers (which are defined in the legislation), holiday entitlement will accrue at 12.07% of hours worked in each pay period. The use of rolled-up holiday pay will also be permitted for those who work irregular hours. The situations where leave that a worker has been unable to take may be carried over will also be set out in the law.

It has also taken steps to ensure the continuation of some EU-derived equality rights, which would have otherwise ceased to apply under REULA after the end of 2023. REULA gives the Government power to go further, although its legislative intentions are currently unclear.....Scan QR to read more.

NEW YORK – PAY TRANSPARENCY

A new law which applies to certain employers located in New York state, will require in-scope employers to include specified information in advertisements for internal and external job, promotion and transfer opportunities, including the compensation or range of compensation applicable to the post, as well as the job description for the position if one exists.....Scan QR to read.

Source: ILO & Evershed

PUBLICATIONS: ARTICLES

LEGAL PRINCIPLES AND GUARANTEES OF REALISATION OF GENDER EQUALITY IN THE LABOUR AND SOCIAL SPHERE

This article emphasizes the significance of women's employment in seafaring, highlighting the challenges posed by the maritime industry's historical gender imbalance. It aims to delineate tasks and trends for enhancing gender equality in maritime practices through international legal provisions, considering both global standards and Ukraine's legislation. The UN Convention on the Elimination of All Forms of Discrimination against Women and agreements promoting equality serve as frameworks for member states. International organizations like the IMO and ILO play pivotal roles in addressing gender equality issues in merchant shipping, with the ILO's standards being crucial. Research indicates positive strides in women's rights and achievements in the maritime sector.....Scan QR to read more.

THE INTERNATIONAL SHIP-REGISTERS IN EUROPE: AN ANALYSIS FROM THE LABOUR LAW PERSPECTIVE

The rise of globalization has led certain countries to adopt "flags of convenience" or "open registers," allowing ship registration irrespective of owner-territory ties. In response, European shipowners shifted vessels to these jurisdictions for fiscal benefits, causing a decline in working conditions and a crisis in the European maritime industry. Traditional maritime countries faced challenges as national shipowners reflagged, resulting in loss of ships and personnel. To counter this, European countries considered establishing their own open registers to regain competitiveness, creating supplementary international registers alongside traditional ones. These were viewed as a strategic response to address the evolving dynamics of the global shipping market.....Scan QR to read more.

MATERNITY BENEFITS IN INDIA: EXPLORING ITS VIABILITY BEYOND THE TENURE OF EMPLOYMENT

In the interplay between work and motherhood, the Maternity Benefit Act, 1961 ("Act") remains a transformative force, redefining the narrative for working women. This legislation, a vital stride towards aligning societal expectations with the realities faced by women during maternity, introduced paid maternity leave and essential benefits during the period of pre- and post-natal care.

In this article, author delve on an interesting question as to whether a woman employee would be entitled to maternity benefits under the Act, if the period for which she claims such benefits goes beyond the term of her contractual employment.....Scan QR to read more.

CONTESTING RACIAL WAGES

This article delves into archival research to highlight the efforts of John P. Davis, the Negro Industrial League (NIL), and the Joint Committee on National Recovery (JCNR) in advocating for racial justice and substantive equality during the Jim Crow era and the New Deal.

It explores the contest between southern industrialists, Davis' anti-racist organizations, and the National Recovery Administration, revealing Davis' critique of New Deal labor laws and his vision for reform to combat racial inequality and oligarchy.....Scan QR to read more.

CONTRACT LABOUR AND THE RIGHT TO FREEDOM OF ASSOCIATION IN THE OIL AND GAS INDUSTRY IN NIGERIA

This paper examines the prevalence of contract labor in Nigeria's oil and gas industry, constituting 60% of the workforce, and the denial of their right to organize into unions. The author explores the constitutional and legal framework, including the Nigerian Constitution and labor laws, which guarantee freedom of association. However, the lack of specific provisions for contract workers has led to exploitation. The paper advocates for law reform to define and regulate contract labor, ensuring their right to unionize and improved workplace rights. .....Scan QR to read more.

DATA RETENTION IN LABOUR LAW

This paper explores the impact of the age of information on society, emphasizing the need for legal frameworks to protect personal data. It specifically analyzes the variations in data protection legislation between Europe and Georgia, focusing on the context of employment. The study underscores the importance of addressing the significant outcomes related to data protection in labor law.....Scan QR to read more.

QUASI (SOCIAL) CITIZENSHIP, THE COMMON TRAVEL AREA, AND THE FRAGMENTED PROTECTION OF EMPLOYMENT RIGHTS IN THE UNITED KINGDOM AFTER BREXIT

This article explores the repercussions of Brexit on the employment rights of Irish citizens in the UK, focusing on the Common Travel Area (CTA). It contends that the CTA, despite enabling specific rights, lacks a defined normative purpose and is inadequate as an employment law tool. The absence of EU free movement and labor law accentuates the CTA's shortcomings, prompting the need for a reassessment of its post-Brexit role and potential normative foundations, such as non-political, rights-based notions of social citizenship.....Scan QR to read more.

SOCIAL SECURITY SCHEMES – A BOON OR A BANE FOR SOCIO-ECONOMIC EQUALITY: A STUDY OF WORKERS FROM BIDI INDUSTRY IN INDIA

The article investigates socio-economic issues in the bidi-making industry, a significant part of India's unorganized sector. Focusing on labor laws like the Workmen Compensation Act and Employees State Insurance Act, the study examines the awareness and satisfaction levels of workers in Prayagraj and Kaushambi districts in Uttar Pradesh. Findings reveal a lack of awareness about social security schemes, leading to dissatisfaction and socio-economic inequality. Recommendations emphasize improving living conditions and implementing awareness programs to uplift bidi workers and enhance understanding of government social security initiatives for improved well-being.....Scan QR to read more.

ANTI-DISCRIMINATION LEGISLATION AND PROTECTION OF WORKING CONDITIONS OF THE SELF-EMPLOYED

This contribution discusses the CJEU ruling in C-356/21 J.K. v TP S.A. It concludes that the ruling contributes to the ongoing development that disentangles the concept of the protection of working conditions from the employment relationship, granting self-employed workers who provide work on a personal basis protection against discrimination. It further discusses the ruling in the context of the spread of non-standard forms of employment on the labour market and policy initiatives to tackle them.....Scan QR to read more.

A RIGHT-BASED APPROACH TO LABOUR MIGRATION OF PEOPLE LIVING WITH HIV FROM INDIA TO THE UNITED ARAB EMIRATES: PROPOSING AN ALTERNATIVE LEGAL AND POLICY FRAMEWORK

This Paper explores the intersection of migration governance, healthcare access, equity, and human rights in the context of HIV-related discrimination faced by People Living with HIV (PLHIV) in cross-border movements, particularly focusing on Indian workers in the United Arab Emirates (UAE). Examining laws like Federal Law 14 of 2014 mandating HIV testing for migrant workers, the study addresses issues such as temporary employment contracts, safety concerns, and socioeconomic rights violations. The objective is to develop a comprehensive framework that safeguards the rights of Indian workers with communicable diseases in the UAE, considering both national and international perspectives.....Scan QR to read more.

LEGAL ASPECTS OF ARTIFICIAL INTELLIGENCE IN THE EMPLOYMENT PROCESS

The integration of artificial intelligence (AI) in employment processes has brought efficiency, digitalization, and accelerated job matching. However, challenges arise concerning human rights, ethics, transparency, privacy, safety, and accountability in AI implementation. The paper emphasizes the need for a comprehensive and adaptive regulatory framework to address issues such as algorithmic bias and discriminatory practices. With AI's transformative impact on recruitment, especially amid demographic changes and increased labor migrations in European countries, ensuring human-centered values and fairness is crucial. The focus is on developing enforceable regulations considering the predominantly private and commercially driven nature of AI solutions.....Scan QR to read more.

GENDER EQUALITY IN THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT: THE MISSING LINK BETWEEN EQUAL PAY AND UNPAID CARE AND DOMESTIC WORK

This article explores the formulation of Sustainable Development Goals (SDGs) related to gender equality, specifically focusing on unpaid care and domestic work (UCDW) and decent work. Examining the historical and sociological aspects of UCDW and equal pay, the article questions the separation of these goals, particularly the inclusion of UCDW under Goal 5 (gender equality) instead of Goal 8 (decent work). Using a legal and feminist perspective, it argues that integrating UCDW into Goal 8 would enhance its recognition as formal work within the labor market, promoting its inclusion and regulation by labor laws globally.....Scan QR to read more.

PUBLICATIONS: REPORTS AND BOOKS

Human-Centred Economics The Living Standards of Nations

Author: Richard Samans

About the book:

This book critically examines the persistent economic underperformance in terms of social inclusion, environmental sustainability, and resilience. It challenges the adequacy of current macroeconomic theory and policy in addressing contemporary challenges such as artificial intelligence, climate change, and inequality. Highlighting the widening disparities resulting from digital transformations, it questions the efficacy of past promises to internalize environmental externalities. Proposing a human-centered, living-standards-oriented growth model, the author advocates for structural reforms emphasizing the role of institutions in supporting broad and sustainable progress. The book suggests a new policy paradigm, echoing a Roosevelt Consensus, to counterbalance neoliberalism and address economic disruption, social insecurity, and political polarization while upholding liberal values and multilateralism.....Scan QR to read more.

Human-centred approach to increasing workplace productivity: Evidence from Asia

Author: Fang Lee Cooke and Nikolai Rogovsky

About the book:

This book explores the International Labour Organization's (ILO) focus on productivity, emphasizing a human-centered approach to the future of work. It delves into the ILO's Centenary Declaration, emphasizing productivity's role in achieving decent work and sustainable development. The human-centered agenda advocates a "high-road" approach to productivity, emphasizing better working conditions and respect for labor rights. The book presents evidence from Asian countries, including China, India, Japan, and South Korea, examining the correlation between macro-level productivity growth and positive outcomes in employment, social protection, equality, and wages. It investigates government, employer, and trade union efforts, as well as enterprise-level HRM practices and their impact on productivity.....Scan QR to read more.

CONFERENCES/WORKSHOP/FELLOWSHIPS

CONFERENCE / WORKSHOP

1. Expert workshop on the regulation of platform work in Frankfurt - March 2024

In cooperation with the Institute for Labour Law and Industrial Relations in the European Union at the University of Trier (IAAEU), the Hugo Sinzheimer Institute (HSI) invites you to an expert workshop on the regulation of platform work on the 21st of March 2024 in Frankfurt.

The workshop aims to address the following questions: Can the Directive deliver on its promises? How can working conditions be improved for genuine self-employed workers who use the platform to provide their services? How do the Nordic countries, where the Directive has been criticised, deal with platform workers? Prof Nicola Countouris (University College London), Prof Jeremias Adams-Prassl (Magdalen College, University of Oxford), Prof Christoph Busch (University of Osnabrück/ELSI), Prof Natalie Videbæk Munkholm (Aarhus University) and Sylvia Rainone (European Trade Union Institute) are speakers. The workshop will provide a space to exchange ideas and learn from each other's experiences.

Deadline
Registration: Mar 21, 2024

2. Comparative Eu and African Labour Law Conference - Cagliari May 2024

The project on African and European Comparative Labor Law is an effort to promote dialogue on national and global issues, build bridges across laws, political and cultural lines, encourage a new generation of labor law experts and professors in pursuing dialogue between the African experience and the European one.

The first initiative of this project will be an international conference to be held in Cagliari in May 2024. Piera Loi (University of Cagliari; email - loip@unica.it), Carla Spinelli (University of Bari; email – carla.spinelli@uniba.it), and Michele Faioli (Università Cattolica del Sacro Cuore; email – michele.faioli@unicatt.it) will serve as coordinators of the 2024 Conference. For this purpose, they invite submissions for the 2024 conference and the related special issue of the Working Papers SERI-FGB, devoted to the comparison between the African and European Labor Law.

Scholars interested in participating should submit a complete draft of their paper by February 25, 2024. Authors will be notified by March 15, 2024, if their papers have been accepted for presentation at the conference. Authors whose papers are accepted will be invited to the 2024 conference and partial finance support will be granted.

OPPORTUNITIES

WTF Labour Law Summer Camp 2024

The second edition of the WTF Labour Law Summer Camp themed Disruption/Dissident Knowledges/Distribution will run from 8 to 11 July 2024, in Bari, Italy. Organized by the Moving Labour Collective, the summer camp is intended as a space for building and growing a critically engaged diverse and inclusive intellectual community of academics and researchers as well as trade unionists, labour and social activists.

The second edition of our summer camp aims to 1) reflect on the distributional and justice dimensions of the multiple crises (of care, ecology, global inequality, etc.) we face as a society, 2) consider how analyses and critiques grounded in “dissident knowledges” can help us interrogate and disrupt the capitalist logics that underpin them, and 3) attempt to reimagine and reassemble our visions of how work, labour and livelihoods are regulated. Envisioning possible futures by engaging with already existing, if submerged alternatives, and exploring new ones is made especially important in light of the pressures emerging in the time of a global rise of the far right, neo/fascism, and ethno-populism, the enduring racial/colonial capitalist dynamics, and the widespread crisis of ecology that provides our very basis of existence on Earth.

A full call for participation, together with detailed instructions on how to apply, will be launched mid-November, with a deadline in early 2024. In the meantime, please save the date.

Call for contributions to Special Issue in Economic and Industrial Democracy

Utopias at work: theories, methods and practices for more democratic work relations

This is a call for contributions to a Special Issue of Economic and Industrial Democracy on the topic “Utopias at work: theories, methods and practices for more democratic work relations”. By gathering contributions from different disciplines, this Special Issue explores the diverse ways in which a utopian lens can contribute to our current analyses of work, work and employment relations, and organizations of working life, toward the creation of socially sustainable and more democratic workplaces and organizations.

If you are interested in contributing to the Special Issue, please send an abstract of max 500 words by 1 of February 2024, to paula.mulinari@mau.se and andrea.iossa@hkr.se. The authors of accepted abstracts will be informed by February 15st, 2024. Submission of final manuscripts for peer-review is expected by September 1st, 2024.

The Special Issue is planned to be published as the first issue of Economic and Industrial Democracy in 2025.

EDITORIAL TEAM

Managing Editor

Dr. Sophy K. J. is Associate Professor of Law at the National Law University Delhi. She is currently the Director of Centre for Labour Law Research and Advocacy (CLLRA). Her areas of research interest are Law relating to Labour and Development, Gender and the Law, Legal History and Anthropology.

Editor in Chief

Dev Dhar Dubey, our editor-in-chief is a PhD scholar at National Law University Delhi. He post-graduated from Gujarat National Law University, Gandhinagar. He is currently working at the Centre for Labour Law Research and Advocacy (CLLRA). He has published several articles in national and international journals and is also the author of two books titled, “Rohingya’s: Journey without an end.” & “Media and Telecommunication Law”.

Editor

Akanksha Yadav, our editor is a PhD Scholar at National Law University Delhi. She has post-graduated from National Academy of Legal Studies and Research, Hyderabad [NALSAR]. She did her graduation from RMLNLU, Lucknow. She is currently working at the Centre for Labour Law Research and Advocacy (CLLRA). She has published several articles and research papers in National Journals.

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Tejas Misra is a 2nd Year Law Student at National Law University, Delhi. Areas of interest include socio-legal research, activism and advocacy. Passionate about history, philosophy and society's intersection with the law. Currently working on research topics relating to labour rights and legal news.

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Kapil Kumar Verma is an LL.M. student at National Law University Delhi; he graduated from National Law Institute University, Bhopal. He is currently working for the Centre for Labour Law Research and Advocacy (CLLRA). His areas of interest include labour law, affirmative action, and women's rights, among others.

To read more articles and blogs and to know more about our Newsletter - Scan the QR Code.

The newsletter titled "Labour Law Insights: Unlocking India's Labor Legal Labyrinth: Insights, Updates, and Analysis" is a comprehensive resource focusing on the intricate landscape of labor law in India. It provides timely updates on legal developments, in-depth analysis of key cases, expert commentary, and answers to common questions, all rooted in Indian legal provisions and case laws. This publication stands as an invaluable resource for scholars, practitioners, and stakeholders seeking profound insights into India's labor legal framework.

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