॥न्यायस्तत्र प्रमाणं स्यात्॥

NLU DELHI

LABOUR LAW INSIGHTS

Decoding Labour Discourse: Insights, Updates, and Analysis

CLLRA NEWSLETTER (ISSN: 2584-1831) VOLUME I ISSUE IX APRIL 2024

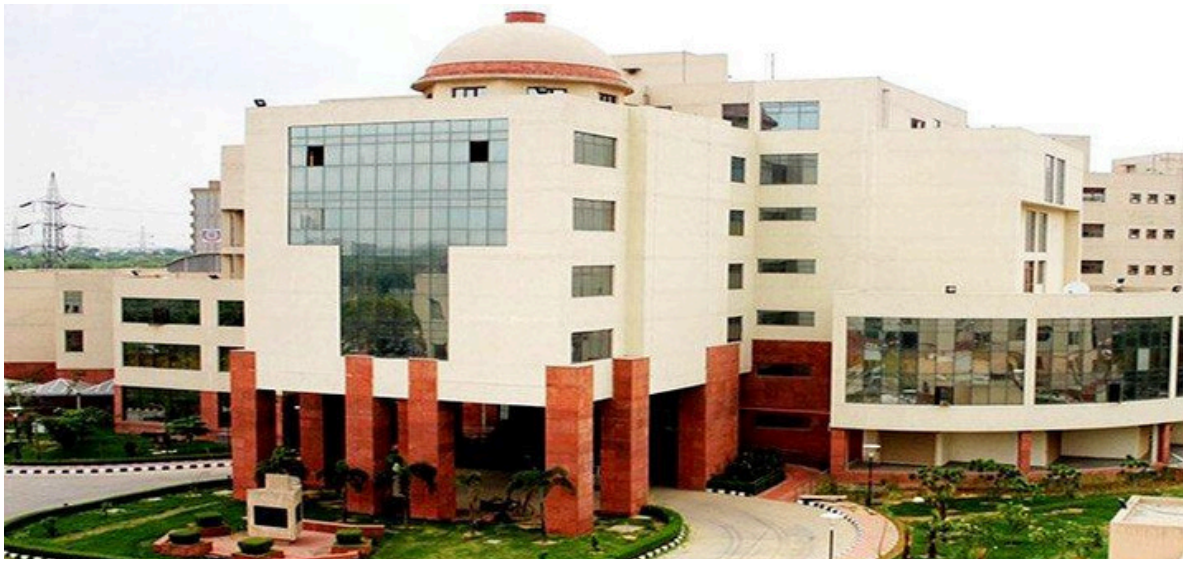
JUDGMENTS | POLICY UPDATES | NEWS | ARTICLES | OPPORTUNITIES

CENTRE FOR LABOUR LAW RESEARCH AND ADVOCACY

CLLRA

Email: cllra@nludelhi.ac.in Website: https://cllra.com

Golf Course Road, Pocket 1, Sector 14, Dwarka, New Delhi, Delhi – 110078



CONTENTS

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

Workman

A MANAGER AND PERSON EMPLOYED AT HIGH RANKING POSITION ARE NOT A "WORKMAN" UNDER SECTION 2(S) OF THE INDUSTRIAL DISPUTES ACT

M/S BHARTI AIRTEL LIMITED V. A.S. RAGHAVENDRA 2024 INSC 265

Facts: The respondent employee was appointed as a regional head with the appellants. In 2011, he made an initial resignation and was paid an amount for full and final settlement of all of his claims. However, afterwards, he filed a petition alleging that his resignation was forceful and was coercive. The respondent contended that in his employment as a manager, he had no decision-making power and nobody reported to him, but that the appellant like other private organizations papa had given impressive designations such as "regional head" without any real power or authority.

Judgment: The Supreme Court held firstly that the respondent was not a "workman" under Section. 2(s) of the Industrial Disputes Act as he was a manager and thus in a high ranking position. Further, the Court observed that the respondent had submitted his resignation with the utmost feeling of humiliation and insult and felt he was unfairly treated by the appellants. However, the Court held that only because the respondent's grievances were not adequately addressed would not mean that he had been "forced" to resign without any evidence of malicious intent or bias on part of the employers. The Court allowed the appeal and held that the respondent had not been forced to resign from his workplace.

Pension

THE PENSION WOULD BE COMPUTED ON THE DATE OF THEIR DEEMED COMPLETION OF TWENTY YEARS

WG CDR AU TAYYABA (RETD) & ORS. V. UNION OF INDIA CIVIL APPEAL NOS 79-82 OF 2012

Facts: The appellants were women officers who had joined the IAF as Short Service Commission Officers (SSCOs), whose service had been periodically extended until they had all retired between 2006 and 2009. However, they were not considered for Permanent Commission (PC). In 2022, a judgment was passed by the Supreme Court allowing PC for all women SSCOs regardless of the date of their release as all of them would have been considered to have completed 20 years of service. However, the appellants had retired after their 14th year of service, and the salary for the purpose of computing pension was taken as the last drawn salary as of the date of release and not from when they had been deemed to have completed 20 years of service.

Judgment: The Court noted that no increments were granted between the period of release and the period at which they were deemed to have completed 20 years of service, and thus, clarified the directions passed in 2022 that the computation of pension would take into account the increments between the period of release and the date of their deemed completion of twenty years. The Supreme Court allowed the appeal and directed for the payment to the officers, and the pension would be computed on the date of their deemed completion of twenty years.

Termination

NON-COMMUNICATION OF ACCEPTANCE OF A RESIGNATION LETTER CANNOT BE A GROUND TO CHALLENGE THE TERMINATION OF EMPLOYMENT

SHRIRAM MANOHAR BANDE V. UKTRANTI MANDAL & ORS. 2024 INSC 3371

Facts: The appellant was a teacher who had been terminated from employment after he had sent a resignation letter to the management. However, the appellant contended that he had withdrawn the letter soon after, and therefore, his employment was wrongfully terminated by the school. He contended that since there was no formal communication of acceptance by the respondents, the resignation was not yet complete.

Judgment: The SC held that non-communication of acceptance of a resignation letter cannot be a ground to challenge the termination of employment. The employment is terminated from the moment when it is accepted by the appropriate authority and there is no requirement for such acceptance to be conveyed to the employee, in the absence of any specific rules as such. The Court held that no communication of acceptance is required to be provided by the employer.

Child Care Leave

SUPREME COURT DIRECTED THE STATE OF HIMANCHAL PRADESH TO REVIEW ITS POLICY ON CHILD CARE LEAVE AND DIFFRENTIATED IT WITH MATERNITY LEAVE

SHALINI DHARMANI V. THE STATE OF HIMACHAL PRADESH SLP(C) NO. 016864/ 2021

Facts: The petitioner was an assistant professor in a government college of Himachal Pradesh. She had a child suffering from a rare genetic disorder. And due to this medical condition, she had to tend to his treatment and continuous surgical requirements. Since the petitioner had exhausted all her sanctioned leaves, she applied for Child Care Leaves (CCL). This was rejected on the ground that the HP government had not adopted the provision of CCL as provided by Rule 43-C of the Central Civil Services (CCS) (Leave) Rules, 1972. As per this rule, female employees with children can get up to 2 additional years of CCL.

Judgment: The Court noted the lack of any policy in the state of HP to provide CCL to mothers of differently abled children, and directed the State to review its policy on child leave. The Court also differentiated between maternity leave and CCL as the former was only for delivering the child and might be insufficient for childcare. The Court observed that women's equal right to work without obstruction was embedded in Art. 15 of the Constitution, and thus, it was necessary that their unique needs were considered. The Court allowed the appeal and also directed that a committee chaired by the Chief Secretary of the State be constituted to look into all aspects of the matter. The Committee would include the State Commissioner, the Secretary of Women and Child Development, and the Secretary of the Social Welfare Department.

Jurisdiction of HC's

HIGH COURTS POSSESS THE AUTHORITY TO EXAMINE TRIBUNAL AWARDS, BUT SUCH REVIEW SHOULD ENTAIL SUBSTITUTING TRIBUNAL FINDINGS WITH THEIR OWN

VVF LTD. EMPLOYEES UNION V. M/S VVF INDIA LTD. & ANR. 2024 INSC 302

Facts: The appellants were an employees' union which raised a charter of demands concerning wage scale revisions and allowances. The Tribunal awarded partial relief to the employees, leading the union to challenge this before the HC. The HC upheld certain aspects of the Tribunal's award and overturned others, leading to an appeal before the Supreme Court, contending that the HC had overstepped its bounds by interfering with the Tribunal's finding on facts.

Judgment: The Supreme Court held that the High Courts possess the authority to examine tribunal awards, but such review should entail substituting tribunal findings with their own. In cases where the employer has demonstrated a difficult financial position, the proper course of action should be to remit the matter back to Industrial Tribunals and not enter into factual questions independently in exercise of writ jurisdiction. The Supreme Court set aside the judgment of the High Court and directed the Tribunal to re-examine the cases of the parties.

Appointment related issue

ASSN. OF ENGINEERS V. STATE OF TAMIL NADU 2024 SCC ONLINE SC 539

TECHNICAL ASSISTANTS SHOULD BE ALLOWED TO JOIN THE PRESCRIBED POSTS THROUGH HORIZONTAL ENTRY AS THEY WORKED AT THE SAME LEVEL OF PAY AS OTHERS

Facts: The appellants were employees in the Tamil Nadu Public Works Department ('PWD'). In 1994, an advertisement was issued by the Tamil Nadu PSC for direct recruitment of Assistant Engineers. This advertisement was challenged by the appellants on the grounds that they should also be considered for the advertisement posts, as the state rules prescribed that those who had rendered service for 5 years would be eligible for the post. The Tribunal allowed the applications filed by some of the engineering officers but not the applications filed by Technical Assistants, claiming that they were not part of the feeder category for the post of Assistant Engineers.

Judgment: The Supreme Court held that the Technical Assistants were allowed to be appointed to the category of Assistant Engineers, based on government circulars and that Technical Assistants were working at the same pay scale as other engineering positions in the feeder category. Further, the Court also noted that the appointment of Technical Engineers would not hinder appointments through direct recruitment, as there were clearly different quotas earmarked for the same. The Court held that Technical Assistants should be allowed to join the prescribed posts through horizontal entry as they worked at the same level of pay as others in the feeder category.

Appointment

DEVESH SHARMA V. UNION OF INDIA DIARY NO. 4303-2024 XV

NO APPOINTMENT WOULD BE DISTURBED IF IT HAD BEEN A LAWFUL APPOINTMENT AT THAT TIME AND FURTHER DID NOT HAVE A CLAUSE THAT THE APPOINTMENT WAS SUBJECT TO ANY ORDER OF THE COURT

Facts: In 2023, the Supreme Court dismissed a set of appeals which pertained to the eligibility of B.Ed. candidates to be appointed as teaching staff in cases where they did not have a D.El.Ed, which is a diploma course for training in primary education. These appeals had challenged a High Court order that had quashed a government notification according to which a B.Ed. was included as a qualification for teachers at the primary level. An application for clarification was passed by the State of Madhya Pradesh of whether this was a retrospective direction.

Judgment: The Court clarified that the judgment of 2023 would have prospective application, and the appointment of no teacher shall be disturbed if he was appointed on the basis of a B.Ed. if it had been an appropriate qualification at the time of their appointment. Further, the Court depreciated the practice of States filing applications for clarification which would in practice, be in the nature of a review petition. The Supreme Court clarified that no appointment would be disturbed if it had been a lawful appointment at that time and further did not have a clause that the appointment was subject to any order of the court.

Discrimination in Appointment

PRIYANKA TYAGI V. UNION OF INDIA & ORS. SLP (C) 3045/2024

SC OBSERVED IT AS UNFORTUNATE THAT INDIAN COAST GUARD CONTINUED TO BE AN OUTLIER ON THE INDUCTION OF WOMEN INTO THE ARMED FORCES ON A PERMANENT BASIS

Facts: The petitioner was a woman appointed as an Short Service Appointee ('SSA') in the Indian Coast Guard. She submitted a request for permanent absorption but was returned without action. This was because it was communicated that there was no provision for absorption of SSA officers in the Coast Guard.

Judgment: The SC observed that it was unfortunate that the Indian Army, Navy and Air Force had rendered judgments on the induction of women into the Armed Forces on a permanent basis but the Indian Coast Guard continued to be an outlier. Therefore, under the ambit of Art. 15 of the Constitution, the petitioner should be entitled to relief until she was considered for permanent absorption. As an interim relief, the Court directed that the petitioner's service be reinstated and be assigned a suitable posting commensurate with her cadre and qualifications.

Superannuation

EMPLOYEE'S SUPERANNUATION HAD TO BE CALCULATED FROM THE INITIAL DATE OF BIRTH PROVIDED AT THE TIME OF JOINING THE SERVICE

THE GENERAL MANAGER, M/S BARSUA IRON ORE MINES V. THE VICE PRESIDENT, UNITED MINES MAZDOOR UNION & ORS. 2024 INSC 264

Facts: The employee represented by the respondent union was employed as a mazdoor with the appellants and was offered casual employment. However, he wrongly provided his birth year at the time of appointment to show he was older than he actually was, as he was actually a minor at the time he was employed. After this, he later on requested the employer to change his birth date to his actual birth date. However, the employee was superannuated from service based on his initially given date of birth, thus the employee challenged this superannuation claiming that he had requested the employer to change his date of birth to a later date.

Judgment: The Apex Court held that since the employee could not have been legally appointed if he was underage, he could not later on change his date to his actual birthdate. Irrespective of his actual date of birth, he would necessarily have to be content with his service and benefits accounted from the date of birth he had originally provided, as that was the only legal route under which he could be employed. The Court held that the employee's superannuation had to be calculated from the initial date he had provided.

Service Matter

UGC LEGISLATIONS THOUGH MADE THROUGH A SUBORDINATE LEGISLATURE HAVE A BINDING EFFECT ON THE UNIVERSITIES

MEHER FATIMA HUSSAIN V. JAMIA MILIA ISLAMIA & ORS. 2024 INSC 303

Facts: The appellants were teachers who sought appointment on a permanent basis in the respondent University pursuant to a letter sent by the UGC. However, the University refused to regularize them and instead rolled out a fresh selection procedure contending that the UGC letter would not be binding on the University.

Judgment: The Supreme Court stated that the UGC legislations though made through a subordinate legislature have a binding effect on the Universities to which it applies, and on the failure to apply those laws, the UGC may withhold the rights made to it out of the fund of the Commission. The Court directed for the appellants to be entitled to continuity in service and other benefits.

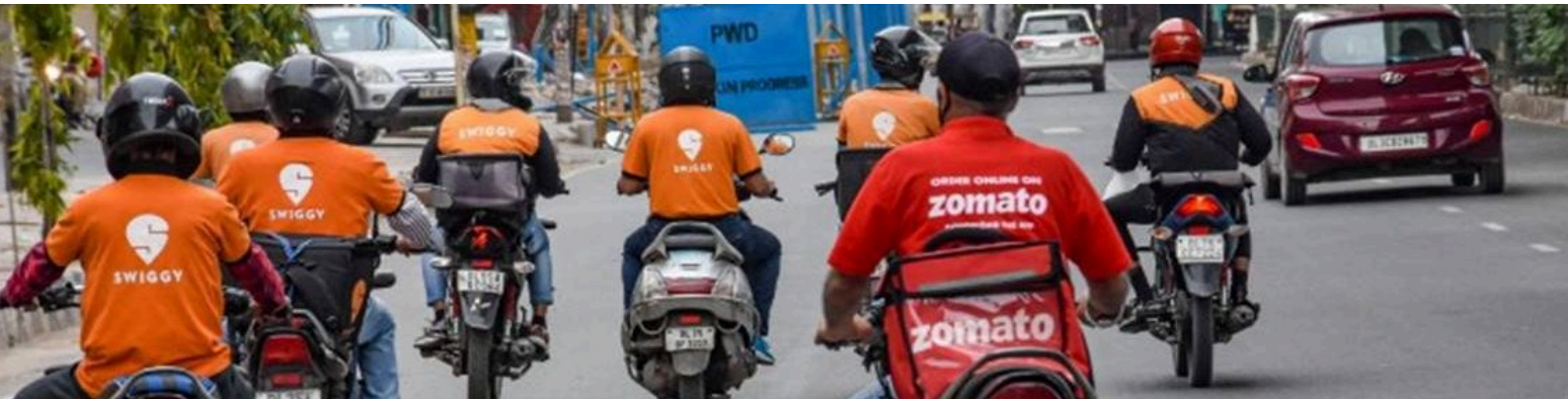
Paid Internship

SC DIRECTED NATIONAL MEDICAL COMMISSION TO FILE A REPLY ON NON PAYMENT OF STIPEND TO MEDICAL INTERNS

ABHISHEK YADAV & ORS. V. ARMY COLLEGE OF MEDICAL SCIENCES WP(C) NO. 730/2022

Facts: The SC had passed a direction in September, 2023 asking the National Medical Commission to file a reply explaining i) whether it was true that 70% of the medical colleges in the country did not pay any stipend to interns, and ii) what steps the Commission was taking to ensure compliance with the norm of paying internship stipend.

Judgment: The Court noted that the Commission had not given the details of entire medical colleges in all States and hence, the earlier direction had not been complied with. Thus, the Court directed for the Commission to file its reply as to the relevant data within a period of 4 weeks from the date of the order.



Recruitment and Recruitment Policy

THE STATE OF WEST BENGAL V. BAISHAKHI BHATTACHARYYA (CHATTERJEE) SLP(C) NO. 009586 /2024

HC ORDER TO SET ASIDE ALL APPOINTMENTS THROUGH BLANKET ORDER WAS VIOLATING THE PRINCIPLES OF NATURAL JUSTICE AND ART. 311 OF THE CONSTITUTION

Facts: The State of West Bengal filed an SLP before the SC challenging the Calcutta HC's order which invalidated 24,000 teaching and non-teaching jobs that were filled as a result of the 2016 SSC recruitment process. These jobs had come under scrutiny for running a "cash-for-jobs" scam. The West Bengal government argued that such an order created a huge vacuum in the State schools before a new selection process could be completed. They also contended that all the appointments had been invalidated in a cursory manner despite the fact that a number of appointments were lawful.

Judgment: The SC noted that the HC had erred in setting aside all the appointments as irregularities had been found only in 8000 names, and by passing such a blanket order was violating the principles of natural justice and Art. 311 of the Constitution. The Court, however, refused to stay the High Court decision, and instead asked whether it was possible to segregate the untainted appointments from the lawful ones. The Court asked the West Bengal government to separate the unlawful appointments from the lawful ones and listed the matter for a future date.

Recruitment

GARIMA KHARE V. HIGH COURT OF MADHYA PRADESH & ANR. SLP NO(S). 9570/2024

SUPREME COURT UPHELD MADHYA PRADESH JUDICIAL SERVICE (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 1994 THAT REQUIRE 70% MARKS FOR APPEARING IN JUDICIARY EXAM

Facts: In 2023, an amendment to Rule 7 of the Madhya Pradesh Judicial Service (Recruitment and Conditions of Service) Rules, 1994 was made that introduced an additional eligibility qualification for the post of Civil Judge, Junior Division (Entry Level). It required that the post required that the applicant should have practiced as an advocate for not less than 3 years and had passed all exams on the first attempt and secured at least 70% marks in the aggregate. This amendment was challenged before the SC.

Judgment: The SC declined to interfere with the amendment and stated that the reason for the amendment was to enhance the quality of judgments which affect the litigants at large. The Court noted that one must possess the highest standards to join the judiciary and that accepting the arguments of the appellants would only maintain the existing subpar standards that had persisted for decades. The Court declined to declare the amendment that introduced a 70% marks requirement as unconstitutional.

High Court

Delhi High Court

- Parveen Kumar v. Export Inspection Council & Ors., 2024:DHC:1824 - A retired officer cannot be termed as “public servant” under Export Inspection Employees Rules, 1978.
- Dr. Shashi Bhushan v. University of Delhi & Anr., 2024:DHC:2847 - A waitlisted candidate would not gain a right to be offered appointment despite resignation of previous incumbent.
- Punjab National Bank v. Poonam Chugh, 2024:DHC:2804-DB - The employer’s negligence in remitting amounts to a pension fund cannot disentitle the employee from the pension scheme.
- Prof. Dr. Mohan Rao & Ors. v. Jawaharlal Nehru University & Ors., 2024:DHC:2619 - Doctors working as professors and assistant professors are entitled to Non-Practicing Allowance (NPA).
- North Delhi Power Ltd. v. Dr. U.K. Priyadarshi, 2024:DHC:2724-DB - An employee would not be entitled to regularization if his employment had only continued due to an order staying his termination.
- Delhi State Legal Services Authority v. Annwesha Deb, 2024:DHC:3246-DB - An advocate empanelled with a legal services authority is not an ‘employee’ and is not entitled to maternity leave under the Maternity Benefit Act, 1961.
- Kush Kalra v. Union of India & Ors., WP (C)-3397/2017 - The Delhi HC ordered the Ministry of Defence to decide whether women should be allowed to join the Indian Army, Navy and Air Force through the Combined Defence Services (CDS) exams within 8 weeks.
- Sanghmitra v. State, 2024:DHC:2524 - Delhi HC called for including 'gender equality' training in the judicial academy curriculum as it may help prevent unseen biases.

Orissa High Court

- State of Odisha & Ors. v. Banamali Samal & Ors., WA No. 1179 of 2023 - Service of a government servant does not qualify for pension unless their appointment, duties, and pay are lawfully regulated by the orders of the government.

Jammu and Kashmir High Court

- Ghar Singh v. University of Jammu & Ors., SWP No.1611/2016 - Casual laborers have intermittent and sporadic employment whereas daily wagers render continuous service.

Chhattisgarh High Court

- S. Santosh Kumar v. State of Chhattisgarh, WPPIL No. 91 of 2019 - Reservation policy for SC/ST in promotion can be framed only on the basis of yardstick fixed by the SC for collecting quantifiable data

Kerala High Court

- Binnesh Babu@ Bineesh Babu v. State of Kerala, OP(KAT) NO. 315 OF 2023 - Past character is not decisive for public employment, and the State should foster development of less fortunate individuals by not condemning them for past crimes.
- B Anandan v. Union of India, WP(C) No. 2392 OF 2018 - Family members of deceased government employees cannot make repeated claims for compassionate appointments.
- K M Habeeb Muhammed v. The Managing Director, OP NO. 38705 OF 2001 - Writ jurisdiction cannot be invoked to question sufficiency or adequacy of evidence in support of a particular conclusion in disciplinary proceedings.
- N. Swaminathan and ors. v. State of Kerala & Ors., WP(C) No. 10866 of 2024 - The transfer of pension funds into the State treasury is permitted and this by itself would not amount to a misuse or investment of pension funds.
- Cherplassery Co-operative Hospital Ltd v. State of Kerala & Ors., 2024:KER:31367 - Co-operative society employees are entitled to benefits under labour laws like minimum wage and maternity benefits.
- Cherian Varkey Construction Company (Pvt.) Ltd. & Ors. v. State of Kerala & Ors., WA No. 44 of 2021 - Preference given to labour contract societies are lawful as they serve a community interest consistent with the aims of a welfare state.

Punjab and Haryana High Court

- Dinesh Kumar and Ors. v. Union of India, 2024:PHHC:045189-DB - Same standard of selection should be maintained in all states for vocational and technical teachers.

Bombay High Court

- Bhausaheb Bhujangrao Pawar v. State of Maharashtra, 1-PIL-30-2024 - Jobs and admissions already secured are subject to outcome of the pleas which challenge the Maharashtra Reservation Act.
- Shramik Janta Sangh v. State of Maharashtra & Ors., Writ Petition No. 1570 of 2023 - The Bombay HC called for information from municipal authorities on what steps were being taken to ensure effective implementation of law against manual scavenging.
- M/s. Premsons Trading (P) Ltd v. Dinesh Chandeshwar, Writ Petition No. 4616 of 2019 - Voluntary abandonment of employment cannot be accepted if notice for resuming duties is not issued.
- Kishore Jetha Somai v. Union of India Writ Petition, No. 7325 of 2022 - If an employee's certificate has been invalidated, he cannot claim any benefits from his employment.
- High Court in its own Motion v. State of Maharashtra & Ors., Suo Motu Public Interest Litigation (L) No. 11654 Of 2024 - The Bombay HC initiates suo motu PIL to hold municipal corporations accountable for accidents and deaths caused due to their negligence.

Karnataka High Court

- Dr Guddadev Yadrami v. The Director & Ors., NC: 2024:KHC-K:2735 - If a fraud has been committed by a person on the basis of a false caste certificate, then no benefits can be taken on grounds of delay and mercy.
- P. Anandan v. The Divisional Controller, Writ Petition No 22673 OF 2015 - Industrial tribunals are bound to give proper and cogent reasons for their orders.
- State Bank of India v. Karnataka State Commission for Schedule Caste and Schedule Tribes & Anr., Writ Petition No. 10347 of 2023 - SC/ST Commission has no jurisdiction to recommend SBI to appoint any person on compassionate grounds.
- Prof Dr Kaushik Majumdar v. Indian Statistical Institute & Ors., Writ Petition No. 264 of 2024 - It is a legal obligation of institutes to provide for better working conditions for specially abled persons.
- Dr Vidyavanthi U. Patil v. State of Karnataka Writ Petition No.100881 OF 2024 - A dentist with BDS degree cannot be appointed as a Taluk Health Officer, a doctoral role must require a MBBS degree.
- Smt. N. Bhuvaneshwari v. The Management of M/s Ambuthirtha Power Pvt. Ltd. - A person in a managerial or supervisory role is not a 'workman' under the Industrial Disputes Act.

Allahabad High Court

- Mahesh Kumar v. State of U.P. and Anr. 2024:AHC:44464 - Termination of a contractual employee is governed by contract, and cannot be adjudicated under Article 226.
- Prem Kumar Tripathi v. The State Of Uttar Pradesh And Anr. WRIT - A No. - 19256 of 2023 - No show cause notice or departmental proceeding can be initiated against a retired employee, in the absence of any rules or regulations.
- The Indian Express Pvt. Ltd. v. Union of India, Writ - C No. - 292 of 2024 - The Working Journalists and Other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 governing the conditions for newspaper employees will have an overriding effect on the Industrial Disputes Act.
- Rajendra Singh v. The State Of U.P. & Ors. Writ - A No. - 6145 of 2021 - A teacher's service after regularization cannot be terminated merely due to lack of qualification at time of initial appointment.
- Poornima Singh v. State Of U.P. & Ors. 2024:AHC:40783 - Resignation tendered by a government employee can be withdrawn at any time before its acceptance.
- Shiv Pratap Maurya & Ors. v. State Of U.P. Through Prin. Secy. Deptt. Of Medical Health & Ors., 2024:AHC-LKO:24472 - If persons have worked pursuant to interim orders of a Court, they would be entitled to salary for that period and not doing so would amount to begar labour.
- Executive Engineer Electricity Transmission Division vs. Mahesh Chandra & Anr., Writ(C) No. - 61111 of 2012 -A labour court cannot award interest in proceedings for recovery of money from employer u/s 33C(2) of the Industrial Disputes Act, 1947, which provides that where any money is due to an employee from his employer, the employee can make an application to the appropriate Government for the recovery of the money due to him.
- Adarsh Kumar v. State of UP & 5 Ors., Writ(A) No. - 2259 of 2024 - The Court disparaged the trend of government servants speaking freely to the media, and enquired from the government about what steps were being taken to train the younger generation of government servants not to be tempted to speak to the media impromptu.
- International Service Fellowship USA v. Harendra Kumar Masih, Contempt Appeal No. - 2 of 2024 - An intra-court appeal is not maintainable against order issuing notices in a contempt jurisdiction.

Madras High Court

- M. Anantha Babu v. The District Collector & Ors., WP No. 27139 of 2021 - Compassionate appointment cannot be denied solely on the ground that the petitioner was an illegitimate child born to his second wife.

- Pandiammal v. Commissioner, Social Welfare and Women Empowerment Department & Ors, WP No. 32200 of 2023 - The contract appointment of Protection Officer cannot be said to be appointed under Rule 3(3) of the Protection of Women from Domestic Violence Rules, 2006 merely because she was allowed to continue her service after completion of tenure of contract, and could be terminated on unsatisfactory experience

Himachal Pradesh High Court

- Roop Lal & Ors. v. State of Himachal Pradesh and Ors., CWPOA No.6687 of 2020 - Employees imparting education to special needs students are discharging a State duty and are entitled to regularization.
- Rakesh Sharma v. Indian Oil Corporation & Anr., LPA No.18 of 2021 - Burden of proving an employer-employee relationship primarily rests upon the party who asserts its existence.
- Suneet Singh Jaryal v. State of HP & Anr., CWP No. 5170 of 2023 - Pensionary benefits cannot be withheld for an indeterminate period on ground of lack of resources.
- Usha Rani v. State of HP & Ors., CWP No.1275 of 2024 - Family annual income and not individual income needs to be considered for determining eligibility of Anganwadi workers.
- UCO Bank & Ors. v. Chaman Singh, LPA No. 96/2021 - Service provided for a period of three months and above shall be treated as one half year for the purpose of calculating total service period.
- State of H.P. & Anr. v. Jai Ram Kaundal, LPA. No. 126 of 2015 - A person appointed under SC/ST quota cannot later claim reservation under ex-serviceman quota.
- UCO Bank & Ors v. Chaman Singh, 2024:HHC:1348 - Any right or benefit vested in an employee under the substantive provision of a regulation cannot be taken away by its proviso.

Calcutta High Court

- Ram Asheesh Yadav v. Union of India & Ors., WPA 4419/2019 - Furnishing wrong information for securing a job amounts to fraud upon the employer.
- Sankar Mandal v. Union of India, WPA 3225/2016 - Non-disclosure of information cannot form the sole ground for an employer to discharge an employee.
- SK. Jaynal Abddin v. Commissioner Of Income Tax, Kolkata, ITA/8/2012 - Payments by supervisors to individual labourers, each not exceeding Rs. 20,000, cannot be disallowed under Section. 40A(3) of the Income Tax Act, 1961.

International Cases

Unfair discrimination

ENEVER V. BARLOWORLD EQUIPMENT SOUTH AFRICA (JA86/22) [2024] ZALAC (23 APRIL 2024) (SOUTH AFRICA)

EMPLOYER COULD NOT MAKE HER CHOOSE BETWEEN HER EMPLOYMENT AND HER RIGHT TO CONSUME CANNABIS IN HER OWN HOME, WHICH IS LEGAL IN SOUTH AFRICA

Court: Labour Appellate Court (LAC) of South Africa

Facts: The appellant was employed with the respondent as a category analyst. The respondent had an Employee Policy Handbook which incorporates a zero- tolerance approach to possession and consumption of alcohol and drugs in the workplace. By accepting and signing the Handbook, the Appellant agreed to random, voluntary and scheduled drug testing. However, the appellant's results came back positive for cannabis, and was dismissed from her service. The appellant alleged that she had been unfairly discriminated against.

Judgment: The Court held that though employers had justifiable occupational health and safety reasons to prevent the use of drugs, the Court held the employer could not make her choose between her employment and her right to consume cannabis in her own home, which is legal in South Africa. It could also not be proven that the respondent had not shown that the appellant's work had been adversely affected or that she had created an unsafe working environment. The Court observed that though the respondent did operate in an environment with heavy machinery, the employer's policy was overbroad as the same standards were being applied to her at home as well. The Court did not accept that the zero-tolerance rule was justifiable because the respondent had a generally dangerous working environment or that it was an inherent requirement of the job not to consume cannabis. The Court upheld the appeal, and her dismissal was found to be automatically unfair on the basis of unfair discrimination, and she was awarded 24 months' compensation.

Discriminatory Transfer

MULDROW V. CITY OF ST. LOUIS, MISSOURI NO. 22-193 SUPREME COURT (APRIL 17, 2024) (USA)

TRANSFER TO VIOLATE TITLE VII OF THE CIVIL RIGHTS ACT, 1964, IT MUST ONLY BE SHOWN THAT THERE WAS SOME HARM CAUSED TO THE EMPLOYEE

Court: Supreme Court of the USA

Facts: An employee with the FBI was transferred to another district, which led to a different work schedule, responsibilities, and loss of special privileges including potential overtime. She filed a Title VII violation, which protects the right against discriminatory transfers.

Judgment: The Court held that in order for the transfer to violate Title VII of the Civil Rights Act, 1964, it must only be shown that there was some harm caused to the employee. This overturned previous precedent as the harm need not be significant. Rather, as long as the transfer left the employee worse off in some way with respect to their employment terms or conditions, and was made because of a protected characteristic like sex or race, it violates Title VII's prohibition on discrimination. The Court held remanded the case back to the lower courts to decide the matter fresh on merits in view of this ruling.

Strike during working hours

SECRETARY OF STATE FOR BUSINESS AND TRADE V. MERCER [2024] UKSC 12 (UNITED KINGDOM)

IMPOSING PENALTIES FOR MEMBERS TO PARTICIPATE IN LAWFUL STRIKES DURING WORKING HOURS WOULD BE VIOLATIVE OF ART. II OF THE ECHR

Court: Supreme Court of the United Kingdom

Judgment: The Supreme Court of the United Kingdom noted that Section. 146 of the Trade Union's and Labour Relations (Consolidation) Act, 1992 (TULRCA) protects employees from taking part in strike actions when done "at an appropriate time", which excludes working time from its ambit. Thus, the Section limits the protection only to strike activities outside working time or otherwise have to be with the consent of the employer. The Court held that this Section was incompatible with Art. 11 of the European Convention on Human Rights (ECHR), which protects the right to free assembly. The Court noted that industrial strikes must be carried out during working hours if it was to have the desired effect, since for workers to withhold labour outside working time would have no little consequence for the employer. Thus, the Court held that imposing penalties for members to participate in lawful strikes during working hours would be violative of Art. 11 of the ECHR.

POLICY AND LEGISLATIVE UPDATES

ESIC PUBLISHES A CYCLICAL LISTING OF STATE-WISE NOTIFIED AND NON-NOTIFIED DISTRICTS UNDER THE ESIC SCHEME

The Employee's State Insurance Corporation (ESIC) has published a comprehensive State-by-State status of notified district of ESI Scheme in Circular No. N-15015/01/2023-P&D dated 18.03.2024. It has stipulated that notifications have been sent to the complete region of 17 States and Union Territories and the partial area of 19 States and Union Territories. There are 565 fully notified districts, 103 partially notified districts, 668 total notified districts, 103 total non-notified districts, and 778 overall number of districts, according to the consolidated state of the district.

ELECTION COMMISSION HAS REQUIRED PAID HOLIDAY FOR EMPLOYEES ON DAY OF POLLING WITHOUT DEDUCTING WAGE

The Election Commission of India has directed relevant authorities about the General Election to the Lok Sabha of 2024 and the Assembly Bye-elections in a circular with reference number 78/EPS/2024, dated 16.03.2024. It draws attention to Section 135B of the Representation of the People Act, 1951, which requires employers to provide paid time off on election day in exchange for no pay reduction. Businesses that violate any laws will be fined, with the maximum penalty being five hundred rupees.

RAJASTHAN SETS CONDITIONS FOR HIRING FEMALE WORKERS AT NIGHT

For the purpose of hiring women workers during the night in Rajasthan in stores and institutions covered by the Rajasthan Shops and Commercial institutions Act, 1958, the Rajasthan government's Labour Department has released a directive dated March 07, 2024 with No.: F.14 (11) (1) Bomb: Law: 2017. The company must have the approval of the female workers who will be working at night, among other things. In addition, appointment letters and photo identity cards will be given to every female employee. Employers must make precautions to stop potential acts or episodes of sexual harassment in the workplace when female employees work late hours. It will be the employer's duty to guarantee their total security. As a result, the employer is required to make transportation arrangements for female employees to and from their homes during the night.

EPFO MODIFIES THE LIST OF DOCUMENTS THAT MUST BE SUBMITTED IN ORDER TO CORRECT THE NAME OF THE PARENT

The Employees' Provident Fund Organization (EPFO) has released a circular dated March 11, 2024, bearing No. WSU/2022/Rationalization of work areas/Joint Declaration/17. As a result, additional documents have been added to the list of documents specified in the EPFO Standard Operating Procedure for processing joint declarations for updating member profiles in EPFO. These documents include the member's Aadhaar card bearing their father's or mother's name, PAN card, 10th or 12th certificate or mark sheet with their parents' or mothers' names, and driver's license.

SEVERAL NOTICES ABOUT MAKING AADHAAR REQUIRED IN ORDER TO ACCESS DIFFERENT SCHEME BENEFITS

Operating under the Ministry of Social Justice and Empowerment, the Government of India's Department of Empowerment of Persons with Disabilities (Divyangjan) released several notifications including S.O. 1265 (E), S.O. 1266 (E), S.O. 1259 (E), S.O. 1260 (E), S.O. 1261 (E), S.O. 1262 (E), S.O. 1263 (E), S.O. 1264 (E), S.O. 1267 (E), S.O. 1268 (E), S.O. 1269 (E), and S.O. 1270 (E). The aforementioned notice requires use of Aadhaar for beneficiaries who are qualified to receive benefits under the Scheme of Institutes, which is run by the Department of Empowerment of Persons with Disabilities in India. This project is being implemented through nine autonomous entities.

MAHARASHTRA AMENDS THE MAHARASHTRA LABOUR WELFARE FUND ACT, 1953

By enacting the Maharashtra Labour Welfare Fund (Amendment) Act, 2024, through a notification dated March 18, 2024, the Maharashtra Labour Welfare Fund Act has been further changed. Sub-section 2 to Section 6BB has been amended by the aforementioned change, changing the amount of payment that each employee and their employer must pay every six months.

CONDITIONS FOR WOMEN WORKERS IN THE STATE OF HARAYANA AT NIGHT

The Governor of Haryana has imposed the requirement on factories requesting an exemption to employ women for night shifts, specifically from 7:00 PM to 6:00 AM, in notification No. 11/6/2022-4lab dated 14.03.2024. The primary goal of these rules is to protect female employees' security and safety. These include actions like outlawing sexual harassment, setting up internal committees, putting anti-harassment policies into place, providing sufficient lighting and CCTV coverage, setting up transportation with security measures, assigning female supervisors to work night shifts, getting consent from female employees to work night shifts, providing medical facilities, abiding by labor laws, facilitating grievance redressal, holding awareness campaigns and, submitting yearly reports on the details of female workers and any related incidents to the appropriate authorities.

GUIDELINES FOR REPORTING IN NIDHI AAPKE NIKAT 2.0 ARE RELEASED BY EPFO

Under the Nidhi Aapke Nikat 2.0 program, EPFO hosts district camps on the 27th of every month, or the following working day in the event that the 27th falls on a holiday. The camp is available to members, pensioners, employers, and everyone else for information sharing and grievance settlement. It is called Nidhi Aapke Nikat 2.0. Regarding this, EPFO has directed in a circular dated March 26, 2024, bearing No. C&PR/2023/NAN2.0/Report-4/E-57674, that a visitor log or register for the camps must be kept in the format specified. In order to promote the district camps widely, the venue information must also be posted on EPFO websites and disseminated on social media. Camps shouldn't be allowed to relocate at the last minute. Additionally, zonal officers are asked to submit NAN-1 by the tenth of each month.

THE JOINT DECLARATION OF MEMBER PROFILE UPDATION PROCESSING STANDARD OPERATING PROCEDURE, VERSION 2, IS APPROVED BY EPFO

A circular released by EPFO on March 26, 2024, with the number WSU/2022/Rationalization of work areas/Joint Declaration/256, describes the Standard Operating Procedure (SOP) that must be followed when processing adjustments to a member's profile inside EPFO. The Joint Declaration of Member Profile Updation SOP (version-2) has been accepted by competent authorities, superseding the prior standard operating procedures. It is stressed that in order to stop incidents of impersonation, identity theft, and other fraudulent acts, field offices must process joint declaration requests with complete diligence. The aforementioned SOP outlines the steps involved in receiving joint declarations from the employer and members for the adjustment of UAN profiles as well as the process by which the field offices will repair UAN profiles.

DESK DISPATCHES

Pension of Government Servants and Article 21: Building a House on Quicksand

Aadi Belhe, Research Intern, CLLRA

Introduction

Pension is a source of constant litigation before Indian courts. Particularly, the pension of government servants has seen great contestation on the basis of Part III of the Constitution. In this piece, I consider the possibility of holding that the right to pension of government servants is a part of Article 21. I will not be dealing with pension payable to employees in the private sector since fundamental rights are available only against the State by virtue of Article 12. My main argument is that the right to pension must be held to be a part of the right to property under Article 300A and not the right to life under Article 21 since the rights under the latter are provided simply by virtue of the fact that one is a 'person'.

Firstly, I will be giving a short overview of the manner in which the judiciary has dealt with pensions claims under the Constitution. Secondly, I will be going over the consequences of holding that the right to pension is a part of Article 300A and not a part of Article 21. Thirdly, I will be justifying the exclusion of pension from Article 21.

Judicial treatment of the right to pension

The Supreme Court has dealt with pension in a consistent manner over a large number of cases. Cases such as Deokinandan Prasad v. State of Bihar[1] ('Deokinandan') and Salabuddin Mohd. Yunus v. State of Andhra Pradesh[2] ('Salabuddin') are emblematic of the stance taken by the Supreme Court on this point of law. In the former case, which was heard by a Constitution Bench of 5 judges, it was held that the right to get pension itself amounts to 'property' due to which it is safeguarded under Articles 19(1)(f) and 31(1) of the Constitution.[3] Both of these provisions dealt with the fundamental right to property while Article 21 deals with the fundamental right to life. There has been no decision of the Supreme Court till date in which it has been stated that the right to pension is a part of Article 21.

Both Article 19(1)(f) and Article 31(1) were removed from the Constitution by the Constitution (Fourty-fourth Amendment) Act, 1978 ('1978 Act'). This amendment downgraded the status of the right to property to that of a constitutional right by providing for the right outside of Part III of the Constitution through Article 300A. Thus, currently right to pension is only a constitutional right under Article 300A and not a fundamental right. This has been confirmed by the Supreme Court in State of Jharkhand v. Jitendra Kumar Srivastava.[4] High Courts have also reiterated this point in judgments such as Naini Gopal v. Union of India[5] of the Bombay High Court, Abhilash Kumar R. v. Kerala Books and Publication Society[6] of the Kerala High Court, and G. Muralidhar v. State of Andhra Pradesh[7] of the Andhra Pradesh High Court.

The implications of having the right to pension be a part of Article 300A

Three consequences flow from calling the right to pension a constitutional right and not a fundamental right. The relatively insignificant result is that a person cannot directly approach the Supreme Court by filing a writ petition under Article 32 in case pension is not paid to him since that Article only allows petitions to be filed if a fundamental right of a person is violated. One would need to approach a High Court under Article 226 to enforce Article 300A.

The second consequence is that a person cannot sue the State for having committed a constitutional tort. In Nilabati Behera v. Union of India,[8] which is the foundation of the law on constitutional torts, it was held by the Court that a compensation can be awarded to persons under Articles 32 and 226 if a fundamental right of theirs is violated and if no other remedy is feasible. Thus, non-provision of pension cannot amount to a constitutional tort and the remedy spoken of by Nilabati Behera cannot be obtained by pensioners. This is more so the case since the Supreme Court has held in Hindustan Papers Corporation v. Ananta Bhattacharjee[9] that this remedy is available only when Article 21 is infringed. One might want to argue that not being able to obtain compensation for constitutional torts does not matter since it is the same as a High Court issuing a writ of mandamus under Article 226 so as to order the grant of pension. This is correct especially since the Court held in D.K. Basu v. State of West Bengal that the "emphasis has to be on the compensatory and not on punitive element" while determining compensation.[10]

The third and most important, consequence is that the right to pension does not have the protection against tampering granted to fundamental rights by Article 13 of the Constitution. This was clearly something that was intended by the 1978 Act. In any case, the wording of Article 300A itself is such that the State can easily ignore right to property, and thereby the right to pension, since it mentions that the right can be taken away by "authority of law". This is much laxer than the phrase "procedure established by law" which is present in Article 21. The 1978 Act was tabled in Parliament in 1977 while the decision of the Supreme Court in Maneka Gandhi v. Union of India,[11] in which due process was read

into the words “procedure established by law” in Article 21, came in 1978. Thus, Parliament seems to have pre-empted, intentionally or otherwise, this landmark decision of the Supreme Court.

Thus, it is fairly apparent that the mere fact that pension is not considered a fundamental right does not lead to any major consequences.

Impossibility of inclusion under Article 21

The right to life granted by Article 21 is available to all persons irrespective of whether they are citizens of India as has been held by the Supreme Court in multiple cases including the recent case of In Re Inhuman Conditions in 11382 Prisons.[12] An argument can be made that the right to pension can be considered to be a sub-set of the right to live with dignity which has been well established in the jurisprudence surrounding Article 21 through cases such as Francis Coralie Mullin v. Administrator, UT of Delhi.[13] This argument would proceed on the basis that pension provides former employees of the State with a steady stream of income that they can use to live a decent life during their twilight years when they cannot work to earn money.

However, my counter to this is simply that the right to pension is not a “fundamental” right. As was half stated and half implied by the Supreme Court in State of West Bengal v. Committee for Protection of Democratic Rights (‘CPDR’), fundamental rights are “fundamental” because they are available to persons due to their inherent personal characteristics.[14] It is fairly apparent that rights under provisions such as Article 29 are available only to certain categories while others such as Article 21 are applicable to all simply by virtue of the fact that they are persons. It would be absurd to say that persons are entitled to pension simply because they are persons. Persons are entitled to pension from the State because they were government servants in the past and not because they are persons. Hence, the right to pension cannot be read into the right to dignity since the right to dignity itself is available under Article 21 solely by virtue of the fact that a person is a person. After all, the reason behind the grant of a right has to determine the scope of that right.

A much more palatable proposition would be that persons are entitled to any property that they might come to own and that this entitlement flows from their status as persons. Of course, even this proposition is no longer true as per the 1978 Act since it removed both Articles 19(1)(f) and 31(1). By the logic of CPDR, the right to property is now not available to persons as a fundamental right since no one has an inherent right to property due to the fact that they are persons. The simple point I want to make is that the first proposition amounts to saying that persons have a right to a certain sum of money by virtue of being a person while the second proposition just states that persons have a right to not be deprived of any property that they might obtain. To accept the first proposition is to claim that government servants have to be afforded a much greater minimum standard of life, i.e. a stronger right to live with dignity, under Article 21 as compared to persons who were never employees of the State. Such a conclusion has no basis in the existing law.

Conclusion

This piece has tried to show that existing precedent such as Deokinandan and Salabuddin which states that pension is only a part of the right to property is good in law. This is not inherently bad in nature since the consequences of this are themselves relatively minor. Notably, a universal pension, i.e. universal basic income, is not prevented from being read into Article 21 by the reasoning provided in this paper since one would be entitled to a universal pension merely because of the fact that one is a person.

[1] (1971) 2 SCC 330
[2] 1984 Supp SCC 399
[3] Deokinandan (n 1) [16].
[4] (2013) 12 SCC 210.
[5] LD-VC-CW-665 of 2020 (Nagpur).
[6] 2022 SCC OnLine Ker 9654 : 2022 LLR 1280.
[7] Writ Petition No. 4581 of 2021.
[8] (1993) 2 SCC 746 [17].
[9] (2004) 6 SCC 213.
[10] (1997) 1 SCC 416 [54].
[11] AIR 1978 SC 597.
[12] (2021) 16 SCC 798.
[13] (1981) 1 SCC 608.
[14] (2010) 3 SCC 571 [10].

Time is Ripe for India to Concretize Right to Strike

Bhuwan Sarine, Research Intern, CLLRA

Introduction

Recently, the governing body of the International Labour Organization (ILO) has requested the International Court of Justice (ICJ) to give its advisory opinion on the question whether right to strike can be read into the Freedom of Association and Protection of the Right to Organize Convention, 1948 (Convention no. 87).[1] This has made the issue of the right to strike extremely relevant.

In this background, this paper argues that this is the perfect time for India to give express recognition to the right to strike and concretize the same by dispelling the existing uncertainties from the legal system. To that end, the paper firstly gives the current background, secondly discusses the problems in the Indian setup, thirdly shows why there is a pressing need to formally recognize the right to strike and finally concludes with a recommendation on how the same can be achieved.

The Background: ILO's Referral to the Dispute

The ILO Committee of Experts on the Application of Conventions and Recommendations has for a long time, believed that right to strike is a corollary to the right to freedom of association. Consequently, it is of the opinion that the right to strike is recognized and protected by Convention No. 87.[2] On the other hand, the Employers' group did not agree with the Committee's interpretation of Convention No. 87, and therefore the disagreement intensified.

Under article 37(1) of its Constitution, the ILO is required to refer to the ICJ any question or dispute relating to the interpretation of its Conventions.[3] Since a disagreement existed, a decision was taken by vote to urgently refer the matter to the court during a special session held on 10 November 2023.[4]

The ILO's Committee on Freedom of Association (COFA) is also of the same view as the committee of experts, and has held that the right to strike represents a fundamental right of workers and may be utilized as a last option for pressurizing employers to redress labour grievances.[5] Additionally, regional human rights treaty forums have also echoed the same voice.[6]

The Conundrum in India

In India, the Constitution guarantees the citizens the right to form associations or unions.[7] It could thus be argued that the right to strike is a natural extension of the constitutional guarantee for freedom of speech, expression and association.[8] After all, "strike" happens pursuant to a common understanding among workers[9] with a view of sympathizing with other fellow workers, and is an expression of their demands regarding wages, working conditions or other grievances.[10] Thus, from the workers' perspective, the right to strike is a corollary of the freedom of speech and expression.[11]

Incoherence of the Judiciary

The question came up for determination before the top court in All India Bank Employees' Association v. National Industrial Tribunal.[12] The court rejected the view and held that even a very liberal interpretation of Article 19(1)(c) cannot lead to the conclusion that right to strike is a guaranteed right under Part III of the constitution.[13] As a result, the restrictions on this right would not be tested along the framework of Article 19(4), but with reference to other legislations which deal with them.[14] A similar view was taken in Kameshwar Prasad, a case contemporaneous with All India Bank Employees' Association.[15]

Thus, the judiciary has repeatedly taken the view that the right to strike is not a fundamental right. Moving ahead to 2003, the question again came up in T.K. Rangarajan v. Govt. of T.N. Unsurprisingly, citing precedents, the court held that employees have no fundamental right to strike.[16] With the law being settled on this issue, the question remains whether or not there is a legal/statutory right to strike in favour of the employees. The straight answer to this can be in the negative, as held in the T.K. Rangarajan case.[17] It was held therein that there is no statutory provision empowering the employees to go on strike, there is not even a moral or equitable justification to strike.[18] However, the ruling suffers from basic infirmities.

While the court gave effect to the prohibition under the local legislation,[19] it disregarded the provisions of the Industrial Disputes Act, 1947 (hereinafter "the Act"). The Act makes some strikes illegal; however, it is contingent upon the conditions being fulfilled.[20] Nowhere under the Act is there a mention of strikes being illegal per se. The Tamil Nadu legislation, which the court gave effect to, is itself in conflict with the Act, a central legislation. Similar vice is present in the Central Civil Services (Conduct) Rules, 1964, a subordinate legislation, which unconditionally prohibits government servants from resorting to strike.[21]

It could be argued that since the Act classifies what kind of strikes would be prohibited, there are those strikes which are perfectly legal. Though there is no express recognition, there is a statutory right to strike by implication. The court in T.K.

Rangarajan conveniently disregarded the provisions under the Act.[22] The court wrongly applied the maxim expressum facit cessare tacitum,[23] since the expression of illegality itself is not present anywhere.

Now, coming to the moral justifications for a strike, the court was correct in saying that strikes affect the entire society and administration, and the workers are required to make use of the state machinery for redressal of their grievances.[24] However, it might be that the workers have tried all possible methods and have been met with a blind eye to their demands. In that case, strike becomes the 'necessary evil,' and a measure of last resort. The court ignored the employees' side of the argument.

In fact, in Crompton Greaves v. Workmen, it was held that a strike is legal if it doesn't violate the provisions of any statute.[25] Similarly, in A.P.S.R.T. Corporation Employees Union case, Justice Chinnappa Reddy noted that if the strike does not contravene the provisions of s. 22 or 23 of the Act, it is perfectly legal.[26] He even went on to say that the right to strike is the ultimate weapon, and an inherent right of every worker.[27] Though coming from a High Court, this is a noteworthy opinion since the right is situated within the provisions of the Act. There is precedent for a similar opinion from the SC as well, in B.R. Singh and Ors. v. Union of India.[28]

To put it shortly, there has been a recognition of the right to strike in India by the judiciary, and it could be drawn out (by implication) from the statute as well. The problem is the absence of an express legislation dealing with it, and conflicting judgements which have clouded the scenario.

Missed Opportunities

In Kameshwar Prasad, the court ruled that some forms of demonstration are permitted and fall within the scope of article 19(1)(a) and 19(1)(b).[29] However, the definition of demonstration using which the court based its opinion possessed all the essentials of a strike.[30] There was an opportunity missed by the court to infer right to strike into right to demonstration, and concretize the same as a fundamental right.[31]

Justice Krishna Iyer, in Gujarat Steel Tubes Ltd. case, after a selective study of foreign case laws, said that a strike may be "illegal" and yet "justified."[32] However, the distinction did nothing to elevate or change the status of strikes. Even though justified, it would still remain illegal in the eyes of law. He could have gone ahead and situated the right to strike within the constitutional framework,[33] because his study of foreign examples would have provided him with such precedents in other countries.

There have been numerous cases where the courts could have elevated the right to the status of a fundamental right, or even a constitutional right, but each time they have fallen short.

Why is a Change warranted?

A lot of countries have recognized the right to strike, and though arguable, the mainstream position is that it has become part of customary international law (CIL). CIL forms one of the sources of international law[34] and India is under an obligation to respect the same.[35] Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the UN General Assembly in 1966 expressly imposes a duty on the state parties to ensure the right to strike.[36] India has signed and ratified the covenant, but its progress on the said right is clearly questionable.

Coming to the ILO conventions, Convention No. 87 and 98 indirectly allow the right to strike by the employees.[37] Despite being a founding member of the ILO and having ratified many of its conventions, India has not ratified these conventions, showing its reluctance to expressly allow the right. Even the Universal Declaration of Human Rights gives implied recognition to the right to strike by using the expression "right to freedom of peaceful assembly and association"[38] but the Indian judiciary has refused to give effect to such an interpretation. It is evident that by not recognizing the right explicitly, India is presently disregarding international law.

While workers in India face issues on a daily basis, neighboring countries like Pakistan and Bangladesh facing similar problems have ratified the conventions way back.[39] South Africa expressly guarantees the right to strike through its constitution,[40] whereas in USA and Canada, the constitutional courts have read this right into their constitutions.[41] Other small third world countries such as Rwanda, Ethiopia and Angola have also incorporated this right into their constitutions.[42] Notable countries like Brazil, Greece, Hungary, Japan, Portugal, Poland etc. have all crystallized the right constitutionally.[43]

Thus, international treaty obligations as well as state practice from all over the world is calling upon India to elevate the status of the right to strike. By not concretizing the right in its domestic setup, India is acting as an anomaly among the democratic countries. The recent referral of the dispute by the ILO has again sounded the bell for India that this is the perfect time to rectify its mistake.

The Way Forward

To give formal recognition to the right to strike, India has two ways available at its disposal. The first is reading the right into its constitution, and the second is enacting a separate

legislation to make this right a statutory one. For the former, it could be easily brought within the ambit of article 19(1)(c), thereby elevating the right to the status of a fundamental right.[44] Through judicial creativity, it is also possible to read the right into either article 19(1)(a), 19(1)(b) or 21.[45] Strikes often cause great inconvenience to the public as well as the administration, so care needs to be taken to subject this right to reasonable restrictions mentioned under the respective provisions.

With respect to the other way, the Parliament could consider coming up with a legislation which expressly grants the right to strike to employees to protect their economic and working conditions. While the Industrial Disputes Act already exists, it is not worded in a way that explicitly concretizes the right. Additionally, there are provisions under other laws which negate the implied right under the Act.[46] The Parliament could use section 7 of the National Labour Relations Act, 1935 (US legislation)[2] and article 236(1) of the Labour Relations Law (labour law of North Macedonia)[3] as sample provisions to build upon.

The priority should be to provide for safeguarding the economic and work interests of the employees, and at the same time, including reasonable restrictions to prevent unnecessary inconvenience to the public.

Endnote:

[1] Rongeet Poddar, 'The ICJ's litmus test: Recognising workers' right to strike and implications for India' The Leaflet (December 20, 2023) <https://theleaflet.in/the-icjs-litmus-test-recognising-workers-right-to-strike-and-implications-for-india/#:~:text=The%20statutory%20regime%20of%20labour,Part%20III%20of%20the%20Constitution> accessed 26 February 2024.
[2] Press Release, 'ILO refers dispute on the right to strike to the International Court of Justice' (International Labour Organization, 11 November 2023) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_901633/lang--en/index.htm> accessed 27 February 2024.
[3] International Labour Organization Constitution 1944, art 37.
[4] Press Release (n 2).
[5] Poddar (n 1).
[6] ibid.
[7] The Constitution of India 1950, art 19(1)(c).
[8] BP Rath and BB Das, 'Right to Strike: An Analysis' (2005) 41(2) Indian Journal of Industrial Relations 250 <http://www.jstor.com/stable/27768011> accessed 25 February 2024.
[9] The Industrial Disputes Act 1947, s 2(q).
[10] IM Sharma, 'Right to Strike' (2004) 46(4) Journal of the Indian Law Institute 522 <https://www.jstor.org/stable/43951934> accessed 25 February 2024.
[11] The Constitution of India 1950, arts 19(1)(a) and 19(1)(c).
[12] All India Bank Employees' Association v. National Industrial Tribunal 1961 SCC OnLine SC 5.
[13] ibid [22].
[14] ibid.
[15] Kameshwar Prasad and Ors. v. State of Bihar and Anr. 1960 SCC OnLine SC 30 [19].
[16] T.K. Rangarajan v. Govt. of T.N. and Ors. (2003) 6 SCC 581 [12].
[17] ibid [17].
[18] ibid [17], [19].
[19] The Tamil Nadu Government Servants Conduct Rules 1973, r 22.
[20] The Industrial Disputes Act 1947, ss 22, 23 and 24.
[21] The Central Civil Services (Conduct) Rules 1964, Rule 7(ii).
[22] Ashish Goel and Piyush Karn, 'Tracing the Right to Strike under the Indian Constitution' (2011) 2(1) NLIU Law Review 174 <https://nliulawreview.nliu.ac.in/journal-archives-2/volume-ii-issue-i-2/tracing-the-right-to-strike-under-the-indian-constitution/> accessed 27 February 2024.
[23] Express mention of one thing implies the exclusion of the other.
[24] Rangarajan (n 16) [19].
[25] Crompton Greaves Ltd. v. Its Workmen (1978) 3 SCC 155 [4].
[26] The A.P.S.R.T. Corporation Employees Union v. The A.P.S.R.T. Corporation Hyderabad and Ors. 1969 SCC OnLine AP 192 [3].
[27] ibid.
[28] B.R. Singh and Ors. v. Union of India and Ors. (1989) 4 SCC 710 [15].
[29] Kameshwar (n 15) [13].
[30] ibid.
[31] Goel (n 22) 176.
[32] Gujarat Steel Tubes Ltd. and Ors. v. Gujarat Steel Tubes Mazdoor Sabha and Ors. (1980) 2 SCC 593 [131].
[33] Possibly locate the right to strike within article 19(1)(c) or article 21 of the Constitution of India.
[34] Statute of the International Court of Justice 1945, art 38(1).
[35] The Constitution of India 1950, art 51(c).
[36] International Covenant on Economic, Social and Cultural Rights 1966, art. 8(1)(d).
[37] Rath (n 8) 254.
[38] The Universal Declaration of Human Rights 1948, art. 20(1).
[39] Rath (n 8) 254.
[40] Constitution of the Republic of South Africa 1996, art. 23(2)(c).
[41] Goel (n 22) 170.
[42] Sharma (n 10) 526.
[43] ibid.
[44] Aseem Prakash, 'Workers' Right to Strike' (2004) 39 Economic and Political Weekly 4320 <https://www.jstor.org/stable/4415584> accessed 27 February 2024.
[45] With respect to article 21 of the Constitution of India, the Supreme Court held in Francis Coralie v. Union Territory of Delhi, (1981) 1 SCC 608 that right to life includes the right to live with human dignity. This can be further extended to include the right to strike as well since the workers' demands are often linked to the right to live with dignity.
[46] The Essential Services Maintenance Act 1981, ss 3, 4 and 12.
[47] The National Labor Relations Act 1935, s 7.
[48] Labour Relations Law 2005 (Official Gazette 62/05), art 236(1).

DOMESTIC LABOUR LAW NEWS

CHANDIGARH PGI CONTRACTUAL WORKERS CALL OFF THE STRIKE

On Wednesday, 3,500 contractual workers in various roles at PGIMER, Chandigarh, went on strike after their union leaders were detained while planning a protest. The strike continued into Thursday, causing significant disruptions to health services, impacting patients and healthcare staff. The workers demanded equal work, equal pay, health benefits, and other perks. Former Chandigarh BJP president Arun Sood conducted three rounds of negotiations with PGIMER officials. During these discussions, it was agreed that the Deputy Director of Administration (DDA) and a few PGIMER officers would approach the Union health ministry for funds to comply with a Punjab and Haryana High Court order on pay parity. The funds to execute the order have been cleared,Next week will mark negotiations on more issues, that include the regularization of contract workers in accordance with directives from the central government. In August 2021, the Supreme Court had decided regarding contract labor rules in whose pursuant these negotiations are being done.....Scan QR to read more

DEATH OF SANITATION WORKER IN VARANASI

While cleaning a sewer at Bhaisapur Ghat in the Adampura neighbourhood of Varanasi, Ghurelal, a Dalit sanitation worker, tragically suffocated and died. Even though the Supreme Court forbade risky sewer cleaning methods and required safety gear and measures, the tragedy nonetheless happened. Despite surviving in severe condition, Ghurelal's coworker Sunil also suffered from exposure to harmful chemicals. Regretfully, Ghurelal was not spared despite the National Disaster Response Force (NDRF) taking immediate action. A prompt investigation of the occurrence was requested by the District Magistrate. India's second-highest rate of sanitation worker fatalities has been reported in Uttar Pradesh, which has seen almost 400 incidents involving sewers over the last five years. Expert Bezwada Wilson has expressed concerns over the hazardous working conditions faced by sanitation workers and criticizes the inadequate compensation provided to the victims' families.....Scan QR to read more.

SOP ISSUES FOR TRANSFER POLICY IN RAJASTHAN

The Rajasthan government is planning to implement a comprehensive transfer policy aimed at streamlining administrative processes and ensuring transparency in employee transfers across various government departments. The proposed policy includes a Common Standard Operating Procedure (SOP) that mandates employees to complete a minimum of three years of service before becoming eligible for transfer.

Additionally, there is a requirement for mandatory rural postings for at least two years during an employee's tenure. The process will involve an online application system for transfers, with special consideration given to marginalized groups, individuals in remote areas, and other specific categories during the counseling phase. Vacant positions across departments will be annually published to maintain transparency.

Despite these efforts to introduce meaningful reforms, the announcement of the draft policy has been met with skepticism from employees due to the state's history of unsuccessful attempts to implement transfer policies. Previous initiatives dating back to 1994 have faced challenges due to bureaucratic hurdles and political complexities. Critics argue that political pressures often influence transfer decisions, leading to preferential treatment and corruption. Therefore, there is an urgent need for structured mechanisms to ensure periodic rotations of officers and staff to safeguard the integrity and efficiency of administrative processes.....Scan QR to read more.

VASANT KUNJ ASSAULT IGNITES DEMAND FOR DOMESTIC WORKER RIGHTS AND SOCIAL JUSTICE

In recent incidents in South Delhi, a Dalit domestic worker faced severe abuse, including physical violence, prompting her to leave her job. Despite negotiating with the police for seven hours, an FIR was finally filed against the perpetrators. Sadly, such violence is not uncommon in the region; a 20-year-old domestic helper took her life just days after starting a new job. These tragedies underscore the vulnerability of domestic workers, particularly Dalits and marginalized communities, who face discrimination and exploitation. Despite their significant presence in the workforce, domestic workers operate informally without proper regulation or recognition. They endure caste-based discrimination and lack basic rights, including fair wages and job security. Efforts to enact legislation for their protection have been stalled, perpetuating their precarious situation. The absence of support systems leaves them susceptible to various forms of abuse, including sexual harassment, with little recourse for redress. Addressing these systemic challenges is imperative to ensure the dignity and rights of domestic workers.....Scan QR to read more.

TATA STEEL UK PLANT WORKERS VOTE FOR STRIKE ACTION

Around 1,500 Tata Steel workers in Wales voted for industrial action due to plans to close blast furnaces and cut 2,800 jobs. Tata Steel expressed disappointment, citing irregularities in the strike ballot process. The company stated restructuring was crucial for sustainability amid transitioning to electric technology. However, Unite the Union opposed the "disastrous" plans, especially at the Port Talbot and Newport Llanwern plants. They voiced readiness for industrial action if an agreement wasn't reached. Tata Steel highlighted "significant irregularities" in the union's ballot process and expressed disappointment over the situation. The dispute underscores tensions between management's restructuring efforts and worker concerns over job losses and the impact on communities. Ongoing consultations aim to resolve differences and address workers' apprehensions about the company's future direction.....Scan QR to read more.

TECHNICAL GLITCHES HAMPER CENTRE'S MATERNITY SCHEME

People face hurdles registering for the Pradhan Mantri Matru Vandana Yojana (PMMVY) due to technical issues and strikes by National Health Mission (NHM) workers. Across Maharashtra, around 5.60 lakh eligible pregnant women and lactating mothers have encountered similar problems. Only 3.34 lakh beneficiaries were registered out of a target of 7.44 lakh for 2023-24, with just 1.84 lakh women receiving financial aid. Dr A B Gadikar attributes the shortfall to NHM strikes and a sluggish PMMVY portal, exacerbated by training delays for ASHA workers. The portal's performance issues, including a '504 error', and its lack of user-friendliness have hindered the process. Additionally, officials deem the increased beneficiary target for 2023-24 as unrealistic, resulting in a drastic drop in coverage to just 44% compared to over 100% in previous years.....Scan QR to read more.

EX-GOOGLE EMPLOYEE RECALLS HOW SHE LOST JOB AFTER 15 YEARS OF SERVICE, WAS FIRED RIGHT AFTER MATERNITY LEAVE

A former Google employee shared her experience of being laid off on her first day back from maternity leave after nearly 15 years with the company. She recounted how, upon returning to work, her meetings were abruptly cancelled, and a "30-minute quick sync" appeared on her calendar, signalling her impending termination. Realizing what was happening, she informed her husband and accepted her fate. The post, originally shared five months ago, recently resurfaced on social media, garnering attention for highlighting the challenges faced by new mothers in the workforce.....Scan QR to read more.

THE FIRST BATCH OF 64 INDIAN WORKERS FROM HARYANA, UTTAR PRADESH LEAVE FOR ISRAEL

Due to a ban on Palestinian workers after terror strikes, Israel urgently requested Indian workers.The first batch of 64 workers from a total of 10,000 was flagged off on April 2, with more batches to follow. Despite an advisory warning Indian nationals in Israel to relocate to safer areas, the Indian government has not clarified if the new workers will be assigned to safe zonesEmployment Terms: Workers are promised equal treatment, proper lodging, medical insurance, social security, and fair wages as per Israeli law. The Centre of Indian Trade Unions has raised ethical concerns about replacing Palestinian workers during the conflict2. The recruitment drive was conducted in Haryana and Uttar Pradesh, with 9,727 workers qualifying for contracts to work in Israel.....Scan QR to read more.

GUJARAT: EVEN 2 MONTHS AFTER 30 MUSLIM SPORTS COACHES WERE FIRED, TERMINATION REASON REMAINS UNKNOWN

Thirty Muslim sports coaches in Gujarat, employed by various sports education government institutions, were abruptly terminated from their positions. The coaches, qualified in training athletes in various sports, received termination calls and emails without explanation. Despite their successful track records and positive feedback from institutions, their contracts were terminated, leaving them perplexed and without jobs. The discriminatory nature of the terminations was evident, as all terminated coaches were Muslim. Efforts to seek clarification from company officials and government authorities have been met with silence, exacerbating the coaches' frustration and sense of injustice. Despite receiving advance salaries, the coaches feel unfairly treated and voice concerns about future employment prospects and discrimination based on their religious identity. The lack of response from authorities underscores the challenges faced by marginalized communities in accessing justice and fair treatment in the workforce.....Scan QR to read more.

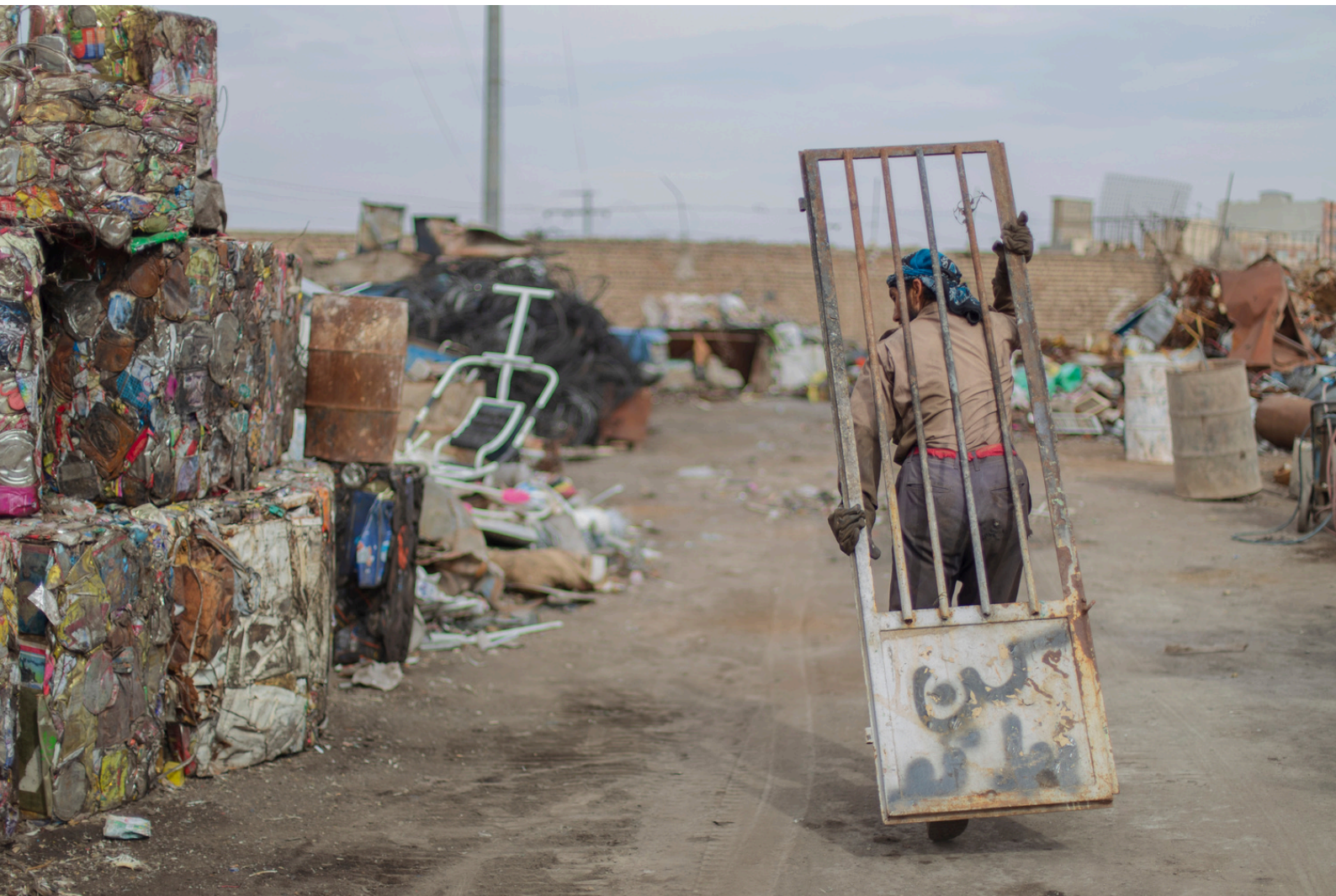
DELHI'S DILEMMA: A GROWING ECONOMY AND RISING UNEMPLOYMENT

India is experiencing rapid economic growth, poised to become the third-largest global economy after the US and China, overtaking Germany and Japan in the next five years. However, concerns persist regarding low job growth and a pro-rich bias, evidenced by high unemployment rates among young graduates. While economic growth has significantly reduced poverty, wealth distribution remains highly skewed, with the top 10% of the population capturing a disproportionate share of national income. The country's structural transformation, favoring services-led growth over employment-intensive manufacturing, has exacerbated inequality. Despite impressive GDP growth rates, India struggles to create productive employment opportunities, particularly for the poor, with a large portion of the workforce still employed in agriculture. Addressing these challenges requires comprehensive efforts to improve education quality, skills development, and sectoral diversification to promote inclusive growth.....Scan QR to read more.

INDIAN NATIONAL CONGRESS GAVE COMMITMENT TO SOCIAL INCLUSION AND DIVERSITY THROUGH ITS MANIFESTO, THIS INCLUDED RECOGNITION OF DISABLITY AS A CONSTITUTIONALLY PROTECTED GROUND, RIGHT TO APPRENTICESHIP ACT AND GRUHA LAKSHMI YOJANA

The Indian National Congress in its manifesto gave commitment to the inclusivity and equal rights by providing certain important promises to the voters in their manifesto.

1. Expanding constitutional provisions to prohibit discrimination based on disability, impairment, or sexual orientation. They also proposed to recognize Braille script and Sign Language as languages, acknowledging the diverse communication needs of individuals with disabilities.
2. Introduce a Right to Apprenticeship Act. It aims to provide a one-year apprenticeship in both private and public sector firms to diploma holders or college graduates under the age of 25. Apprentices will receive ₹ 1 lakh a year. The apprenticeship is designed to impart skills, enhance employability, and potentially lead to full-time job opportunities for millions of youth.
3. Safeguarding the rights of gig workers and those employed in the unorganised sector and improving the social security they receive;
4. In order to protect migrant labourers' and domestic helpers' fundamental legal rights,
5. Through Griha Lakshmi Yojana, the Congress in Karnataka pledged to provide ₹2,000 monthly to every woman head of household under this scheme, aiming for financial empowerment and independence. The announcement followed a previous promise of 200 units of free power monthly to households.....Scan QR to read more.



INTERNATIONAL LABOUR LAW NEWS

BULGARIA AFFIRMS THAT IT WILL CONTINUE TO SUPPORT WORKPLACE HEALTH AND SAFETY

The documents of ratification for the Occupational Safety and Health Convention of 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention of 2006 (No. 187) were deposited by the Bulgarian government with the Director General of the ILO on April 2, 2024.

"Bulgaria has always been a strong supporter of the inclusion of a safe and healthy working environment in the ILO's framework of Fundamental Principles and Rights at Work and will continue to support all the necessary steps to follow up on the historical achievement reached in June 2022," said H.E. Ambassador Yuri Sterk, Permanent Representative of the Republic of Bulgaria to the UN Office and other International Organizations in Geneva, upon depositing the instruments of ratification.....Scan QR to read more

ON THE FIRST JOINT ILO-EUROPEAN COMMISSION VISIT TO THE NATION, THE ILO DIRECTOR-GENERAL UNVEILS A NEW PROJECT TO ENHANCE LABOR MARKET INSTITUTIONS IN THE REPUBLIC OF MOLDOVA WITH SUPPORT FROM THE EU

At a critical juncture in the nation's pursuit of EU accession by 2030, ILO Director-General Gilbert F. Houngbo announced the launch of an ILO project to support reforms in the Republic of Moldova's major labor market institutions. All of these initiatives will support the process of aligning the nation's labor laws with relevant EU acquis and international labor standards.

The declaration was made as the Director-General concluded an uncommon two-day combined visit to the nation with Mr. Nicolas Schmit, the EU Commissioner for Jobs and Social Rights.....Scan QR to read more.

TURKEY IS IDENTIFIED AS A PATHFINDER COUNTRY IN THE GLOBAL FIGHT AGAINST CHILD LABOR

Due to its persistent efforts to end child labor, Turkey has been designated as a Pathfinder Country in the international campaign against child labor. This acknowledgement follows decades of committed work and calculated measures to get rid of child labor within its borders. As one of the first six nations to sign up for the International Programme on the Elimination of Child Labour (IPEC) of the International Labour Organization (ILO), Turkey's path to this milestone was set in 1992. Following that, Turkey accepted important international agreements, including the United Nations Convention on the Rights of the Child and several ILO agreements pertaining to child labor. With the implementation of extensive governmental programs throughout the years, Turkey has successfully reduced the rate of child labor among children aged 5-17 from 15.2% in 1994 to 4.4% in 2019.....Scan QR to read more.

ILO & PACIFIC ISLANDS FORUM SIGN COOPERATION AGREEMENT

A cooperation agreement between the Pacific Islands Forum and the International Labour Organization will enhance their relationship and cooperation in a number of fields related to the world of work. The agreement was signed on April 26, 2024, during the Pacific Tripartite High-Level Dialogue in Suva, Fiji. It is a sign of the ILO's commitment to assisting in the implementation of the Decent Work Agenda and the 2050 Strategy for the Blue Pacific Continent, as well as a significant step in the organization's strengthening of ties with the Pacific region. This agreement is significant because it will raise and integrate labor problems into regional discourse and decision-making processes.....Scan QR to read more

PUBLICATIONS: ARTICLES

FINANCING GAP FOR UNIVERSAL SOCIAL PROTECTION: GLOBAL, REGIONAL AND NATIONAL ESTIMATES AND STRATEGIES FOR CREATING FISCAL SPACE

The study provides estimates of the global, regional, and country-level financing gaps required to achieve universal social protection, encompassing key guarantees for various demographics and essential healthcare across 133 low- and middle-income nations. The annual gap, totalling 3.3% of GDP, necessitates an additional US$1.4 trillion, primarily for essential healthcare. Disparities exist among income groups and regions, with low-income countries facing significant challenges due to coverage gaps and low GDP.

Across all regions, government expenditure must increase by 10.6% to cover the gap, with low-income countries facing considerable shortfalls. Strategies include domestic resource mobilization, removal of fuel subsidies, debt management, and increased official development assistance. Collaboration between the ILO, international financial institutions, and UN entities is crucial to expand fiscal space for social protection in low-income countries. Despite progress, official development assistance remains below targets, necessitating substantial increases and allocation to social protection.....Scan QR to read more.

DECENTRALISED SKILLING PLAN LOOKING BEYOND NUMBERS LATA GIDWANI, PUSHPENDRA CHOURDIYA

The article discusses the need for comprehensive approaches to skill development, particularly at the district level in India. It emphasizes the importance of adequately training officials in economic profiling and labor relations to ensure functional District Skill Committees (DSCs). The article highlights funding challenges for DSCs, along with suggestions for funding and capacity-building measures.

The article advocates for collaborations between government schemes and institutions at the district level, such as Krishi Vigyan Kendras and NABARD, to enhance planning and execution of skill development programs. It also proposes strategies for bridging the gap between academia and communities, engaging Panchayati Raj institutions, promoting skill entrepreneurship, and strengthening social inclusion, particularly for women. The article stresses the need for policy interventions, awareness creation, and community engagement to ensure the effective implementation of skill development initiatives.....Scan QR to read more.

DEMOGRAPHIC DIVIDENDS AND CHALLENGES SOCIO-RELIGIOUS DISPARITIES IN INDIA'S YOUTHFUL WORKFORCE ABUSALEH SHARIFF, ASRAR ALAM

The article explores the socio-economic landscape of India's youth, focusing on disparities among different socio-religious communities. It highlights significant educational gaps, particularly among Muslims, Scheduled Castes (SCs), and Scheduled Tribes (STs), with a majority having education levels below secondary. Moreover, it points out the underrepresentation of these groups, especially Muslims, in secure, salaried positions, particularly in the modern services sector.

The article underscores the urgent need for targeted interventions to address educational disparities and promote equitable access to economic opportunities. Additionally, it emphasizes the importance of strategic investments in education, health, and skills to harness India's demographic dividend effectively and ensure a prosperous future for all.....Scan QR to read more.

POLITICAL ECONOMIC REFLECTIONS ON CONTEMPORARY WORKER SUBORDINATION AND THE LAW- ERIC TUCKER

The article delves into the dynamics of protective labour laws and their limitations in addressing worker subordination within capitalist structures. It examines how laws often focus on creating barriers to limit subordination but fail to address the underlying economic system that perpetuates it. Despite occasional successes in securing protective legislation through workers' movements, the imbalance of power between capital and labor persists, as evidenced by recent Supreme Court decisions acknowledging this reality. The article suggests that while labor law cannot fundamentally undermine capitalism, there is a need to expose its structural limits and propose changes that strengthen the anti-capitalist movements. It concludes by advocating for a critical understanding of the system generating worker subordination and the pursuit of alternative possibilities beyond the current legal framework.....Scan QR

SOMETHINGS OLD, SOMETHINGS NEW AND A LOT THAT'S BLUE: POLITICAL ECONOMIC REFLECTIONS ON WORKER SUBORDINATION AND THE LAW IN CONTEMPORARY CAPITALISM ERIC TUCKER

The article goes into the role of protective labor law in mitigating worker subordination within capitalism. It argues that while labour laws aim to reduce subordination, they often face regulatory dilemmas inherent in the logic of capitalism. These dilemmas stem from the structural conditions of capitalism, limiting the efficacy of labour laws in challenging the underlying power dynamics. The article highlights how labour laws primarily regulate the terms of exchange rather than penetrating the core of production, where surplus value is extracted. Despite occasional successes, recent trends indicate a deepening of worker subordination, reflecting the enduring influence of capitalist structures. The article calls for acknowledging these structural limitations and suggests exploring alternative approaches to address worker subordination within the capitalist systems.....Scan QR to read more.

INTERNATIONAL ECONOMIC INSTITUTIONS, THEIR TREATMENT OF LABOUR AND ASPIRATIONS FOR SUSTAINABLE DEVELOPMENT- TONIA NOVITZ

This Article explores how the legal frameworks and operations of international economic institutions influence labor standards. It begins by analyzing the governance and activities of the International Monetary Fund and World Bank Group, comparing the effects of the 'Washington Consensus' with efforts toward realizing International Labour Organization norms and sustainable development goals. The second section focuses on the World Trade Organization's legal foundations and trade rules, including the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services. It assesses the implications of these rules for labour, particularly in terms of labour commodification and exceptions for development and labor concerns. Throughout, the chapter highlights the limited access of working people to decision-making and supervisory mechanisms within these institutions, underscoring the challenges faced in promoting labor standards at the international level.....Scan QR to read more.

UNVEILING THE GAP: EXPLORING GENDER INEQUALITY IN ECONOMIC EMPOWERMENT ACROSS INDIA DR. R. SENTHAMIZH

Gender inequality in economic empowerment stems from deep-rooted social norms, limited access to quality education and skills training, workplace discrimination, and harassment. Solutions include investing in girls' education, promoting equal pay, sharing unpaid care work, expanding financial inclusion, bridging the digital gender gap, challenging stereotypes, and prioritizing data collection and research. Addressing these issues requires a multi-sectoral approach at individual, community, and national levels. By empowering women through education, fair labor practices, and inclusive policies, societies can foster economic equality and create a more prosperous world for all.....Scan QR to read more.

INTERACTION BETWEEN LABOUR LAW AND GDPR: THE EMPLOYEES' RIGHTS AND THE EMPLOYERS' OBLIGATIONS BY ASIMINA BOURAMA

This delves into the intricate relationship between labour law and the General Data Protection Regulation (GDPR), particularly focusing on how they intersect to safeguard employees' rights and employers' obligations. It explores the practical impacts of GDPR on Greek employment law, highlighting the need for alignment with robust data privacy measures.The impact of GDPR on several sectors is examined in this article, with particular attention to Greece. It draws attention to legal interpretations and implementation difficulties encountered by European countries. Notably, opportunities and problems are highlighted as the extraterritorial consequences of GDPR are examined. Cross-border employment practices under GDPR compliance is one important topic covered. The rule affects international corporations and their employees by imposing new standards on how employee data is handled. It is vital to strike a balance between employee rights and data protection.....Scan QR to read more.

TWO ESSAYS ON THE ECONOMICS OF DISCRIMINATION ETHNICITY AND GENDER IN THE LABOUR MARKET AND WELFARE SYSTEM- NIKLAS OTTOSSON

This paper tries to link the discrimination in welfare and employment. In the first essay, the study investigates potential discrimination against employers by job seekers using a survey experiment with 889 university students. Results suggest no ethnic or gender discrimination against employers. The second essay focuses on the discrimination against employment seekers receiving unemployment insurance benefits, examining decision-making processes at the Swedish Public Employment Service (SPES). Two survey experiments involving 1,245 case workers and 148 control administrators show no bias in their decisions. The essays shed light on underexplored aspects of discrimination, offering insights into both the labour market and welfare system dynamics.....Scan QR to read more.

SOCIAL GROUPS AND UNEQUAL EMPLOYMENT OPPORTUNITIES IN SKILLED OCCUPATIONS IN INDIA- TANIMA BANERJEE

This article examines the caste and ethnicity-based employment gap in skilled jobs in India using data from the 2021–2022 and 2018–2019 Periodic Labour Force Survey rounds. The study employs non-linear decomposition to analyze the employment gap. Findings indicate that socially forward groups are more likely to participate in skilled jobs than socially backward classes. A significant portion of the gap remains unexplained by characteristic differences, including endowments. However, discriminatory hiring practices contribute to the gap, with higher-skilled jobs showing less disparity. High-skilled occupations, prevalent in the public sector under reservation policies, are influenced by productivity factors. Additionally,the formal high-skilled jobs in the private sector may be subject to anti-discrimination laws, while low-paying unskilled jobs are dominated by socially backward-class workers in the Indian labor market.....Scan QR to read more.

NOT DELIVERING: THE UK 'WORKER' CONCEPT BEFORE THE UK SUPREME COURT IN DELIVEROO - IWGB V CAC AND ANOTHER [2023] UKSC 43 - NICOLA KOUNTOURIS

Technological advancements have reshaped work relations, with platform capitalism resembling a digital version of the pre-industrial systems. This evolution calls for a reevaluation of statutory definitions of key concepts like 'work' and 'worker,' as proposed in Manifestos for Labour Law and the 'Status of Worker' Bill. These reforms aim to redefine workers as those engaged to provide labor, not operating their own business, thus clarifying distinctions between labor and capital. This underscores the need to adapt labor law to modern employment arrangements while retaining the 'personality' term conceptually.....Scan QR to read more.

PUBLICATIONS: REPORTS AND BOOKS

Trade, Labour and Sustainable Development Leaving No One in the World of Work Behind: Tonia Novitz

Tonia Novitz's latest book, "Trade, Labour and Sustainable Development: Leaving No One in the World of Work Behind," delves into the intricate relationship between trade and labor regulations with a focus on advancing sustainable development goals. In her work, Novitz emphasizes the critical need for reforming international legal frameworks to ensure that individuals within the global workforce are not marginalized. She underscores the risks associated with addressing labor and environmental concerns separately, advocating instead for an integrated approach that acknowledges their interconnectedness. Novitz argues for the inclusive crafting and implementation of trade regulations through participatory processes, which would encompass representation from all sectors of the labor market and regions worldwide. Through this approach, she contends, sustainable development can be more effectively pursued while safeguarding the rights and well-being of all workers.....Scan QR to read more.

Labour Law and Economic Policy How Employment Rights Improve the Economy: Adrián Todolí-Signes

This book reevaluates the necessity of labour standards, departing from traditional philosophical foundations to justify their existence. It examines the historical context of labour law, tracing its origins from the Industrial Revolution to the present era of globalization and digitalization. The text argues that in today's globalized economy, labour standards are essential for promoting economic growth, ensuring a fair distribution of wealth, fostering meritocratic working conditions, and promoting equality among workers. Drawing on the case studies from the EU, UK, and US, the book illustrates how deregulation of labour markets can impede innovation and economic progress, particularly in the face of challenges posed by platform work, algorithms, and AI. It advocates for essential labour standards such as minimum wage regulations, collective bargaining rights, protection against discrimination, and social security measures to maintain a functioning economy.....Scan QR to read more.

Labour Law and Economic Policy. How Employment Rights Improve the Economy (HART): Adrian Todoli

This book takes an economic perspective to explore the significance of labour institutions, arguing for their role in fostering innovation, efficiency, productivity, and economic growth. It challenges the traditional justifications for labour laws, which have historically focused on protecting the weaker party in employment contracts. In light of four decades of neoliberal policies, the book contends that these justifications are no longer adequate for advancing labour and employment rights. Instead, it proposes a new narrative for the necessity of labour standards, examining their evolution from the Industrial Revolution to the contemporary era of globalization and digitalization. Through case studies from the EU, UK, and US, the book illustrates how deregulation of labour markets can impede innovation and economic progress, particularly in the face of challenges posed by platform work, algorithms, and AI. It underscores the importance of labour standards such as minimum wage laws, collective bargaining rights, protection against discrimination, and social security in ensuring the proper functioning of economies worldwide.....Scan QR to read more.

OPPORTUNITIES

1 Call for Papers - Indian Journal of Criminology

Indian Journal of Criminology is a joint publication of the Indian Society of Criminology ("ISC") and National Law University Delhi. The journal is peer reviwed open access bi-annually (Janaury and July) Journal. Indian Journal of Criminology began in 1973. It has been considered a reputable and prestigious journal in the field of criminology and criminal justice in the Indian context. The Indian Journal of Criminology meets all the requirements for academic excellence in criminology and is included in the UGC-CARE List Group I. Last date of submission:- 30th April, 2024, Submission guideline:- Full Paper/Manucripts shall be submitted to the Editor, Email:- indianjournalofcriminology@gmail.com

2. Applications Invited for Junior Fellows Internship

The United Nations University Office of the Rector recruits highly qualified applicants to work as Junior Fellows at the UNU headquarters in Tokyo. Junior Fellows are recruited through a competitive application process twice per year. Graduate students interested in the work of the United Nations — and in particular, UNU — are encouraged to apply. For further information visit: https://careers.unu.edu/o/junior-fellows-internship-fall2024/

3. 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 the 17th and 18th of 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, we 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.

4. **Eco-social Synergies: Legal Challenges at the Intersection of the Environmental and Employment Realms**

The IX Tarragona International Environmental Law Colloquium (TIEC) jointly organized by the Tarragona Centre for Environmental Law Studies (CEDAT-URV) and the Tarragona Environmental Law Students Association (AAEDAT) will be held on 6 and 7 June 2024. This hybrid event is organized as an activity carried out by the Faculty of Legal Sciences (Department of Public Law) of the Universitat Rovira i Virgili (Tarragona, Spain). **Deadlines:** Abstract submission: Jan 19, 2024

5. **Applications Invited for World Bank Graduate Scholarship Program**

The JJ/WBGSP is open to citizens of certain developing countries with relevant professional experience and a history of supporting their countries' development efforts who are applying to a master's degree program in a development-related topic. Subject to available funding, JJ/WBGSP offers scholarships for 53 Participating Master's Programs in 27 universities in the U.S., Europe, Africa, Oceania and Japan in key areas of development, including economic policy management, tax policy, and infrastructure management. Deadline: From March 25 to May 24, 2024 at 12:00 noon EST, https://www.worldbank.org/en/programs/scholarships/jj-wbgsp

6. 2025-2026 Fulbright-Nehru Master's Fellowships

The Fulbright-Nehru Master's Fellowships are designed for highly motivated individuals who demonstrate outstanding leadership qualities, have completed the equivalent of a U.S. bachelor's degree, have at least three years professional work experience, and are committed to return and contribute to their communities in India. These fellowships are awarded for up to two years to pursue a master's degree at U.S. colleges and universities in the areas of Economics; Environmental Science/Studies; Higher Education Administration; International Affairs; International Legal Studies; Journalism and Mass Communication; Public Administration; Public Health; Urban and Regional Planning; and Women's Studies/Gender Studies. For more details visit : https://www.usief.org.in/Fulbright-Nehru-Fellowships.aspx

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.

Editor

Tejas Misra is a 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.

Editor

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.

SCAN ME