International Journal of Innovative Research in Engineering and Management (IJIREM)
ISSN: 2350-0557, Volume-9, Special Issue-1, Jannuary-2022
Young Researchers' Conference on Indian Literatures, 2022
Organized by Presidency University, Bangalore, India

An Introduction to Employment Law

Neha Saxena
Assistant Professor, Department of Law, Presidency University, Bangalore, India,
Email Id-nehasinha@presidencyuniversity.in

ABSTRACT:

In general, both voluntary and legal procedures manage the job relationship. Agreements and other decisions that result from collective bargaining, arbitration, conciliation, mediation, and grievance and disciplinary handling are considered voluntary measures. They also include norms of ethical workplace behaviour that are voluntarily adopted (such as those promoted by the Chartered Institute of Personnel and Development). Treaties and directives of the European Union (EU), the 1950 European Convention on Human Rights and Fundamental Freedoms, British statute law, the common law of contract and tort, case law, statutory codes of practise, and various international standards are examples of legal measures. These are not discrete sets of metrics in real life. As we will see, voluntary and statutory actions are inextricably linked and have an impact on one another.

KEYWORDS:

Collective Bargaining, Employment Law, Globalisation, Severance.

I. INTRODUCTION

Employer-employee interactions are governed by a wide variety of legal rules and concepts known as employment law. It is made to safeguard the rights and interests of everybody concerned. Here is a brief overview of some important terms and ideas in employment law

Employment Contracts: The employer-employee relationship is built on the basis of employment contracts. They provide an overview of the terms and circumstances of employment, including duties, working hours, pay, benefits, and termination policies. Contracts may be implicit, written, or verbal. Anti-discrimination laws prohibit businesses from treating workers or job seekers unfairly on the basis of certain protected characteristics, including race, gender, age, religion, national origin, and handicap. Any step of the employment process, including hiring, promotion, and termination, is subject to discrimination.

Wage and Hour Laws: These regulations set minimum wage rates, govern overtime compensation, and impose time restrictions on employees. They also control matters pertaining to mealtimes, breaks, and documentation needs. Employers are required to abide by the relevant legislation since wage and hour rules differ across countries [1]–[3].

Workplace Health and Safety: Employers are required by law to provide their staff a safe and healthy working environment. This include putting safety regulations into place, doing risk analyses, giving appropriate training, and upholding safety standards. Additionally, employees have the option to decline risky tasks in specific situations.

Family and Medical Leave: There are several countries where businesses are required to provide their workers time off for family or medical reasons. These regulations often ensure the continuation of certain benefits throughout the vacation term and provide employment security. Examples include time off for caring obligations, sick leave, and maternity and paternity leaves.

Termination and Severance: The procedure for ending an employee's contract is governed by employment law. They describe the reasons for termination, the duration of notice, the amount of severance compensation, and the rights of fired workers. Employers may face legal repercussions for wrongful terminations, such as those motivated by prejudice or retaliation.

Collective Bargaining and Unions: Employees' rights to organise labour unions, participate in collective bargaining, and go on strike are all covered by employment law. These rights are intended to ensure fair treatment and negotiation of work arrangements as well as to balance the power relationships between employers and employees.

Employee Privacy and Data Protection: Employees have the right to privacy at work, and companies are required to abide by the law while gathering, storing, and using this information. Protecting private information like Social Security numbers and medical records is part of this.

Protections for Whistleblowers: Many countries have legislation in place to provide protection to workers who disclose unlawful or unethical acts taking place inside their organisations. These laws provide whistleblowers protection from reprisal and offer channels for reporting and looking into wrongdoing.

Claims for employment discrimination and dispute resolution: When conflicts over employment emerge, workers may seek redress via administrative or judicial routes. This involves reporting instances of discrimination, harassment, or other legal infractions involving the workplace. There may also be other options for resolving disputes, such mediation or arbitration.

It's crucial to remember that employment rules might differ greatly across nations, states, and even individual localities. To fully comprehend the employment rules that apply to a certain circumstance, it is important to research specific local legislation and obtain legal counsel [4]–[6].

II. DISCUSSION

What are the objectives of both legal and voluntary measures?

There are two main goals. First, they have an impact on how managers do their duties, such as how they wield authority, manage workforces, and resolve conflicts of interest. The following example demonstrates this impact. It is well acknowledged that there is a power imbalance in favour of the employer in the work relationship. The unrestricted use of this employer authority may be limited by both voluntary and legal control. So, for instance, agreements on salary and working conditions, as well as assistance with grievance resolution, may be reached via collective bargaining with a trade union to reduce the exploitation of people at work. Legislation may also establish minimum standards for employment (such as a national minimum salary) and place restrictions on the actions an employer may take against workers (such as punishment and dismissal).

This regulation's second goal is to uphold particular moral standards. On the one hand, there are those values that affect the kind and standard of choices (such as justice, equality of treatment, and rationality). There are other principles that shape the regulatory process itself. This is shown by the basic significance of consent in approving and amending employment contracts as well as the need of justice and reasonableness in disciplinary actions.

What impact does the law have on important matters?

The law may define a basic framework for terms and conditions of employment (the substantive problems), but it has long been understood in British employment relations that the specifics would either be decided by employers alone or after negotiation with trade unions. There is, perhaps, no major nation in the world where the law has played a less significant role in the shaping of (industrial) relations than in Great Britain, and where the law and legal profession have less to do with labour relations, as stated by one academic lawyer in 1954 (Kahn-Freund 1954).

But this portrayal quickly started to shift. Over the next decades, statute legislation was increasingly passed to set forth both the terms and circumstances of employment provided to employees as well as specific principles to direct company activity. So, for instance, "fairness" is now a fundamental standard used to assess the cause for terminating an employee. The term "reasonableness" is often used as a benchmark for evaluating health and safety requirements. The cornerstone of equality legislation is the prohibition of "less favourable treatment."

Additionally, there has been an increasing trend towards the more precise prescription of specific employment terms and conditions. A few pieces of statutory law and some case law have contributed to this. All employers are impacted by these more specific standards. For instance, the prohibition of indirect sex discrimination has led to a

corpus of case law that directs companies to carefully consider their hiring procedures. The legality and validity of practises such seniority-based promotion, demands for full-time employment, age restrictions in the workplace, etc. must be taken into account under this regulation.

Academic commentators have drawn attention to rising 'juridification' evidence in Britain and other European nations. This is referred to as the propensity for regulating union and employer activity in accordance with the law. In fact, it is claimed that because to the continuous involvement of statute law, we in Britain have evolved to a "minimum standards" contract of employment.

How does the law impact matters of procedure?

The procedural elements may be separated into two categories: those that deal with individual employees and those that deal with group connections. Each employee has an employment contract in place that they both signed. Both the creation and modification of contracts are predicated on consent. The employee must be consulted when an employer wants to amend the terms and conditions of employment, according to the courts' assertions in several instances.

Procedural fairness is critical in cases involving persons and disciplinary action. The ACAS Code of Practise on Disciplinary and Grievance Procedures (2009) outlines this.

Case law has supported this. It has been established that people have the right to file complaints via an appropriate process as a result of an implicit provision of their employment contract (WA Goold (Pearmak) Ltd v McConnell and Another [1995] IRLR 516). The ACAS code of practise also explains new regulatory rules for grievance management. A worker also has the legal right to be present at a grievance and disciplinary hearing.

Britain historically has a strong legacy of voluntarism for deciding work relations practises in terms of collective relations. Employers were therefore free to choose which terms and conditions of employment to negotiate with unions and whether or not to do so. Additionally, they might decide on any arrangements for consultation. There is still a great deal of employer discretion on this matter. However, it has been somewhat limited by European and British legislation.

Economic perspectives

One may argue that the restrictions imposed by the legislation define a work market. Determining how and when managerial power is regulated (e.g., via working time restrictions, minimum pay, and protection against unjust dismissal) is one of the fundamental economic functions of labour law, as was previously noted. Leading labour law theorist Otto Kahn-Freund stated in Davies and Freedland 1983 that the "main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship." Therefore, it is believed that labour legislation might be used to combat inequality.

For increasing productivity and skill levels, labour legislation may provide incentives or disincentives. The effectiveness of a company in a market where there is competition is impacted by the form of labour law. The job of encouraging economic efficiency is crucial for some. Thus, it is suggested that minimum wage rules may promote skill and technology investment rather than a dependence on cheap labour. The migration of workers both domestically and internationally may be impacted by labour legislation. Additionally, as previously said, such legislation may have a significant moral component that addresses concerns like slavery, child labour, unjust discrimination, privacy, and bullying [7]–[9].

The expertise of businesses in managing their human resources may be a major factor in the labour law disincentives. For instance, it was discovered that information obligations—such as those regarding the employment contract and changes—were significant (Lambourne et al. 2008). In a survey of 500 microbusinesses (i.e., those with fewer than 10 employees), The Better Regulation Executive (2010: 16) found that respondents believed that "employment law does have a negative effect on business growth, and the concern about employment law is probably more about cost, complexity, and the perceived cost of "getting it wrong" than about paperwork." In particular, it is thought that it is becoming harder to fire workers and that companies must go through a burdensome procedure when it comes to termination (2010: 17). Additionally, as an economic phenomenon,

globalisation has sparked a spirited discussion on the necessity for international employment regulation given the weakening influence of national labour laws.

Globalisation and the changing role of labour law

According to a significant research on labour law, the emergence of transnational labour standards and the rising trend towards worldwide economic integration have given comparative employment law studies considerable prominence recently. The nature and status of labour rights have been significantly impacted by globalisation, which may have a negative influence on the effectiveness of national employment legislation and labour market regulation. Issues including workplace abuses and the deterioration of workers' rights are now a typical occurrence. The characteristics of the new economy, according to Hepple (2005: 9), "mean that labour law is now inescapably global law and not just the concern of a particular nation state." The importance and relevance of international labour legislation have increased. Child work, slave labour, forced labour, and a number of other types of economic exploitation have all been hot topics in discussions. The topic of "social dumping" (when businesses seek to move in nations with fewer or weaker employment law regimes) and multinational corporations' duties for establishing and upholding labour standards have also been brought up in these discussions. There are several challenges involved in regulating big multinational enterprises. Codes of conduct and social tagging systems are examples of "privatised" types of regulation that have been attempted to be implemented. International trade union federations are only beginning to engage in transnational collective bargaining. However, there are instances of policy agreements. PPR, a global retailer and luxury goods firm with headquarters in Paris that owns brands including Gucci and La Fnac, committed to a European charter in 2010 that included promises on "quality of life and work-related stress". Collective bargaining often occurs in the developed world "under the threat of relocating or merging with foreign corporations: domestic labour laws rarely offer rights to bargain about strategic corporate-level decisions such as these," according to a study. **Does labour law now face a crisis?**

The effects of "footloose" multinational corporations, growing worldwide marketplaces, and migratory labour all pose significant concerns about the viability of offering working people adequate job security against the use of employer economic power. The contract of employment is the cornerstone of employment protection in the United Kingdom. But this tool is not flawless. Its flaws, such as its failure to acknowledge fairness and nondiscriminatory treatment, are being progressively remedied by statute law. Although the employment contract is somewhat successful, many 'atypical' (as well as some'standard') employees continue to be beyond the scope of its limited protection. The following part examines some of the political wrangling that went on in order to establish the present system of employment legislation and regulation.

Political perspectives

It's crucial to keep in mind that law develops within political contexts, both in Britain and the European Union. Changes in the way we handle employment regulation reflect a variety of political perspectives that evolve throughout time. Politicians have opinions on the kind of voluntary actions that should be allowed, the scope of employment legislation, and the level of protection that should be provided for workers. According to Morris, Willey, and Sachdev (2002: 229), there are three different general models of political approach that can be used to analyse the politics that underlie employment law: the free collective bargaining model, the free labour market model, and the employee protection or social justice model.

Each of these models takes into account a variety of economic, social, political, and human rights issues in different ways and with different emphasises: economic management, the economic effects of collective bargaining and employment law, the idea of social justice, the right to job security, anti-discrimination laws, and the human rights to freedom of association and expression. The models are made to examine and assess general patterns in the evolution and characteristics of employment legislation.

The free form of collective bargaining

This mirrors the established structure of industrial relations in Britain, which emerged mainly after World War One. The practice of collective bargaining, which often results in voluntary agreements between a business and its employees, was viewed as the core of employee relations. Consultation had a rather little role. This model partially mirrored the international rules on freedom of association that the International Labour Organisation (ILO)

established in the 1940s and 1950s and that the British governments ratified. Philosophically, this paradigm placed a strong focus on voluntarism, which was widely supported by governments, labour unions, and businesses. According to Kahn-Freund in 1954, it was typified by a broad, though imperfect, "abstention of the law." The few laws passed had two main purposes. First, it established a framework that was permissive, allowing labour unions to legitimately operate, participate in collective bargaining, and call for and organise strikes. Collective bargaining was supported by public policy as a legitimate way to control job terms and conditions and "institutionalise" the conflicts of interest that are pervasive in employment relationships.

Second, there was very little express protection for workers under the law. Wages Councils, which were first established in 1909 and later dissolved in 1993, served as one example. For categories of employees who were particularly disadvantaged and for whom collective bargaining was challenging, these councils established minimum wages. Health and safety laws is another important example. Social reformers of the nineteenth century provided the foundation for some of this laws. More complete laws wasn't passed into law until 1974.

In the years after World War II, there were several pressures on voluntarism. Governments have been attempting to strike a balance between the general interest and the sectoral interests and demands of unions and their members. Therefore, governments both Conservative and Labour enacted voluntary and statutory incomes policies as well as legislative efforts to limit trade union power when, for example, the level of pay settlements reached through free collective bargaining was perceived to be inflationary and economically damaging. Following 1979, this free collective bargaining paradigm came under intense political attack under the Thatcher administration. The free labour market model is an economic idea that illustrates how a labour market operates without substantial impediments to employment or government involvement. It is predicated on the laws of supply and demand and makes the assumption that people and organisations may freely enter into employment contracts with one another.

The free labour market model's salient characteristics are:

In this model, the demand for labour is represented by employers or enterprises trying to recruit employees, while the supply of labour is represented by people searching for work. The pay rate and the overall level of employment in the market are determined by the labour market's equilibrium between supply and demand.

Wage Determination:

In a free labour market, the interplay between labour supply and demand mostly determines wages. When there is a labour shortage, salaries often increase as firms fight for employees. In contrast, if there is a labour shortage, salaries could fall as a result of increasing competition among job searchers.

According to their talents, preferences, and the availability of employment prospects, employees are free to move between various professions, vocations, and geographical areas in a free labour market. The effective distribution of human resources across sectors and regions is made possible by labour mobility.

Efficiency and Competition:

Efficiency and productivity are projected to increase in a free labour market as a result of competition between employers and employees for available positions. Employers try to entice and keep qualified individuals by providing competitive pay and a pleasant workplace, while employees look for the best employment options that fit their talents and interests.

Flexibility:

The free labour market concept places a focus on the adaptability of work arrangements. It enables the negotiation of a number of employment arrangements, including full-time, part-time, contract-based employment, and temporary employment. Employers and employees are allowed to negotiate contracts that meet their requirements and goals.

Limited Government Intervention:

The free labour market paradigm presupposes little to no interference by the government in labour market activities. Basic labour rules, such as those concerning workplace safety, anti-discrimination, and minimum pay requirements,

are essentially the responsibility of the government. Regulations that considerably limit the freedom of employers and workers to openly discuss employment conditions are often not included in this model, nevertheless.

The free labour market model is an idealised conception, thus it may not accurately represent the intricacies of actual labour markets. Government laws, labour market imbalances, the market strength of employers, collective bargaining, and societal factors are just a few of the variables that might affect the actual labour markets. In order to attain desirable social and economic objectives, many economies thus have a mixed labour market structure that contains components of both free market principles and government involvement [10], [11].

What fundamental ideas govern employment law?

We have discussed a number of guiding ideas that shape employment law in the earlier parts. Here, we provide them a more thorough analysis and show how they relate to employment relations and human resource management. These guiding principles can be divided into those that affect the processes by which decisions on terms and conditions and other employment relations matters are made, as well as those that affect the substantive issues of employment relations (i.e., the outcomes, such as the terms and conditions of employment and other decisions). Important matters:

Substantive issues:

1. Fairness
2. Reasonableness
3. Equal treatment
4. Harmonisation

Procedural issues:

1. Natural justice
2. Consultation
3. Consent
4. Freedom.

III. CONCLUSION

In conclusion, employment law is essential in controlling how companies and workers interact. It includes a broad variety of legal guidelines and precepts designed to safeguard the rights and interests of both parties. People may better understand their rights and duties at work by comprehending the fundamental ideas and principles of employment law. The legal framework governing employment provides justice, equality, and a healthy work environment via employment contracts, anti-discrimination legislation, wage and hour restrictions, and workplace safety requirements. Although the free labour market model offers a theoretical framework for comprehending employment interactions, it's critical to grasp that in actual labour markets, a combination of market dynamics and government intervention is often used to accomplish desired results. Employers and workers may manage the complexity of the employment relationship and maintain compliance with pertinent rules by being updated about employment laws and getting legal counsel as required.

REFERENCES

[1] L. J. Trautman, L. Koretz, A. McMullen, H. J. Pace, and D. D. Schein, “Employment Law: The Basics,” SSRN Electron. J., 2021, doi: 10.2139/ssrn.3765016.
[2] D. Cabrelli, “1. Introduction to Employment Law,” in Employment Law in Context, 2020. doi: 10.1093/he/9780198840312.003.0001.
[3] M. E. Gold, Introduction to the Law of Employment Discrimination. 2019. doi: 10.7591/9781501724978.
[4] I. D. Ebuenyi, M. Guxens, E. Ombati, J. F. G. Bunders-Aelen, and B. J. Regeer, “Employability of Persons With Mental Disability: Understanding Lived Experiences in Kenya,” Front. Psychiatry, 2019, doi: 10.3389/fpsyt.2019.00539.
[5] D. Cabrelli, Employment Law in Context. 2020. doi: 10.1093/he/9780198840312.001.0001.
[6] D. Cabrelli, “10. Introduction to Employment Equality Law,” in Employment Law in Context, 2020. doi: 10.1093/he/9780198840312.003.0010.
[7] A. Voena, “Yours, mine, and ours: Do divorce laws affect the intertemporal behavior of married couples?,” Am. Econ. Rev., 2015, doi: 10.1257/aer.20120234.

[8] J. Wahba and R. Assaad, “Flexible Labor Regulations and Informality in Egypt,” Rev. Dev. Econ., 2017, doi: 10.1111/rode.12288.
[9] A. Taeihagh and H. S. M. Lim, “Governing autonomous vehicles: emerging responses for safety, liability, privacy, cybersecurity, and industry risks,” Transp. Rev., 2019, doi: 10.1080/01441647.2018.1494640.
[10] D. Sansone, “Pink work: Same-sex marriage, employment and discrimination,” J. Public Econ., 2019, doi: 10.1016/j.jpubeco.2019.104086.
[11] D. T. Eisenberg, “The restorative workplace: An organizational learning approach to discrimination,” Univ. Richmond Law Rev., 2016.