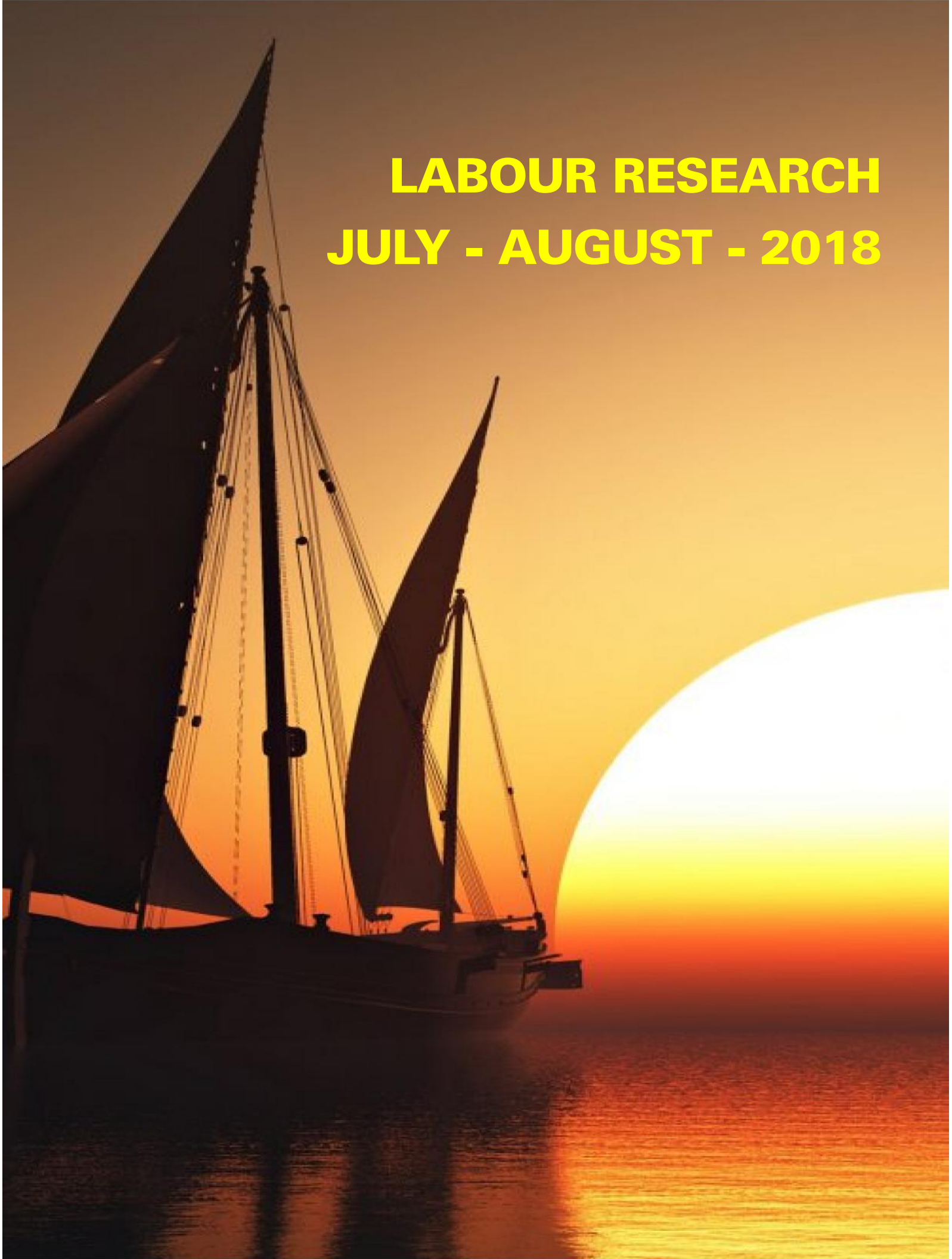

LABOUR RESEARCH
JULY - AUGUST - 2018

VOL:15 NO.4 BANGALORE JULY - AUGUST 2018

Editorial

# ORDERLIES – A LEGACY OF COLONIAL CULTURE

Orderlies are a legacy left behind the British in India that was prevailing during their colonial rule, taken over later by the bureaucrats and politicians of post independent India. When there is a hue and cry on the atrocities against people in the lower strata of the society by various political parties, no voice is heard against the torture of orderlies in the police,bureaucrats and defence forces who are also a government servant entitled for all rights benefits and fair treatment. There are reports of these unfortunate government servants being tortured across the country by their own bosses or their relatives, whether in police or in bureaucracy or by ministers, politicians etc.

Considering the torture of these ill fated government servants, Government of Karnataka, as early as in the year 2016 scrapped the orderly system, when there were nearly 3000 people working with various officers of police and bureaucracy as orderlies. Still according to a recent report a police officer in Karnataka is employing 18 orderlies at the official residence for house hold work, that may not be an isolated case.

Considering the plight of the orderlies, the High Court of Madras in their recent order directed the department not to utilize orderlies for any other job other than for their official duties. When the government failed to prevent such atrocities the association had to step in to fight for their cause. When the administrative mechanism is showing their blind eye against such ill treatment the judiciary had to step in.

In a recent case in Kerala a top police officer's daughter has beaten up an orderly who was seriously reported to be injured. The matter is pending before the high court of Kerala when the girl has filed a counter case against the orderly as a defence to protect herself from the crime. This is not an isolated case as similar atrocities are being reported from various parts of the country by the officers from the police, bureaucracy, including politicians, ministers who do not want this paraphernalia to be shelved. According to report even ex ministers in various states are still continuing the service of the orderlies as a status symbol.

But fearing torture, punishment or transfer, victims are not reporting or exposing such incidents. The orderlies are made to do all the household works of the officers, such as taking care of their family members, pet dogs, watering their gardens, washing their cloths, cars, painting their quarters, at the cost of the

public ex chequer. There are also reports that these officers or bureaurocrts are retaining more number of orderlies than permitted. This is when every day crime is taking place in the country such as murder, robbery, theft, crime against women and children which the government is unable to control due to lack of required number of police force. According to report when at the international level one police officer is available for 333 people, it is 137 officer per one lakh people in India. Even then more people are working as orderlies elsewhere and the crime continued unabated.

It is most unfortunate that when the orderlies are facing torture, Human Rights Commission is a silent spectator in such situation. In our democracy we find that the police force is being made as stooges of politicians or beurocrats resulting in demoralizing them, while the law and order in the country is a cause of concern. When there is lack of sufficient strength in the police force to take care of the law and order, that makes the police force getting frustrated leading to torture of the victims in an inhuman way violating the human rights. There are may cases reported against the police force, leading to custodial death, thereby committing culpable homicide.

As per the police Act prevailing in deferent states police personal cannot be asked to do any sort of house hold work other than official duties. There need a method of reporting such torture in the department and take appropriate action. This is when the Hon'ble Supreme Court in *Prakash Singh's* case as reported in (2006) 8 Supreme Court cases, gave a clear direction. But whatever incidents happening in the country as reported against the policemen is a naked vilation of such directions. It is the three bench member of the Supreme Court headed by Justice, Sabarval issued such direction. Thereafter the National Police Commission in their report made the recommendation that there should be a situation that the police officers are to be allowed to do their duties without any external interference. When there is unnecessary and unlawful interference, from the government and by other external force will only demolish the police force, the report added. Based on such report the Supreme Court in their order made clear that there should be a specific guidelines and security measure in the transfer of the police force that will demoralize them. The latest being the direction of the Supreme Court that in the selection of police chiefs in the State shall be as approved by the Union Public Service Commission and that the state shall not appoint DGP on acting basis. The friction between the state and police chief will come out after their retirement when they vent their feeling of torture under gone during their service due to political pressure. Unfortunately according to report the direction given in *Prakash Singh's* case has not been implemented in many states in the country. Such misuse of police force for political ends will affect their performances in carrying out of their duties, in investigating many sensitive cases. There is no right either for a Minister, Judge, Police, Politicians, Bureaucrats to misuse the police orderly in their house hold or other errand jobs other than for the official duties, which may amount to an act of contempt.

When the police force itself is struggling to perform their duties in the absence of sufficient man power it lead to frustration among them that makes them to torture the culprits in the process of performing their duties. Authorities should ensure that the forces under them are not over loaded in their work and hence relieve them from any work pressure by providing periodical training to them to take a human approach in handling the crime. When the authorities fail to respond to their grievance, the respective union should intervene and fight for the cause of their members.

If our hardly fought and earned democracy is to be preserved we need a proper law and order prevail in the country for which a disciplined police force is required. If such equilibrium is disturbed our democracy will be in peril. There need a clear democratic set up in the police administration itself.■

## MEMBERS CAN WITHDRAW 75% OF FUNDS 30 DAYS AFTER LOSING THEIR JOBS: EPFO


In a worker –friendly decision, the Employees Provident Fund Organisation (EPFO) on 26th June 2018 allowed subscribers to withdraw 75% of the accumulated corpus one month after losing a job. The move is expected to have twin benefits –allowing quick withdrawal of the money, while keeping the account active even after unemployment.

"We have decided to amend the scheme to allow members to take advance from its account on one month of unemployment. He can withdraw 75% of his fund as advance from the account after one month of unemployment and keep its account with the EPFO (active) "Labor minister Santosh Gangwar told reports after a meeting of the central board of EPFO.

A subscriber needs to contribute to his PF account consecutively for pension. However, it has often been observed that a person closes his or her PF account two months after losing a job, something that affects the person's pension eligibility.

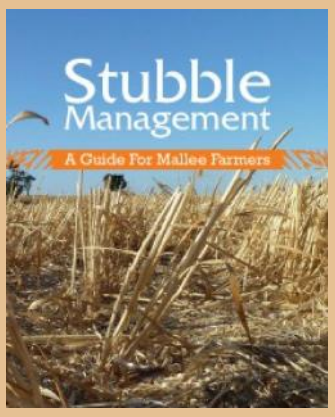
'We are trying to give subscribers a window to take out a sizable portion of the corpus, yet not close the account. When he gets new job, he can transfer the old account money to the new account with the new employer," said central PF commissioner V.P. Joy.

EPFO has an active subscriber's base of over 55 million and manages a corpus of over ₹10.5 trillion.■

***Source: Mint- 27.6.18***

*Article*

## WHY STUBBLE 'MANAGEMENT' MATTERS




Delhi's air pollution is not only a problem of political will, but also a multidisciplinary problem where solutions lie in providing the right incentives to stake holders. These incentives can help in mitigating the long-term consequences of the toxic air North India is breathing and addressing the underlying structural deficiencies.

Stubble burning by farmers in neighboring Punjab and Haryana along with construction dusts and high traffic has aggravated air pollution in Delhi and surrounding cities. This coincides almost each year with the onset of foggy winters in North India. Stubble burning is not new to North India, despite it being banned by the Punjab Pollution Control Board.

But as with most other policies and laws that fail notwithstanding the lack of enforcement, the huge savings- financial and time that accrue to the farmers from violating the stubble burning ban far outweigh any intended benefits from its outlawing. Instead, the right mix of technological and economic incentives can create economic opportunities incentivizing farmers and other stake holders to come together to stop the practice of stubble burning.

***Help them sell it***

North India could take a leaf out of South's experience, following its lead on stubble management. In most rice growing regions of Andhra, Tamil Nadu and Karnataka, farmers get economic value for paddy straw by selling it as cattle feed- income from paddy straw sales could significantly boost farmer's total income. In certain cases, farmers grow low-yield varieties of paddy exclusively for cattle feed.

Both Punjab and Gujarat are home to sizeable dairy co-operatives and there is a huge agri-business opportunity for the famers in the region –patterning with these cooperatives, trading nutrition –rich stubble for livestock ad unlocking a potential value –added chain.

Punjab and Haryana have long taken the easy path of turning a blind eye towards this issue, but an investment by State governments in ramping up mechanization with built- in incentive for farmers will help generate additional income for farmers in the region, creating additional employment opportunities. In much of the US and Europe, crop stubble is cut into bales, and is a much sought after by mushroom growers, livestock owners, and for pulp.

Crop stubble can be repurposed to create another value chain around low-cost, eco friendly wood products, and this is where the private sector and its expertise can be roped in to create necessary infrastructure and transport links to connect the farms to retail markets.

Punjab is home to some of the bigger names in farm and equipment industry with an existing dealer network across the agricultural North India and a leading agricultural university, which create ripe conditions for public private partnership to not only educate the farmers but also provide solutions through technological and economic incentives.

**Innovative solutions**

According to media reports, Punjab Agricultural University's Super-Straw Management System (SSMS), an equipment that can be fit on a combine harvester and together costs nearly $31,000 (over ₹ 20 lakh), works to cut, take our stubble, drill wheat seeds, and evenly deposit any loose crop residue over the farm.

From soil management perspective too, using modern technology is beneficial for improving soil quality SSMS deposits crop residue over the farm, adding organic matter over time, retaining nutrients, water and replenishing soil structure. The university reported higher sales of the equipment, and lower incidents of crop burning compared to the previous year, which indicates a willingness on part of farmers to adopt a mutually beneficial modern technology. However, it would still require a massive thrust from the central and State Governments, working out an incentive structure that considerably brings down the adoption costs, getting the much –needed buy –in from farmers. With nearly 120-130 million people affected in North India due to air pollution, the Government can no longer afford to overlook another disaster in the making the burden of rising health costs associated with a public health crisis, which is already exacting a heavy toll on India's young and elderly, the two most vulnerable demographic groups. Studies have well-documented the adverse impact of air pollution on physical health, however, three are mental health costs to pay as well. Recent IFPRI research shows air pollution causes depressive symptoms and can affect cognitive development in the long run.

**Wider angel**

For India, tackling air pollution is not only a domestic policy issue, but a global one as well. India is signatory to the Paris Accord on climate change, and has committed itself to starting mitigation activities immediately as well as developing a five year plan for mitigation activities.

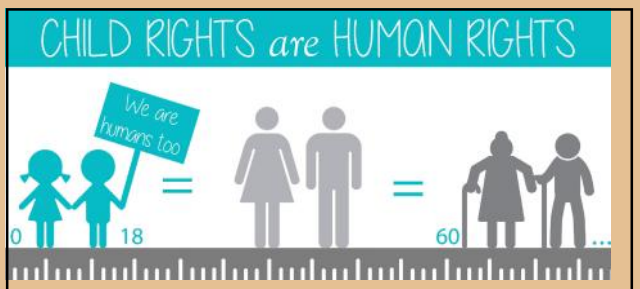
While, the problem may not be political, but implementation of solution lies in political will and consensus. In his first speech from the Red Fort on Independence Day in 2014, Prime Minister Narendra Modi laid great emphasis and rightly so, on cleanliness invoking Mahatma Gandhi, and announcing the "Clean India" campaign, calling it a cause close to his heart, with immense potential to create wealth through tourism.

To be sure, stubble burning is not the only cause of the high levels of smog faced by Northern Indian cities. Efforts are needed to check and mitigate high levels of air pollution triggered by the dusts from the construction sites and the high volume of road traffic. Yet, the media coverage of Delhi's air pollution internationally has brought it on the global radar and the world is now looking at whether the Indian technocrats and policy makers work together to lift the smog from the capital city and the surrounding areas.

Undoubtedly, it will require a sustained collaboration between the central and State governments, but also the right mix of technical, economic and policy incentives to make it an attractive proposition for farmers to switch from stubble burning to stubble management.■

***Source :Business Line-Dt.22.12.17***

# CHILD RIGHT A HUMAN RIGHT




***80 percent of the Indian work force is employed in the unorganized and informal sector, where the children are most abused through forced labour, trafficking, slavery and physical and sexual exploitation.***

The right of the children is supposed to be taken care of, when the "World Day against Child Labour" is being observed on 12th June every year across the world. There are enough legislation passed by various countries to protect the rights of the children. The government of India amended the Child Protection Act in the year 2000 in support of the resolution passed by the United Nations on Child Right. According to Sec 2 (d) of the Child Protection Act, Children who require protection is those who are orphans and do not have home to live. In order to ensure such protection a child welfare rule also came into affect in the year 2007. The intention of the amendment was to give protection to every child who needs it and it is upto the Child Welfare Committee to implement it. According to the amended rule 2015, the Care Homes for the children require registration inview of the child abuse reported in various parts of the country, whether they are working within the parameter of Child Protection Act. United Nations Organisation in their meeting on Child Right, are stressing four points i.e. right to grow, right for protection, right for food, right to unite and share. As such it is the legal and moral obligation of the respective country to give protection to the children. Inspite of various laws around the world to protect the child right, there is no denying that millions of children across the world to day live in destitute, in an oppressive condition, silently suffering social and economic deprivation of which India has third of such children. Inspite of more than six decades of attaining independence the condition of children in India have not improved at the desired level. They are still under shackles, yet to gain freedom, victims of negligence. Child and maternal nutrition continue to be the most challenging risk factor resulting in stunt growth of the children and their morality.

80 percent of the Indian work force is employed in the unorganized and informal sector, where the children are most abused through forced labour, trafficking, slavery and physical and sexual exploitation. When over 18.6 million adult remain unemployed in India today, 10 million children are employed in various sectors. According to International Labour Organisations report, 168 million child labours are there in the world. This is when the child labour is prohibited in most of the countries including in India. Parliament has passed child labour (Prohibition and Regulation) Amendment Act 2016 which outlawed the employment of children under 14 in various sectors except in family enterprises and enhanced the punishment for those employing children. But by allowing children to work in family enterprises would lead to further exploitation and will be detrimental to their education and health. Here the nature of job is not classified. It can be from slaughter house to beedi factory or even fireworks factory which is more dangerous.

There are also reports that various terrorists groups across the world such as in Pakistan, Syria, Afganishtan, Yemen, Nigeria, Philipines and the Maoists in India and the terrorists in Kashmir are using children as a shield, or spy work, informer or part of suicide squard. It is under these circumstances we saw a savior to rescue of these unfortunate children in the form of Shri Kailash Satyarthi in India. He found millons of children across the world undergoing torture in particular in India and other third world countries which the world initially disbelieved. Various incidences in his early life made him to discard his Engineering profession and plunge into social life for rescuring children who are undergoing torture and living in bondage. He travelled throughout the world and studied the condition of children. According to him every human being is born free but put in bondage due to circumstances. He emulated his vision from our freedom fighters who fought for freedom for the country. With the same passion he faught to free children from bonded labour across the country and

the world, disregarding the resistance he received from mafias who emplay the children. He was under regular attack by the predators of children. Though initially many countries and organisation did not relish or understood the spirit behind his mission, supported him later seeing his zeal. Rehabilitation of the orphaned and bonded children become a subject matter of development of each nation, considering that the youth is the asset of any country for their economic growth. This was not realised by those countries until the name of Shri Kailash Satyarthi was announced for Nobel Prize for peace for the year 2014 along with Yusuf Malala of Pakisthan. Initially many countries refused to believe that there is a bonded labour or slavery prevailing in their country and in the modern world. They were under the impression that after Martin Luther King, Abraham Lincoln and Gandhiji who faught for upliftment of black and slavery, bonded labour is not previlant in any country. But the various envents followed subsequently showed them that they were wrong. According to Kailash Satyarthi the child labour is not only due to poverty but also due to child trafficking. A child labour is doing the same job of a regular labor but for 14 to 16 hours in a day with lessor wages. There are cases were a child is employed while his father or mother is jobless and the children are exploited by the employer to get better profit and more work. We cannot eradicate poverty or social injustice unless eradicate illiteracy and provide quality education to children. Welfare of any nation depends up on the welfare of the children who are the future of the country. ■

## GUIDELINES FOR HARMONEOUS-EMPLOYER-EMPLOYEES RELATIONSHIP

***Merely saying 'My door is always Open' is neither enough nor effective, nor efficient. A system or regular procedure is required. The complaints of the employees should not be buried but aired.***


Over the years the relationship between employers and employees has changed—firstly from 'masters and servants' thereafter to 'employer and employees' and now the employees are called as 'team members' or 'team leaders' and lately one of co-partners.

Earlier it was a one-sided relationship with employer wielding absolute power to hire and fire employees. Gradually, Government and Unions intervened to prevent one-sided exploitation by the employer and to wield countervailing power over them. Today the relationship between employer and employee is contractual, reciprocal, and mutual. The employee has certain rights and obligations and so does the employer. The obligations of the employer are relatively precise band specific whereas those of the employees are imprecise and elastic. The substantive terms of the contract of employment have prescribed wages, working hours, holidays, etc. in definite terms, but the obligations of the employee to provide an honest, efficient, and faithful service and to obey orders are not easily measurable and, therefore, application of sanction against workers for non-fulfilment of obligations often becomes difficult. Also managerial authority and power needs to be accepted by the subordinates. Tolerance of non-acceptance of managerial authority or arbitrariness in the exercise of managerial authority can cause further problems.

In any case, in the employment relationship employees' expectations become employers' obligation and employers' expectations become employees' responsibilities. So, there is bound to be certain area of friction or dissatisfaction where either party is not able to live up to the other's expectations. When employees' expectations are not fulfilled we call them grievances and when employers'or managements expectations are not fulfilled, it becomes the subject matter far discipline. Both grievance and discipline are thus two sides of the same coin. The objective of managements should be to integrate the interests of both employees and employers and work for collective well-being.

While in employment, the employees may occasionally have cause to be uncomfortable,

disappointed or aggrieved either about certain managerial decisions, practices or service conditions. The question then is whether this particular symptom or feeling is given any attention or is ignored altogether. What are the pros and cons of each of the approaches. In the present- day social context, especially in democratic system, it is accepted that employees should be able to express their dissatisfaction, whether it be a minor irritation, a serious problem, or a difference of opinion with the supervisor over terms and conditions of employment. In tract, or in the absence of a negotiated collective contract between Management and Union.

The Government of India was conscious about maintaining of harmonious relationship of employer and employees and has substituted section 9-C to the Industrial Disputes Act w.e.f. 15.9.2010. This section makes it obligatory to establish a Grievance Redressal Machinery (GRM) within industrial establishment having 20 or more workmen with a one stage appeal to the head of the establishment for resolution of disputes arising out of individual grievance. With this amendment, the workman will get one more alternative grievance redressal mechanism for the resolution of his dispute within the organization itself with minimum necessity for adjudication. It may be noted that setting up of GRM is no way will affect the right of the workman to raise dispute on the same issue under the provision of Industrial Disputes Act, 1947.

It is important that there be in all but the smallest of establishments a definite procedure for handling the complaints and injustices, imagined and real, which inevitably arise in establishment. In every establishment, mistakes are made, communications are garbled or supervisors fail to see the ramifications or anticipate the consequences of their decisions and directives. The result often is that something unjust or unfair happens to an individual employee. Then the employee has a complaint or, to use a better word, a grievance.

The important thing is to see that such grievances/ complaints are not buried but are aired, looked into and set right if anything is amiss. For this purpose, there should be a clearly specified procedure. Employees should not only be informed clearly of this procedure but encouraged to use it. It should, furthermore, be written into the service rules of the establishment.

A grievance procedure should be a very simple straight-forward affair. A clearly defined routine for handling grievances, beyond the assurance and access it provides to the employee, is also an important Management aid. It reveals weaknesses of communication, avoids the loss of time, misunderstandings, and backtracking that occur when all difficulties are brought directly to the head of the establishment. He should see that the procedure is not short-circuited and that as many grievances as possible are settled at the first step. Except in case of a few big industrial units, such a formal procedure is very uncommon in India. In small enterprises the workers make a direct approach to the top boss who very often, without consulting the line supervisors below, gives decision on the issue. Prompt and effective handling of complaints and grievances are the key to industrial peace and harmonious employer- employees relationship. Such problems be resolved and eased long before they assume the character of an open conflict. In our democratic country where the trade unions, politicians and the labour authorities take perverted pleasure in fishing in the troubled water. One advantage of giving a widest possible solution is that the possibility of the manager overlooking any discontent is very much reduced. Even those discontents which have not yet assumed great importance for the worker and have therefore not moved into formal procedural channels such as casual remarks or grumblings technically called "complaints", come within the purview of the grievance handling machinery of the organization and are removed in the course.

Some such structure of appeal must be available for all employees. What from this could take will differ from one to another but the basic necessity of same avenue of recourse with clearly defined steps remains. Not only is this a necessity for justice but also it is a requirement for effective Communication and Management.■

***By***
***H.L.Kumar, Advocate***
***Source: FLR 2018 (157)***

## DELAY IN PAYMENT OF RETIRAL DUES- PENAL INTEREST

**RETIRE AND RETIREMENT:** Term "Retire" has been defined in American Heritage Dictionary as "to withdraw from one's occupation, business, or office, stop working." According to Compact Oxford Dictionary it means to "Leave one's job and cease to work especially because one has reached a particular age". Meaning assigned to the word "Retire" in the Chambers Dictionary (12th 'Edition) is to "withdraw" to retreat; 'to recede ' to withdraw from society, office, public or active life, business, profession etc."

"Retirement" may take within its fold all kinds of retirement but retirement by way of "superannuation" denote discharge from a post on attaining a particular age which is uniformly applicable to a particular category of service-holders, ***R.N. Rajanna v. State of Karnataka***.'

**PENSIONER :** The expression 'pensioner ' is generally understood in contradistinction to the one in service. Those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression 'pensioners'. They for the purpose of pension benefits form a homogeneous class, which cannot be divided by arbitrarily fixing an eligibility criterion unrelated to the purpose of revision of pension.

**PENSION IS NOT A BOUNTY:** It was held by the Hon'ble Apex Court in ***D.S. Nakara v. Union of India,*** that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ***ex gratia*** payment. It is a payment for the past services rendered. It is a social welfare measure rendering socio-economic justice to those who in the hay day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical ***raison d'etre*** for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules. Pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. ***Kerala SRTC v. K.O. Varghese***. Pension is not a charity or bounty nor ii it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for the past. services, ***PEPSU RTC v. Mangal Singh***.

**RETIRAL BENEFITS :** It was held in ***Sewak Saran Gupta v. State of U.P.*** that retiral benefits are the accumulated savings of a lifetime of service of a Government Servant. In a large number of cases, the retrial benefits are the only source of livelihood and means of survival not only for the retired Government Servant but for his entire family. If the retiral benefits are not paid in time, the very survival of the retired employee and his family members comes under the question. In ***Dr. Chandrakant Sharma v. V.C., Dr. B.R. Ambedkar University*** it was held that retiral benefits are legal and fundamental rights of an employee, being his earned but deferred wage after rendering service for a long period. It is a part of right to earn livelihood under Article 21 of Constitution of India.

**WITHHOLDING OF RETIRAL BENEFITS:** In ***Dr. Chandrakant Sharma v. V.C., Dr. B.R Ambedkar University*** an employer, for valid reasons may withhold retiral benefits to the extent and in the manner it is permissible under the Rules, if an employee is denied or deferred his retinal benefit for whimsical, fancy and arbitrary assumption or inaction of employer or for fault of authorities of employer, it is most abhorring and condemnable attitude on their part. It amounts to harassment of a person who is now a senior citizen having retired from service but at this advanced age, he/she and

family are made to suffer financial and otherwise, for no fault on their part and this sufferance is on account of apathy, inaction and whimsical attitude of non caring officials to the needs and rightful dues of retired employees. Withholding of retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin, if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee must however be ashamed and feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our Constitution.

**INTEREST PAYABLE IN CASE OF DELAY IN PAYMENT:** The Hon'ble Supreme Court has held that pension is not a bounty but a right of a Government Servant and if there is a delay in the payment of post retiral dues, then interest becomes payable as held in ***Dr. Uma Agarwal v. State of U.P.*** and again in ***Smt. Madhuri Devi v. State of U.P. In Shripati Tripathi v. State of U.P.*** a Division Bench of the Hon'ble Allahabad High Court held that interest is payable on arrears of salary and other retirement benefit and awarded 12% simple interest per annum.

Interest on delayed payment on retiral dues has been upheld time and again in a catena of decisions. In ***Shamal Chand Tiwari v. State of U.P.*** (W.P. No. 34804 of 2004) decided on 6.12.2005 it was held: "Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondent well in advance, there is no reason for them not to make arrangement for payment of retiral benefits to the petitioner well in advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of ***State of Kerala v. M. Padmanaban Nair*** the Hon'ble Supreme Court held as under:

"Since the date of retirement of every Government Servant is very much known in advance we fail to appreciate why the process collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government Servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government Servant immediately after his retirement cannot be overemphasized and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement." ***Dr. Chandrakant Sharma v. Vice Chancellor.***■

***By...***
***Ajit Kumar Singh. Additional Advocate General, Uttar Pradesh***

***Source: FLR 2018(157)***

*Judicial Verdict*

**[2018 (157) FLR 714]**
**(DELHI HIGH COURT)**
**VIBHU BAKHRU, J.**
**Writ Petition (C) No. 455 of 2018 and C.M. Nos. 1984, 1985 and 1998 of 2018**
**January 23, 2018**
**Between**
**Ms.C.**
**INDIAN INSTITUTE OF CORPORATE AFFAIRS and other**

***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013—CCS (CCA) Rules, 1965—Rule 14—Complaint—Lodged with respondent—Not immediately referred to ICC constituted—Her request for interim relief not considered by ICC—ICC acts as an inquiry authority—ICC would be free to obtain any clarification front petitioner—ICC is empowered to grant interim relief—ICC is requested to complete the proceedings expeditiously.*** [Para 14]

## JUDGMENT

**VIBHU BAKHRU, J.**—The petitioner, whose name is concealed to avoid any ignominy, has filed the present petition, ***inter alia,*** praying that directions be issued to respondent Nos: 5 to 10 - persons constituting the Internal Complaints Committee (hereafter 'the ICC ') - to comply with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereafter 'the Act ').

The petitioner claims that on IO.11.2017 she was sexually assaulted and groped by respondent No. 4. This incident happened within the campus of respondent No.1 at Manesar, Gurgaon, Haryana. She further alleges that respondent No. 4 had been sending unwelcome whatsapp messages and songs of sexual nature to the petitioner. The petitioner states that the complaint in this regard was lodged with respondent No. 3 on 13.11.2017 but the same was not immediately referred to the ICC.

2. According to the petitioner, the ICC was constituted on 28.11.2017. The petitioner claims that she has also applied for interim relief to the ICC, however, the same has not been considered as yet.

3. The petitioner claims that the ICC is not following the principles of natural justice and has not provided any statements, deposition, documents or evidence that has been placed before the ICC and, therefore, she has been effectively precluded from responding to the same. She also claims that some of the Witnesses in the case are 'being intimidated and victimized. The petitioner also alleges that respondent No. 3 has failed to maintain confidentiality with regard to her identity at the campus and has shared the details of her complaint openly with other persons.

4. At the outset, .Mr Shukla, the learned Counsel appearing for the respondents states that the Ministry of Corporate Affairs, Government of India had constituted the ICC by an Office Order dated 20.4.2017 and the petitioner's complaint was forwarded to the ICC on 14.11.2017.

5. He states that ICC is currently conducting a preliminary investigation and is not acting as an "Inquiring Authority". The proceedings are only to assist the Disciplinary Authority to form a prima facie opinion for constituting an inquiry udder Rule 14 of the CCS (CCA) Rules, 1965.

6. Ms Grover, the learned Counsel appearing for the petitioner contends that even at the stage of such preliminary investigation, it is necessary that all material collected by the ICC ought to be provided to the petitioner and she also be given a further opportunity to rebut the same. She submitted that he petitioner has not been provided any material and also has had no opportunity to cross-examine any of the witnesses that may have deposed in favour of respondent No. 4 before the ICC.

7. She relied on the decisions of this Court in ***Manisha Sharma v. Union of India and others, Pallavi Pandey v. Kendriya Bhandar, and Sonali Badhe A.L..A. Directorate of Enforcement, Ahmedabad v. Ashish Chandra Singh, DLA, New Delhi and another:*** W.P.(C) 6207/2017, decided on 15.12.2017.

8.This Court is not persuaded to accept the contentions advanced on behalf of the petitioner. In terms of the Office Memorandum bearing F. No. 11013/2/2014-Estt (A-III) dated 16.07.2015 issued by the Government of India. Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training (hereafter 'DoPT'), the role of an ICC has been explained in the context of Rule 14 of the CCS (CCA) Rules, 1965.

9. It is relevant to refer to Rule 14 of the CCS (CCA) Rules, 1965; the relevant extract of which is set out below:

***"14.PROCEDURE FOR IMPOSING MAJOR PENALTIES:***

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Ru16 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or

misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Provided that where there is a complaint of sexual harassment within the meaning of Rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

10. A plain reading of Rule 14 (2) of the CCS(CCA) Rules, 1965 indicates that an inquiry into any misconduct or misbehaviour against a Government servant would commence only where the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation or misconduct or misbehaviour on the part of the Government servant. The proviso to Rule 14 (2) of the said Rules specifies that the ICC would be the Inquiring Authority in cases where the complaint is of sexual harassment within the meaning of Rule 3-C of the CCS (Conduct) Rules, 1964.

11. It is not disputed that the ICC would be deemed to be an Inquiring Authority; however, the said inquiry would commence once the Disciplinary Authority forms an opinion as required under Rule 14 of the CCS(CCA) Rules, 1965. At this stage, the ICC is only conducting a preliminary investigation. The ICC's dual role has been explained in the guide on "Steps for conduct of Inquiry in complaints of Sexual Harassment", which was circulated under the cover of the Office Memorandum dated 16.7.2015. The relevant extract of the said OM reads as under:—

***" Complaints Committee to be Inquiring Authority***

As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

***Need for investigation***

7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-motu. As per section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

8. As mentioned above, the complaints of sexual harassment are required to be handled to be verified. This is called preliminary enquiry/ fact finding enquiry or investigation. The Complaints Committee conducts the investigations They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge-Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

***Dual Role***

9. In the light of the Proviso to the Rune 14(2) mentioned above, the Complaints Committee would normally be involved at two stages. The

first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS(CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated."

12. As noted above, at this stage, the Disciplinary Authority has not formed an opinion for inquiring into the truth of the allegations made against respondent No. 4 and an inquiry against respondent No. 4 has not been instituted as yet. The preliminary investigation conducted by the ICC is only to assist the Disciplinary Authority to form such an opinion. The preliminary investigation would also aid the preparation of the imputation of charges for misconduct and misbehaviour, if any.

13. It is also essential that at this stage detailed findings are not returned by the ICC as the matter is only at a preliminary stage. Returning definite findings at this stage would certainly give a cause to the person accused to claim at the subsequent stage that the ICC had already made up its mind even before a copy of the imputation of charges were served on him. This would frustrate the intention of ensuring that the ICC act as an Inquiring Authority.

14. Since it is stated that the ICC is merely conducting a preliminary investigation regarding the complaint of the petitioner, no further interference by this Court is called for at this stage. However, it is necessary to observe that the ICC would be free to obtain any clarification from the petitioner, if considered expedient.

15. The ICC is requested to complete the proceedings as expeditiously as possible after the petitioner returns from the Bharat Darshan Tour.

16. Needless to state that if the petitioner is aggrieved by the Disciplinary Authority not taking an appropriate action at that stage, the petitioner would be at liberty to apply.

17. It is also necessary to observe that the petitioner also has the right even at this stage to approach the concerned authorities for immediate protection that may be required by her. It is seen that the ICC is also empowered to grant initial relief, if the circumstances so warrant.

18. Respondent No. 2 shall also consider whether it is necessary to enquire into the role of respondent No. 3.

19. The petition is disposed of with the aforesaid observations. The pending applications are also disposed of.■

***Petition Disposed Of.***



*EDITED and Published by Sri. Y. Sudarshan on behalf of AISBOF, at SBI Buildings, St.Mark's Road, Bangalore - 560 001, Printed at L.V. Graphics, Bangalore- 560 021 ☎ 23321456*