

INDUSTRIAL RELATIONS : A NEED FOR REORIENTATION WITH REFERENCE TO FREE MARKET ECONOMY IN INDIA

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I. INTRODUCTION

In any industrialised society the industrial disputes between employers and the workmen are inevitable because of the clash of the conflicting interests of the employers and that of the workmen. Such an inherent industrial climate in any country in the modern times requires the presence of the dynamic industrial relations system in order to encourage and maintain cordial and healthy relations between the management and the working class. It is observed that the system of industrial relations management in a country is dependent upon the nature of the political, social structure and legal system of the society. Precisely for this reason if we view the industrial relation systems comparatively in the U.S.A., the U.K., Japan, Australia, India, Africa etc., the systems are substantially distinct in each country from the other.

After independence India chose the Nehruvian model of mixed economy for our country. It worked well for a long time but ultimately it was found that substantial investments made in the public sector started making huge losses at the cost of the tax payers. Thus for the last six years our Government has been making efforts to bring about economic reforms in the economy towards a free market economy. Some basic reasons, *inter alia*, towards this shift could be listed as following :

- (i) The trend of the world towards globalisation in which India could not remain isolated particularly when there was change in economic system in Eastern Europe, the collapse of the U.S.S.R. and the shift towards new economic model in the region, as well as Chinese concern also for transition from Communism to a competitive market oriented economy.
- (ii) To raise the rate of economic growth (GDP) which could be possible only through efficient running of industries with competitive approach and profit motive.
- (iii) To privatise those PSU's which were not running on efficient, protective and profit basis, so that they could compete with other industries.

- (iv) To liberalise the economy with a view to encourage more investment particularly from the foreign countries. And thus the Indian Government started projecting the liberal economic policies in the form of free market economy.¹

In order to survive in this competitive world economy India has to strive hard and change towards free market economy and globalization which should bring about substantial increase in GDP and encourage the foreign investors to invest in India. The object of change in the system should be to raise the economic standard of the poor class and increase in the annual economic growth rate. The above goals can be achieved only by making the economy competitive, with lesser state controls, and more and more investment. We know that at the level of present economic development we cannot have sufficient investment unless we also allow and encourage foreign investments at least in the priority sectors, power and in the infrastructure. The focus of this paper is to analyse and point out in what manner our labour laws and industrial relations system should adapt themselves so that the economy becomes competitive and also encourages foreign investment. Some fundamental reforms are suggested in the labour laws and industrial relations in India which should gear the present economy towards the free market competitive economy and induce the foreign investors to invest in India.

II. BASIS OF EMPLOYER-EMPLOYEE RELATIONSHIP

While discussing about industrial relations we are basically concerned as to how the relations between the employers and workers are governed under the law in a given society. Historically, one may be surprised to note that it was in the year 1771 in the famous *Sommerset's case*² that Lord Mansfield for the first time made it clear that slavery was incompatible with the English common law. In feudal times when agriculture was the main source of employment the employment of agricultural labour was described in terms of *landlords* and *serfs* which implied partial slavery because the serf could not choose his employer and if the landlord sold his land to another person then the serf also changed hands and became the serf of another landlord. During the period of industrial revolution individualism of *laissez faire* was the basis of determining the relationship and was called as 'master and servant' relationship where the principle of 'hire and fire' as propagated under the pure law of contract between the employers and the workers operated. However, it may be emphasised that the modern trend all over the world is of a welfare state and consequently the common law concept of 'servant' in the law of 'master and servant' is substituted with that of an 'employee'. And thus the relationship can now best be described as the relationship of employer and an employee. Hence labour laws and industrial relations must have a human approach which ensures labour human dignity.

III. UNIONISM AND THE LAW

Modern industrial relations have to be based on proper industrial democracy for the workers and employers. And for a balanced system industrial relations based on democratic lines, it is essential that both the workers' unions and employers' associations/unions are allowed to flourish in the industrial society. The best method for the resolution of industrial disputes is collective bargaining between the employers' and the labour unions. For this, it is imperative that there should be such trade union law that encourages proper unionism and at the same time makes the unions and their leaders responsible as partners in the process of industrial democracy. In India there are some basic flaws in the trade union law which have to be removed so that we can encourage collective bargaining as a method of resolving industrial disputes. In this respect, the following changes in the Trade Union Act, 1926 are suggested;

(a) Presently under the Trade Unions Act, 1926, any seven or more members of a trade union by subscribing to the rules can apply for registration.³ Such a provision encourages multiplicity of trade unions in industrial settings. Such a scenario under the law is not good for sound trade unionism and determining the 'sole bargaining agent' for purposes of collective bargaining. Therefore, under the law of trade unions a provision should be introduced wherein a trade union should be allowed to register only if at least 20% of the members of the establishment or industry apply for registration as a trade union.

(b) At present, under the trade union law there is no obligation on the part of the employers to recognise a majority union for the purposes of collective bargaining like in the U.S.A. Such a situation under the law encourages the unscrupulous employers and the union to thwart the process of healthy trade unionism by recognising the bogus unions in the establishment and discouraging genuine trade unions. Many a times the employers and corrupt union leaders set up a union as opposed to the genuine union in the establishment. This lacunae in law is a major reason of the unpopularity of collective bargaining in India. Thus it is important that a provision providing for compulsory recognition of the majority union should be introduced in the Trade Unions Act, 1926.

(c) Under the Trade Unions Act, a provision for conducting secret ballot should be introduced before a union can go on strike and only if the majority of the union members want to go on strike, the strike should be considered legal. Such a provision would avoid industrial strife purely on the whims and fancies of the union leaders and would encourage workers participation in the industrial democracy.

(d) Under the law, no officer or member of a registered trade union shall be held liable for criminal conspiracy for activities of the trade union in furtherance of trade disputes.⁴ Moreover, no trade union, official of a trade union or member of trade union should be liable for any tortious or civil liability for an activity of unions or members in furtherance of a trade dispute.⁵ In *Rohtas Industries Staff Union v. State of Bihar*⁶, it has been ruled by the Patna High Court and confirmed by the Supreme Court of India that the trade unions are not liable to pay damages to the employers for participation in a strike whether it is legal or illegal. Such kind of civil immunity to the trade unions has made the trade unions irresponsible. In fact as in the U.K., a provision in the Trade Unions Act should be introduced wherein if the motives of the union leaders are not genuine in industrial dispute and they resort to strike which is unfair then the union shall be liable to pay damages to the employers depending upon the size of the union membership. Such a step should make the leaders of the unions and workers more responsible and they would indulge in genuine industrial disputes only.

IV. MECHANISM FOR THE SETTLEMENT OF INDUSTRIAL DISPUTES

The nature of industrial disputes is quite distinct from ordinary civil disputes. The industrial disputes are economic in nature and basically disputes of interests between the employers and workmen. The industrial disputes are not disputes about rights and liabilities under the law. In industrial disputes in a society it is not only the interests of the employers and workmen which are at stake. The interests of the society are also affected if there are industrial disputes and industrial strife. Therefore, speedy and effective methods, mechanism and forums have to be devised to resolve and settle industrial disputes. The effective and speedy mechanism for the resolution of industrial disputes is much more imperative in the present policy of economic reforms and free market economy in India. It has been observed that investment in various priority sectors and infrastructure industries is short of the required level because the foreign investors are afraid of the rigid labour laws and dilatory mechanism for the settlement of industrial disputes. Such a scenario in industrial relations does not induce and encourage the foreign investors to invest in India. Accordingly, the following suggestions have been made with respect to the dispute settlement mechanism available in India.

(i) It is well recognised all over the world that collective bargaining is the best method for the resolution of industrial disputes between the employers and the workmen. In India, though it is accepted by the employers and the workmen that collective bargaining should be resorted to for the settlement of industrial disputes yet it is very seldom that the employers and unions or workmen resort to collective bargaining. In fact, both the employers and unions have become

accustomed to the compulsory adjudication by the labour courts and industrial tribunals. Adjudication of industrial disputes by industrial tribunals is very dilatory and time consuming process which hampers healthy relations between management and the workmen. In this regard, it is suggested that a provision under the Industrial Disputes Act, 1947, similar to the provision under the National Labour Relations Act, 1935 of the U.S.A., should be incorporated making it obligatory for the parties to first of all resort to collective bargaining bonafidely for the settlement of industrial disputes. And in any case where a party to the industrial dispute refuses to collective bargaining then it should be treated as unfair labour practice under the law. Such a step would give a boost to the popularity of collective bargaining in India also.

(ii) If in the process of collective bargaining the management and union leaders fail to negotiate an agreement then in the process of settlement the use of the conciliators and mediators may be resorted to so that the industrial disputes should be resolved speedily and effectively. And supposing still the disputes cannot be settled than disputes should be referred and preferred by the management and unions to be decided by the voluntary arbitrators under section 10A of the Industrial Disputes Act. Reference to labour courts and industrial tribunals for adjudication of industrial disputes should be the last resort by management and unions for the resolution of industrial disputes. Such measures would help in creating healthy environment in industrial relations in India and would also encourage the faith of foreign investors in the Indian industrial relations system which is so imperative for the economic reforms of free market economy and globalisation in India.

V. SOME IMPORTANT ISSUES UNDER THE INDUSTRIAL DISPUTES ACT

A. Unfair Labour Practices

During the period of industrial strife, both the management and unions and their workmen have the tendency to resort to unfair labour practices. Such practices by the management or the unions create unhealthy climate of industrial relations in an industry. Such practices not only affect the production but also jeopardise the day to day working relations between the management and workmen. And some times such practices lead to law and order problems in the society. Therefore, such practices need to be prevented and curbed in industries.

In India, the unfair labour practices on the part of the management as well as the workman and unions are provided under the Fifth Schedule of the Industrial Disputes Act. An employer or a workman or a union is prohibited to commit any unfair labour practice.⁷ However, the only remedy available for

the commission of unfair labour practices by the employer, a workman or a union under the law is the prosecution for a criminal offence with the prior permission of the 'appropriate government'.⁸

Prosecution for the offence of commission of unfair labour practices is not a sufficient remedy because neither the employer nor the workman nor the union is interested in the criminal prosecution. The need is for the prevention and curbing of such practices when these are being committed by the employer, or a workman of a union. In this respect, it is suggested that there should be provision under the Industrial Disputes Act providing for an agency to listen to the grievance of the affected party and the agency should have the power to issue cease and desist orders against the party who is either engaged or commits unfair labour practice. Such a provision exists under the National Labour Relations Act, 1935 in the U.S.A. where the National Labour Relations Board is empowered to deal with the complaints of the aggrieved party and issue appropriate cease and desist orders against the party which engages in or commits the unfair labour practice. Such kind of provision would help in developing healthy and cordial industrial relations between employers and the workmen.

B. Strike and its Consequences on Workmen

In the process of collective bargaining between employers and the workmen, strike is one of the most important weapon in the armoury of workers and unions. There is no doubt that this right of strike in furtherance of industrial disputes should be well recognised. However, the right of strike cannot be left completely unregulated under the law. Sections 22 and 23 of the Industrial Disputes Act provide for the grounds declaring the strike illegal. Section 24 of the said Act makes the strikes illegal if any of the grounds under sections 22 and 23 of the Act have not been observed. For participation in illegal strike, for instigating an illegal strike and giving financial aid in furtherance or support of illegal strikes are declared as offences under the Industrial Disputes Act.⁹ Any active participation in an illegal strike by workmen can also lead to disciplinary action against him in the form of termination or dismissal from job.¹⁰

In the U.K. and U.S.A., the workmen are not entitled to wages for the period of strike. However, in India the workmen have been paid wages even for the strike period particularly where the strike is legal and is also justified. It was for the first time that a categorical ruling from the Supreme Court in *Bank of India v. T.S. Kelavala*¹¹ held that the principle of 'No Work No Pay' should be followed. But again the Supreme Court in the case of *Syndicate Bank, Canara Bank and the State Bank of India v. Their Workmen*¹² held that in case the strike is legal and justified then the workmen are entitled to wages. The

above ruling of the Supreme Court has diluted the principle of 'No Work No Pay' for the payment of wages to workmen for the strike period. It is submitted that in case the workmen are entitled to wages for the strike period also then there is no pressure on the workmen for going on strike and make the unions and workmen irresponsible. Such a law is one of the factors which deters the foreign investors to invest in Indian industries. Hence, it is suggested that 'No Work No Pay' principle should be adhered to for the payment of wages for the strike period.

C. Unfair Dismissal and Reinstatement of Workmen

It is well conceded that law and the industrial tribunals must give proper relief to the workmen in case of unfair dismissals. However, it has been observed that in almost every case of unfair dismissal reinstatement of the workman on the job with back wages is the rule in India. It is expected of the employer to conduct an elaborate domestic enquiry following the strict principles of natural justice just like ordinary courts, before taking an action in the form of dismissal or discharge. It is suggested that in each and every case, for all types of industrial employments, a detailed enquiry need not be insisted by law. It is found that in most of the cases the matter is agitated before the labour courts. And in case the dispute is raised before the labour court or tribunal, let the labour court or the tribunal decide on the merits of the case. Reinstatement of the workman should not be made in each and every case by the labour court or industrial tribunal merely on the grounds of technical illegalities like no proper enquiry etc. The reinstatement of a workman on the job should be on the substantial merits of the case. It is suggested that as in the U.K., the labour court or industrial tribunal in India should give the option to the employer for reinstatement of a workman or a heavy compensation in lieu of reinstatement for an unfair dismissal of a workman.

D. Lay-off, Retrenchment and Closure

Under Chapter V-B of the Industrial Disputes Act, if an industrial establishment has employed not less than one hundred workmen on an average per working day during the preceding twelve months, then the employer cannot lay-off, retrench or close the establishment without the prior permission of the appropriate Government.¹³ It has been found that whenever the employers apply for the prior permission for lay-off, retrenchment or closure to the appropriate Government the permission has not been granted generally. These provisions for permission are very stringent and deter the employers to invest in industries and have much more deterrent effect on the foreign investors who do not feel encouraged or induced to invest in Indian industries. It is recommended that these provisions should be repealed from the Industrial Disputes Act so that more liberal foreign investments flow in industries and the industries can freely compete in the free market economy.

VI. WORKERS PARTICIPATION IN MANAGEMENT

Labour used to be treated like a commodity at the beginning of the industrial revolution. However, it is now considered that in the industrial process of production, labour is equally a partner with the capital. Thus, it may be pointed out that there is an imperative need to ensure proper workers participation in management to enhance the GNP in the Indian Economy. Workers participation in management is not only good for workers but is also essential for developing cordial relations between the employers and workmen. Workers participation in management also ensures proper management of industrial organisations and establishments.

Article 43 A of the Constitution of India enjoins that the state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in industry. However, little has been done in India to secure workers participation in management of industries. In the year 1990, a Bill titled the Participation of Workers in Management Bill, 1990 was introduced in the Parliament. The Bill of 1990 provided for Shop Floor Councils¹⁴ and the representation of workers at the board of management.¹⁵ It is earnestly suggested that the law on the lines of the 1990 Bill should be enacted as early as possible so that there is proper growth of industries in India.

In conclusion, it may be reiterated that India has rightly chosen the path of liberalisation, globalisation, and free market economy. India cannot remain isolated when the whole of the world is progressing towards free and competitive economic system. However, the goal of a free market economy cannot be achieved without requisite changes in the industrial relations system. There are various provisions in law as discussed in this paper which do hamper healthy industrial relations between the management and workmen. Such provisions also negate the goal of competitive and free market economy. In fact to reorient the industrial relations system in India necessary reforms and changes in industrial relations law will give a new orientation as suggested above in this paper which will go a long way in ensuring healthy industrial relations as well as achieving the goal of free market economy which will encourage the foreign investors to invest in India which is so essential to increase the level of economic development in India.

NOTES AND REFERENCES

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1. See Harish Chandra, *Reflections on Free Market Economy in India*, 18 DELHI LAW REVIEW (1996) at 220-221.
 2. (1771) 20 S.T. 1.

3. See section 4 the TRADE UNIONS ACT, 1926.
4. See section 17 the TRADE UNIONS ACT, 1926 and *Ruikar v. Empror*, AIR 1935 Nag 149.
5. See section 18 of the TRADE UNIONS ACT, 1926.
6. AIR 1962 Patna 170.
7. See section 25 T of the INDUSTRIAL DISPUTES ACT, 1947.
8. See sections 25 U and 34 of the INDUSTRIAL DISPUTES ACT, 1947.
9. See sections 26 to 28 of the INDUSTRIAL DISPUTES ACT, 1947.
10. See *Gujrat Steel Tubes v. Its Workmen*, AIR 1980 SC.
11. (1990) II LLJ 235 SC.
12. AIR 1995 SC.
13. See sections 25-M, 25-N and 25-0 of the INDUSTRIAL DISPUTES ACT, 1947.
14. See section 4 of the PARTICIPATION OF WORKERS IN MANAGEMENT BILL, 1990, which provides for equal number of representatives of the employer and workmen at the Shop Floor Level Council.
15. See section 6 of the PARTICIPATION OF WORKERS IN MANAGEMENT BILL, 1990.