



The Development of Industrial Jurisprudence

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THE DEVELOPMENT OF INDUSTRIAL JURISPRUDENCE

No branch of modern law has attained greater importance than that relating to labor unions, and no more difficult industrial legal problems are presented to the courts than those which arise out of disputes under trade agreements. The sweep of conflicting political theories and changing economic systems from the XIIIth through the XVIIth Centuries to the present day has left the common law affecting industrial matters to-day a clouded, uncertain record. It has a distinct color, but little else. The title of this branch of the law, as even to-day carried in text-books, law encyclopedias and reported decisions, illustrates this conclusion. What more abhorrent title can be found in all of the reported law of former ages than "Master and Servant",—the terminology used to describe the legal relationship of active or absentee capital and the workers of industry.

In addition to the cases which have been decided in our courts as to the rights, privileges and duties of trades unions, and the few decisions relating to operations of employers' associations, the courts have naturally been resorted to in order to determine disputes arising out of the relationship between an individual employer and an individual employee. Severance of employment has given rise to litigation ranging from action for wages to pleas for injunctive relief prohibiting competitive employment by the discharged or resigned employee.

In the main, however, employment litigation has been concerned with punishment rather than reform. Specific performance, or compliance with contracts, is seldom within the purview of such court actions. The demand is for damages, or in other words, punishment for infraction or breach of contract. Our treatment of criminal cases has at last brought us to the position where the public mind is directed toward an emphasis on reform rather than punishment. A similar attitude is imperative in the treatment of industrial civil cases. It helps little to assess damages on employer or employee in cases involving infraction of employment relationship. Damages, practically the sole language of our courts in so-called "Master and Servant" cases, breed nothing but ill will, and have neither the intention nor the result of effecting industrial peace.

To stretch our judicial machinery into a form where its operation would be flexible enough to decide industrial issues and adjust such differences, is not possible by mere expansion of powers and functions. If the courts of the land are ever to be empowered with such functions, other organs of extra-judicial industrial machinery, estab-

lished outside and apart from our courts, will first have to operate satisfactorily in an independent fashion. After such continued operation, it may well be that the power of our courts will be extended to cover such new industrial machinery. But while the people have been possibly over-desirous to place tremendous additional administrative powers and functions on the state, a natural restraint and timidity is evident when the extension of judicial functions is proposed. The creation of commissions—Public Service, Workmen's Compensation, City Planning—and other quasi-judicial boards, points clearly to a desire to remove from, rather than bestow upon, the courts special functions and powers.

And the cause is that the judicial machinery established in this country for obvious reasons has proved inadequate to handle in an effective manner the mass of minor but consequential disputes arising between employers and employees. The delays of procedure, the lack of confidence in the judiciary, and the practical compulsion of retaining counsel, have forced employers and unions to the establishment of their own judicial tribunals.

In industrial disputes time is of the essence, for time often means the difference between employment and unemployment. A discharged employee can find no true relief in a suit for money damages, especially when the decision will not be reached within a month and possibly not within a year. Moreover, most industrial quasi-legal matters before the joining of issues involve what in fact though not in law are offsets or counterclaims. A superintendent discharges a forewoman, the workers in the shop stop work. The contract clearly prohibits the forewoman's discharge without hearing and notice; and further, is violated by the stoppage on the part of the workers. Surely a revolution in our codes of practice would be necessary in order to bring before one judge, in one action, the superintendent, the forewoman and the striking employees. Nevertheless, that very feat is easily performed under extra-judicial machinery established by workers and employers in specific industries. Under our codes of practice, however, the courts are prohibited from a consolidated hearing and trial on *all* correlated issues.

In addition the impartial standing of our judiciary is, without meaning any disrespect, correctly impugned. There is a clean alignment of most individuals either for or against dividends to persons other than those actively connected with industrial enterprises. The members of the legal profession—from whom the judiciary is selected—most naturally decline to look with any disapproval upon ethical or moral grounds, on absentee profit-sharing; and conversely probably underemphasize the justice of the greater distribution of the profits of industry which labor and management increasingly claim from the share heretofore paid for invested capital. Thus labor dis-

trusts our courts, which are truly colored with pre-judgment of our economic life.

Little need be said of the outrageous costs of litigation and of the time wasted in sitting around waiting for trial. Litigation may result in the doing of justice but it is far more a matching of wits than a sifting for truth. Our rules limiting the admissibility of evidence, and the establishment of the judge as an impartial auditor, rather than as a scientific investigator for truth, make the use of our courts for complicated economic and human problems anything but an adequate forum. Probably lack of time rather than danger of befogging issues still demands strict limitation of our rules as to admissible evidence. Such rules, however, make trials a sport or game. A lawyer untrained in this game may be unable to squeeze into the record material facts; and conversely, a skillful "evidence sportsman" can becloud the issues with immaterial facts. The bar, moreover, hardly looks with due approval on those judges who take upon themselves the examination of witnesses. Such action tends to divest the profession of the "vested right" of examination. In proportion to the intellects of the contestants, the judges, and the juries, it is possible to place limitations on admissible evidence. Trained advocates, skilled jurors or learned judges grasp the kernel of a situation without hearing all the facts. Untrained contestants, on the other hand, require elaborateness and even repetition of evidence. So in actions arising out of industrial relations, the broadest possible airing of grievances, and practically a total lack of restraint on evidence become necessary in order to arrive at just decisions, and in order to procure the valuable and proper education of the contestants. Industrial litigants in our courts are not so much aggrieved by failure to win a case, as by a feeling of injustice having been done by refusal to listen to what to them are the salient facts.

Such and similar factors have caused a resort by employers and employees to an institution of their own making. The development of these intra-industrial courts is in an early stage. Until ten or twelve years ago, if a semblance of industrial peace existed in a particular industry, the machinery invoked for the settlement of disputes was an ordinary arbitration board consisting of representatives of each side, who upon failure to agree were empowered to call in an additional impartial person. Under such machinery, it became evident that the representatives of the respective sides contributed little to a judicial determination of any dispute. These representatives, because of pressure from their respective constituents, assumed the roles of advocates. The result was that the power of decision of any such tribunals, as a matter of practice, was vested not in the board of arbitration, but entirely in the impartial outsider who was called in to listen to the evidence in the particular case under consideration.

Where the impartial outsiders were spasmodically drafted and where the personnel of such outsiders varied in each case, the parties to the dispute, as well as the industry affected, were deprived of the advantages which would naturally accrue if the impartial final arbitrator were the same person over a definite and lengthy period of time. Such continuous service spelled familiarity with an industry rather than with a particular grievance. Machinery has now been improved so as to provide continuity of the industrial policy as translated in the decisions rendered. The defect in the earlier industrial machinery has been corrected in a dozen or more industries which are now operating under what has been termed the "impartial chairman" type of agreement.

Under the impartial chairman type of agreement, what might be termed an "industrial judge" is employed through the funds jointly contributed by the union and the employers' association in the industry concerned. His term of employment is indefinite; and consequently he stands somewhat in the position of a Prime Minister, in that he must necessarily resign as soon as he loses the confidence of either side. This, of course, does not mean that each decision rendered by the impartial chairman must meet with the approval of all the members of each side, for, of course, that is a practical impossibility. It merely means that these judges are subject to recall,—and the recall of these industrial judges, at least in this period of development, rests upon a different basis from the public recall of public judges. We have never denied the legitimacy of granting the legislature or the executive the power of judicial recall upon charges. We have at this time wisely been slow to approve recall at the will of the electorate. The unwillingness to sanction popular recall, like the movement for a short ballot, reflects our distrust of the power of the electorate intelligently to select or remove more than a few outstanding persons in the political panorama. With the industrial judges, however, the criticism of the parties to the agreement more closely resembles "charges"; and the distinction is clear that here the recall is to be exercised, not by a partly disinterested populace, but by highly interested groups whose attention has been continuously directed toward the issues involved and the capacities of the judges.

The impartial chairmen now sitting in various industries throughout the country often establish their own rules of procedure, and as a rule have the power of passing upon all industrial questions arising in the industry under the particular contract in existence between the union and the employers' association. The practices under which the impartial chairmen operate vary greatly. In some markets the contract is merely a charter of fundamental principles to guide the industry, establishing the impartial machinery, providing for the duration of the agreement, and prohibiting strikes and lock-outs dur-

ing its pendency. In other contracts full details are agreed upon: hours of labor, rates of piece work, methods of election to the trade council, method of presentation of appeals, rules governing the terms of employment, such as union preference, hours, sanitary conditions, and the like. While the general agreement has the merit of flexibility, it has the disadvantage of postponing settlement on fundamental issues. In at least one labor market, the very lack of agreement on the terms of employment has been responsible to a large extent for the abolition of the impartial chairman.

Under these various agreements there have been no less than two thousand written decisions rendered by impartial chairmen in this country. These decisions cover questions involving the discrimination of employer against employee because of union activity; right of promotion; wrongful discharge; increase in wages; decrease in wages; holidays to be allowed to workers; hours of labor; method and order of laying off workers during periods of unemployment; methods of preference in the rehiring of unemployed; basis of pay, whether piece-work, week-work, piece-work with minimum guarantee, profit-sharing or bonus system; and even such technical problems as the much mooted question in the textile industry of the desirability of one operator's working on two looms or more. The range of matters placed before the impartial chairman is as wide as the industry itself. Unless provided to the contrary in the contract, all incidents of employment come within the power of the impartial chairman for consideration and decision.

The methods of enforcement of these decisions vary greatly depending upon the terms of the particular contracts. Money fines, limited and unlimited, may be assessed in certain industries. In other cases the decisions rest for their enforcement on the good faith of the parties to the agreement. In passing, it might be interesting to mention that under many of the impartial chairmen agreements, a legislative chamber is established. This chamber, known either as a trade board or council, is composed of an equal number of representatives of labor and employers, and through such legislative board a considerable part of the strain which would be felt by the impartial chairman sitting as a judge is removed by previous agreement in such board or council on mooted industrial problems which involve questions of trade policy and which, if left unsettled, would ordinarily result in cases of individual grievances on the part of individual workers or employers.

The decisions rendered by impartial chairmen are increasing in number and are in effect a new industrial common law. These decisions are peculiarly impressive considered in relation to statutes enacted by the legislatures, such as the Walton Act, passed in 1920 by the State of New York for the purposes of enforcing arbitration

agreements generally. At present, there is a sufficient *camaraderie* between the dozen or more impartial chairmen holding office, so that there is a sporadic and undirected exchange of decisions. Naturally, each impartial chairman renders decisions based on the contract under which he holds office. Nevertheless, the decisions rendered in various labor markets under such agreements carry weight as precedents in the determination of any case in a separate market. Now is the time to collate, codify and headnote and properly index the decisions rendered by impartial chairmen. If this general movement of impartial chairmen is to attain the industrial prominence which the writer of this article anticipates, and the decisions now being rendered are not codified and indexed at this time, much of the red tape and confusion, and many of the conflicts apparent in our regular administration of justice through the courts of the land, will creep in to this extra-judicial structure created for the judicial settlement of industrial disputes. It may be that in time, public official cognizance will have to be taken of such industrial agreements, of the courts created thereby and of the decisions rendered thereunder. Possibly the appointment, pay and control of these industrial judges will be turned over to or assumed by the Government through its departments of labor. This may be necessary if for no other reason, than to protect the consuming public against decisions effecting increases in wages, which, uneconomically multiplied, are translated into the prices paid by consumers for the commodity affected. Whether or not the State as such is injected into these new industrial tribunals, the codification of such decisions rendered will necessarily tend to uniformity of practice and to the earlier establishment of proper standards of industrial practice.

Throughout the world, irrespective of the individual desires of anyone, a general movement is on way which in some form or another is wiping out certain property rights. Workmen's Compensation Acts, inheritance taxes, excess profit taxes up to eighty per cent., rent legislation, tenement house regulatory acts and other evidences of this anti-private property movement are appearing at a most remarkable pace. The corollary of this movement is, of course, to bring into prominence the counter-part of private property rights, namely the industrial rights of those active in industry. As this movement grows, the courts established by legislation will be addressed increasingly often for the determination of questions affecting industrial rights. That our regular legally established judicial system is improperly conceived and inadequately constructed to handle industrial disputes, can scarcely be denied. As we stand at the beginning of a new development which promises so much, one lesson in particular may be taken from the burdens which an unthinking, unscientific original growth of the common law has placed upon society at this time. At the very

inception of the movement the decisions of these self-erected industrial courts should be codified, indexed and mechanically properly arranged. The resultant uniformity and clarity will aid in the intelligent development which will bring to fulfillment the promise of industrial peace that the impartial chairmen hold out.

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INDIAN SUPREME COURT AND WORKER ORIENTED INDUSTRIAL JURISPRUDENCE

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INDIAN SUPREME COURT AND WORKER ORIENTED INDUSTRIAL JURISPRUDENCE

I Concept

WHAT IS “worker oriented industrial jurisprudence” is the primary question which must be addressed to ourselves. Only by breaking up this phrase we would be able to fathom its real intent and purpose. Well, then, to begin with jurisprudence, as we all know, is the science of law or the philosophy of law. This science entails the norm structure, *i.e.*, it lays down what is law. Why at all such a thing as law came into existence. What does it entail, *i.e.*, what are its basic ingredients—the balance between rights and duties; the concept of illegality and the sanctions for the same. Once having known what is jurisprudence, it is but logical that we should reflect on the term “industrial jurisprudence”. It is the normative science in relation to industry. In a sense industrial jurisprudence revolves around the structuring of norms which regulate the intra-industrial relationship in a scientific manner in order to promote justice and fair play in the control and distribution of material resources.¹

What is industry? What are the ingredients of industry? It is a device to produce goods and services essential to the society.² It is the fusion of capital, labour and raw material. Each of these elements is inalienable and vital for the creation, sustenance and survival of their offspring. But it is labour which holds the key. It is the single determinant factor without which there would be no industry. It is on their sweat, toil and tears that an industrial edifice is raised. History has shown that far from being treated as equal with the suppliers of finance, as industrial jurisprudence entails, the worker finds himself precariously hanging on the edge of a precipice where any struggle to achieve in reality the constitutionally entailed normative equality³ in the industrial process, ranging from plant management to equal share in the profits of production,⁴ would mean loss of livelihood—loss of life itself. Thus, worker oriented industrial jurisprudence stands for those norms, principles and ideals, whereby the purveyor of labour is accorded participative rights in each and every industrial process⁵ in relation to his predominant input for the creation, growth and survival of the same.

In the following pages I intend to explore, how the Indian Supreme Court through channels of adjudication has tried to promote the principle

1. See Constitution of India, art. 39(b)

2. *Bangalore Water Supply and Sewerage Board v. A. Rajappa*, A.I.R. 1978 S.C. 548.

3. See Constitution of India, art. 43A.

4. *Id.*, art. 39(b) and (c).

5. See *supra* note 3.

of equality, and accorded it the desired status in consonance with the principles of justice and fair play, and has tried to advance the health, service conditions, social security, etc., of the working class in India.

II Survey

The infrastructure of labour legislation looms large over the topical perspective. It is only through interpretation of statutes that the Supreme Court is trying to ingrain the essence of economic democracy⁶ in the capital-labour nexus. The legislation⁷ delves into a host of issues: settlement of labour-management disputes, regulation and payment of wages; allowances; accident compensation; conditions of work and schemes for social security essentially pertaining to labour. A case analysis (classified Actwise) of the period 1978-83 will show how the court has acted as a catalytic agent in promoting a worker oriented industrial jurisprudence.

Interpretational widening of labour avenues

*Bangalore Water Supply and Sewerage Board v. A. Rajappa*⁸ is a case in which the Supreme Court was called upon to interpret the scope of the word "industry" under the Industrial Disputes Act 1947. The matter arose in a special leave appeal under article 136 of the Constitution from the Karnataka High Court which rejected the contention of the sewerage board that it was an industry within the ambit of the term defined under the Act⁹ wherein the respondent-employees challenged the imposition of fines by it and claimed protection.¹⁰

Conflicting opinions of the court¹¹ during a period of twenty-five

6. In view of the present writer economic democracy stands for justice and fairplay and not merely a participative role without commitment.

7. The relevant statutes are Industrial Disputes Act 1947, Minimum Wages Act 1948, Equal Remuneration Act 1976, Payment of Bonus Act 1965, Payment of Gratuity Act 1972, Workmen's Compensation Act 1923, Factories Act 1948, Employees' State Insurance Act 1948, Employees' Provident Funds and Miscellaneous Provisions Act 1952 and Maternity Benefit Act 1961.

8. *Supra* note 2.

9. S. 2(j).

10. See Industrial Disputes Act, s. 33C(2).

11. *Budge Budge Municipality v. P.R. Mukherjee*, (1953) 1 Lab. L.J. 195 (S.C.); *Corporation of City of Nagpur v. Its Employees*, (1960) 1 Lab. L.J. 523 (S.C.) and *State of Bombay v. Hospital Mazdoor Sabha*, (1960) 1 Lab. L.J. 251 (S.C.) gave wide import to the scope and coverage of the expression "industry". However post-1960 decisions, viz., *University of Delhi v. Ram Nath*, (1963) 11 Lab. L.J. 335 (S.C.); *National Union of Commercial Employees v. Meher*, (1962) 1 Lab. L.J. 241 (S.C.); *Madras Gymkhana Club Employees' Union v. Gymkhana Club*, (1967) 11 Lab. L.J. 720 (S.C.); *Cricketer Club of India Ltd. v. Bombay Labour Union*, A.I.R. 1969 S.C. 276 and *Management of Safdarjung Hospital v. Kuldip Singh Sethi*, A.I.R. 1970 S.C. 1407 reveal that the pendulum swung back in curtailing that scope and coverage of "industry".

years preceding 1978 left the coverage of the expression "industry" uncertain and vague. This state of affairs led to the constitution of a seven-member bench in the present case to enter into a detailed examination of earlier decisions with a view to finding out a rational basis for determining whether activities like professions, clubs, educational institutions, research institutes, cooperatives, charitable projects and other ventures including domestic servants and governmental functions, fall within or outside the scope of the legal connotation of the term "industry". The majority opinion answered it in the affirmative. The court while restoring its ruling in *Budge Budge Municipality*,¹² *Corporation of City of Nagpur*¹³ and *Hospital Mazdoor Sabha*¹⁴ overruled its ratio in *Safdarjung Hospital*,¹⁵ *National Union of Commercial Employees*,¹⁶ *Gymkhana Club*¹⁷ and *Dhanrajgiri Hospital*.¹⁸

Justice Krishna Iyer's judgment lends clarity as to what an "industry" is and what are its essential concomitants. According to him there is prima facie an "industry" in an enterprise if there exists (a) (i) systematic activity, (ii) organised by cooperation between employer and employees (direct and substantial element/cooperation is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious, but inclusive of material things or services geared to celestial bliss, i.e., making, on a large scale, *prasad* or food). (b) It follows, therefore, that the absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. (d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.¹⁹

The consequences²⁰ of the decision led to a swell in the ranks of

12. *Supra* note 11.

13. *Ibid.*

14. *Ibid.*

15. *Ibid.*

16. *Ibid.*

17. *Ibid.*

18. *Dhanrajgiri Hospital v. Workmen*, A.I.R. 1975 S.C. 2032.

19. "Undertaking" must suffer a contextual and associational shrinkage with the expression "industry" as explained in *Budge Budge Municipality*, *supra* note 11.

20. The consequences are as follows: (a) Professions, clubs, educational institutions, cooperatives, research institutes, charitable projects and other kindred ventures, if they fulfil the triple test, cannot be exempted from the scope of s. 2(j) of the Industrial Disputes Act. (b) A restricted category of professions, clubs, cooperatives and even *gurukulas* and small research laboratories may qualify for exemption if, in simple ventures, substantially and going by the dominant nature criterion (i.e., where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not workmen as in *University of Delhi*, *supra* note 11, or some

workmen²¹ who were hitherto outside the purview of the Act, for the reason of the ambivalence of the connotation of the term "industry" and its coverage.

The expression "workman" has also received liberal interpretation by the Supreme Court in *Hussainbhai v. Alath Factory*,²² wherein the court tried to mitigate the hardship caused by its interpretation of the definition of "workman" in *Dharangadhra Chemicals Works v. State of Saurashtra*²³ by extending the coverage of "worker" to include "dependent entrepreneur".²⁴ In *Hussainbhai* the petitioner, a factory owner manufacturing ropes, had entered into agreements with intermediate contractors who had hired the respondent-union's workmen. In the industrial dispute raised by the respondent-union the petitioner contended that no direct employer-employee *vinculum juris*²⁵ existed between him and the workmen. However, the tribunal gave an award in favour of the workmen, which was affirmed by both the single judge as well as a division bench of the Kerala High Court. Dismissing the special leave petition the Supreme Court, speaking through Krishna Iyer J., laid down the following test for determining the

departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in *Corporation of Nagpur*, *supra* note 11, will be the true test. The whole undertaking will be industry although those who are not workmen by definition may not benefit by the status). Substantively no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit. (c) Pious or altruistic mission where many employ themselves free or for small honoraria or like return are also exempt from the scope of industry. (d) Finally, sovereign functions, strictly understood, alone qualify for exemption, not the welfare activities, economic ventures undertaken by the government or statutory bodies. Even in departments discharging sovereign functions, if these are units which are industries and if they are substantially severable, then they can be considered to come within s. 2(j).

21. See Industrial Disputes Act, s. 2(s).

22. (1978) II Lab. L.J. 397 (S.C.).

23. (1957) I Lab. L.J. 477 (S.C.). In this case the Supreme Court had an occasion to interpret the term "employed" used in definition of "workman". N.H. Bhagwati J., speaking for the court, observed: "The essential condition of a person being a workman within the terms of this definition is that he should be *employed* to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus *employed* there can be no question of his being a workman within the definition of the term as contained in the Act." *Id.* at 480. The judicial requirement of a "workman" being employed as servant restricts the coverage of the definition of "workman" and excludes, besides independent contractors, dependent entrepreneurs. Thus, the decision renders millions of dependent entrepreneurs legal orphans.

24. Persons who, though having no independent calling of their own, work for the enterprise of another and depend for their income on the hire or reward which they get in respect of their employment, *e.g.*, handloom weavers, cigar rollers, match box framers, steel trunk makers, goldsmiths and brass workers.

25. Means bond, chain or link of law. See *Latin for Lawyers* (3rd ed.).

scope of the term "worker" :

Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu*²⁶ is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment we discern the naked truth, though draped in different perfect paper arrangement that the real employer is the Management, not the immediate contractor.²⁷

Corrective justice

A question which often falls to be determined is what should be the guiding factor for awarding full or partial back wages, where reinstatement is found to be the appropriate relief. In *Hindustan Tin Works v. Its Employees*²⁸ the management issued a notice of retrenchment on fifty workmen on the alleged ground of non-availability of raw material. Subsequent management-union negotiations resulted in the retrenched workmen being taken back with continuity of services. Simultaneously, the workmen demanded revision of wages. The management rejected the demand. Ultimately, a settlement was arrived at. The management, thereafter, served a notice of retrenchment on forty-three workmen. On reference, the labour court directed reinstatement with full back wages. Against this award the management preferred an appeal to the Supreme Court. The question arose whether the labour court was justified in awarding full back wages. The court held :

If the workmen were always ready to work but they were kept away therefrom on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.²⁹

Can the action of the company in removing the names of appellants from its rolls on the presumption that they had abandoned it, constitute an alteration in the conditions of service of the workmen? The decision in *G.T. Lad v. Chemicals and Fibres of India*³⁰ gives a negative answer. In

26. *Actions Ex contractu* are actions arising out of breaches of contract, express or implied. See Mozley and Whiteley, *Law Dictionary* 135 (8th ed.).

27. *Supra* note 22 at 398.

28. (1978) II Lab. L.J. 474 (S.C.).

29. *Id.* at 477.

30. (1979) I Lab. L.J. 257 (S.C.).

this case the appellant along with certain other workmen went on indefinite and peaceful strike to demand reinstatement of three dismissed protected workers.³¹ The workers having paid no heed to its notice, the management treated their failure to join duty as voluntary abandonment. Thereupon by separate communication they were informed that their names had been struck off the rolls and the company sent a cheque to each for the amount due to them. There was nothing in the standing orders of the company to indicate that it could terminate the services of the workmen on the ground of abandonment of service because of their going on strike to enforce their demands. The Supreme Court held :

[In the absence of any provision in the] standing order by virtue of which the company could have terminated the services of the appellants, the impugned action on the part of the company clearly amounted to an alteration in the conditions of service of the appellant during the admitted pendency of the industrial dispute before the Labour Court, which adversely affected them and could not be countenanced.³²

Thus the decision has given security of tenure to a workman.

In *Shankar Chakravarti v. Britannia Biscuit Co.*³³ the Supreme Court was invited to decide as to whether in the absence of any pleading or request by the employer, it is the duty of the labour court or tribunal to call suo motu the employer to adduce additional evidence to justify the penal termination of service of a workman. In this case the management after holding an inquiry (which was found to be defective and in violation of natural justice) terminated the services of the appellant workman and gave him a month's wages in lieu of notice. Since an industrial dispute between the workman and the management was pending before the industrial tribunal the management filed an application under section 33(2) of the Industrial Disputes Act seeking approval of its action by the authority concerned. The tribunal held that the enquiry was conducted in violation of the principles of natural justice. Accordingly, the application was rejected. The company, therefore, filed a writ petition under articles 226 and 227 of the Constitution in the Calcutta High Court, but it was dismissed. It then preferred a letters patent appeal. A division bench of the Calcutta High Court remanding the matter back to the tribunal held that it was incumbent that it gave the employer an opportunity to lead evidence to prove charges alleged against the appellant before deciding the validity of the domestic enquiry. On appeal the Supreme Court held :

Undoubtedly if such a pleading is raised and an opportunity is

31. Industrial Disputes Act, explanation to s. 33(3).

32. *Supra* note 30 at 260-61.

33. (1979) II Lab. L.J. 194 (S.C.).

sought, it is to be given but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings there is no duty cast by law or by the rules of justice, reason and fair play that a quasi-judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights, namely, the right to adduce additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to adduce additional evidence.³⁴

The court said that this "apart from being unfair to the workman, is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing the decision of a lis between the parties arrayed before a quasi-judicial Tribunal."³⁵

Scope of "closure"

Is it not illegal, when on account of closure of a section of the manufacturing unit, the workmen rendered surplus are retrenched without prior compliance with section 25F of the Industrial Disputes Act. In *Avon Services (Production Agencies) Pvt. Ltd. v. Industrial Tribunal*³⁶ the management attempted to serve notice on certain workmen stating that on account of its decision to close the painting section from a certain date due to unavoidable circumstances, their services would no longer be required due to surplusage; they were, therefore, retrenched. The workmen were, accordingly, informed that they should collect their dues under section 25FFF from the office of the company. On these facts the question arose whether this case fell under section 25F or under section 25FFF?³⁷ In order to resolve this question the Supreme Court proceeded to determine whether there was anything in the notice to suggest that the case was one of retrenchment or closure. It observed: "The tenor of the notice clearly indicates that workmen were rendered surplus and they were retrenched."³⁸

Now the question arises, whether the closing down of an inalienable section of the manufacturing process amounts to closure within the

34. *Id.* at 208.

35. *Ibid.*

36. (1979) 1 Lab. L.J. 1 (S.C.).

37. The Supreme Court explained the distinction between sections 25F and 25FFF as follows: "By S. 25F a prohibition against retrenchment until the conditions prescribed by that section are fulfilled is imposed. By S. 25FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not, therefore, conditions precedent to closure." *Id.* at 8.

38. *Id.* at 9.

scope of the expression "undertaking" as used in section 25FFF. In a negative answer the court held that in the context of this section it must mean a separate and distinct business, commercial, trading or industrial activity, and not an infinitesimally small part of a manufacturing process. In view of this the court stated that if painting was no more undertaken as one of the separate jobs, the workmen would become surplus and they could be retrenched after paying the compensation as required by section 25F. The court, accordingly, upheld the finding of the tribunal that this was a case of "retrenchment". As conditions precedent were not complied with, it was invalid and the workers were entitled to reinstatement with full back wages. By restricting the scope of closure and granting reinstatement with back wages in case of an invalid retrenchment, it has seen to it that the workers are not left to the vagaries of the management's mercy.

Judicial protection for collective action

Among the numerous issues which were raised in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*,³⁹ three are of great topical significance : (i) Does illegality of strike per se spell unjustifiability? (ii) Can the management dismiss strikers for participating in an illegal strike? (iii) Is it open to the court to pierce the veil and determine the nature of termination of service?

In order to appreciate these issues the relevant facts are that certain workmen went on strike during the pendency of proceedings before an industrial tribunal. Consequently, the management, after giving several notices to the strikers to resume work and on their failure to report for duty on the specified date, discharged all the 835 workers and offered them one month's wages in lieu of one month's notice. In this process the factory remained closed for over four months and, thereafter, the work recommenced with the help of new recruits. Again the management made the so-called final offer calling all the strikers to rejoin their duties by a specified date lest the remaining vacancies would be filled by fresh recruits. But by the time the mazdoor sabha agreed, the management cut down the number to be recruited to 250. However, out of 853 discharged strikers 419 resumed their duties without break in service. On intervention of the labour commissioner the dispute regarding 34 other discharged strikers was settled and a reference to the arbitrator was made regarding the remaining 400 discharged workmen under section 10-A of the Act. The arbitrator held that (i) the notice was illegal, (ii) participation in an illegal strike constituted misconduct, and (iii) management's order of termination was justified. The High Court on being moved under article 226 quashed the arbitrator's award and directed reinstatement with partial payment of back wages. Against this order an appeal was preferred to

39. (1980) 1 Lab. L. J. 137 (S.C.).

the Supreme Court on the three issues. As regards the first the court held :

Even if a strike be illegal, it cannot be castigated as unjustified unless the reasons for it are entirely perverse or unreasonable—an aspect which has to be decided on the facts and circumstances of each case.⁴⁰

On the second, with reference to the nature and effect of participation in an illegal strike Krishna Iyer J. pertinently observed :

We cannot agree that mere failure to report for duty, when a strike is on, necessarily means misconduct. Many a workman, as a matter of procedure, may not take the risk of facing the militant workmen or the management's hirelings for fear, especially when there is evidence in the case from the Sabha that the management had hired goondas and from the management that the striking vanguard was violent. It is also possible, in the absence of evidence to the contrary, that several workmen might not be posted with the management's notice of recall or the terms in which they were being recalled.⁴¹

Accordingly, the court overruled the findings of the arbitrator that "dismissal for passive participation in the illegal and unjustified strike by not reporting for duty" was appropriate.

As regards the third issue the court approved its earlier trend to lift the veil to determine whether the order of discharge amounted to simple termination or punitive dismissal, notwithstanding the provisions in the standing order empowering the management, inter alia, to discharge workmen found guilty of misconduct.

The court also rejected "the theory of community guilt and collective punishment"; instead it ruled that no worker shall be dismissed save on the proof of his individual delinquency. The decision clearly shows that the workman's socio-economic security is the primary concern of the court.

New focus on retrenchment

*Santosh Gupta v. State Bank of India*⁴² is a landmark judgment widening the horizon of the expression "retrenchment".⁴³ In this case the respondent bank terminated the services of the appellant-workman (a woman) who had put in more than 240 days of service deemed continuous for a year under section 25B(2) on the ground of her failure to pass the prescribed test. She was neither served with a notice required under

40. *Id.* at 168, referring *Crompton Greaves v. Workmen*.

41. *Id.* at 171.

42. (1980) II Lab. L.J. 72 (S.C.).

43. See, for definition, Industrial Disputes Act, s. 2(00).

section 25F(a), nor paid retrenchment compensation under section 25F(b). On these facts the question arose whether the termination of services of the workman by the bank due to failure of the former to pass the prescribed test for confirmation in service amounted to "retrenchment". The Supreme Court, adopting a broad construction of the definition of the term "retrenchment", stated :

[I]f due weight is given to the words "the termination by the employer of the service of a workman for any reason whatsoever" and if the words "for any reason whatsoever" are understood to mean what they plainly say, it is difficult to escape the conclusion that the expression "retrenchment" must include every termination of the service of a workman by an act of the employer...except those not expressly included in S. 25F or not expressly provided for by other provisions of the Act such as Ss. 25FF and 25FFF.⁴⁴

Accordingly, it was held that discharge of the workman on the ground that she did not pass the test, which would have enabled her to be confirmed, was retrenchment. Further, as the requirements of section 25F had not been complied with the court ordered reinstatement of the workman with the payment of back wages. The negation of law amounts to negation of justice particularly in the context of employer-workman relationship—the principle which the court has tried to reinforce in this particular decision, for which it has deployed its interpretational capacity.

The scope of section 25B(2) of the Industrial Disputes Act was delineated by the Supreme Court in *Surendra Kumar Varma v. Industrial Tribunal*.⁴⁵ The facts of the case are identical to those of *Santosh Gupta*. In this case the court stated :

[E]ven if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months."⁴⁶

The court, accordingly, held :

There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be.⁴⁷

It was felt that the management having wrongfully terminated the services of the workman without appreciating the scope of section 25B(2)

44. *Id.* at 74-75.

45. (1981) 1 Lab. L.J. 386 (S.C.).

46. *Id.* at 390.

47. *Ibid.*

it amounted to retrenchment and as the requirements of section 25F were not complied with the court directed reinstatement with back wages. The ratio of this case clearly shows that the court shall by necessity give a broad interpretation to welfare legislation designed to give relief to workmen.

The following three significant questions arose in the case of *L. Robert D'Souza v. Executive Engineer*.⁴⁸ (1) What is the true scope of the expression "termination of service for any reason whatsoever" occurring in the definition of the term "retrenchment". (2) Does retrenchment amount to a change in the conditions of service? (3) If so, whether notice contemplated by section 25F would be dispensed with in view of proviso (b) to section 9A?

The appellant in the case was a daily-rated casual labourer of the railways who had rendered twenty-six years of continuous service. Being an active trade unionist, the appellant demanded that the benefits granted by the central pay commission be extended to the category of employees to which he belonged and for this purpose undertook a fast but broke the same on 28 September 1974 at the instance of the assistant labour commissioner. Taking advantage of the appellant's absence, the respondents terminated his service with retrospective effect, i.e., from 18 September 1974, on the ground of unauthorized absence. On reference the full bench of the Kerala High Court negatived the appellant's contention that the termination being illegal and unjustified constituted retrenchment within the meaning of section 25F of the Industrial Disputes Act. On appeal the Supreme Court, as regards the first question, reiterating its earlier view,⁴⁹ held:

[T]he expression "termination of service for any reason whatsoever" in the definition of the expression "retrenchment" in S. 2(00) of the Act covers every kind of termination of service except those not expressly included in S. 25F or not expressly provided for by other provisions of the Act as Ss. 25FF and 25FFF.⁵⁰

Negating the other two contentions of the respondent the court observed:

When a workman is retrenched it cannot be said that change in his conditions of service is effected. The conditions of service are set out in Fourth Schedule. No item in Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by Item 10 of the Third Schedule. Now, if retrenchment,

48. (1982) 1 Lab. L.J. 330 (S.C.).

49. Expressed in *State Bank of India v. N.S. Money*, (1976) 3 S.C.R. 160; *Hindustan Steel Limited v. Presiding Officer, Labour Court*, (1977) 1 S.C.R. 586; *Delhi Cloth and General Mills Ltd. v. Shambhu Nath Mukherjee*, (1978) 1 S.C.R. 591; *Santosh Gupta*, *supra* note 42; *Mohan Lal v. Bharat Electronics*, (1981) 11 Lab. L.J. 70; *Surendra Kumar Varma*, *supra* note 45.

50. *Supra* note 48 at 333-34.

which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in Fourth Schedule, S. 9A would not be attracted... and no notice is necessary.⁵¹

The court, therefore, came to the conclusion that the termination of the appellant's services amounted to retrenchment and, as the requirements of section 25F were not complied with, directed the reinstatement with back wages. As in earlier cases,⁵² the court again protected the interest of the retrenched worker in this case.

Strains of progressive judicial thinking emerge from the decision in *Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. v. Management*:⁵³ Firstly, the judicial policy to protect the interests of retrenched workers by allowing departure from the principle of "last come, first go"⁵⁴ only on *valid and justifiable reason* to be proved by the management. Secondly, by heavily penalising a recalcitrant management for indulging in dilatory litigation tactics to evade a just resolution of the dispute at the expense of causing immense hardship to poor workmen. In this case the management retrenched twenty-three workmen. Out of these, services of seven were terminated without following the rule of "last come, first go". The tribunal, therefore, set aside the management's order of termination of seven workmen and directed their reinstatement with some back wages. The Supreme Court, in appeal, confirmed the findings of the tribunal and laid down :

The rule is that the employer shall retrench the workman who came last, first, popularly known as "last come, first go". Of course, it is not an inflexible rule and extraordinary situations may justify variations.There must be a valid reason for this deviation...⁵⁵

It added :

There is none here, nor even alleged, except only plea that the retrenchment was done in compliance with S. 25G grade-wise.⁵⁶

It stated further :

Affirmatively, some valid and justifiable ground must be proved by the Management to be exonerated from the "last come, first go" principle.⁵⁷

51. *Id.* at 336.

52. *Supra* note 49.

53. (1980) II Lab. L.J. 124 (S.C.).

54. S. 25G.

55. *Supra* note 53 at 126.

56. *Id.*, at 126-27. The court held that "grading for the purpose of scales of pay and like consideration will not create new categories." *Id.* at 127.

57. *Id.* at 127.

The Supreme Court also deprecated the tendency of the management indulging in unnecessary litigation to harass workers.⁵⁸ Penalising the management heavily it directed that firstly, it should fulfil the terms of the award⁵⁹ and secondly, for the post-award period pay full wages until the High Court judgment on 13 April 1971 and thereafter 75 per cent of the wages until 30 April 1980. It seems that the concept of even-handed justice in industrial adjudication has finally struck roots.

Actions : majority versus minority

Can a minority union raise an industrial dispute? Whether during the currency of settlement the government can make a reference on the initiative of the minority union? Whether the acceptance of benefits of the settlement by members of minority unions could operate as implied agreement by acquiescence and debar that union from raising fresh demands with reference to the settlement. These were the significant issues raised in *Tata Chemicals Ltd. v. Workmen*.⁶⁰ The appellant in this case contended that in lieu of a settlement with the majority union regarding dearness allowance, the minority union was precluded from raising a dispute on the same issue and it was not appropriate for the government to refer the same to an industrial tribunal. The court negatived the appellant's contention. On the first and second questions following its earlier decisions⁶¹ it held that a minority union could validly raise an industrial dispute, as section 2(k) of the Act did not restrict the ambit of industrial dispute only to a dispute between an employer and a recognised majority union. It covers within its wide sweep any dispute of difference between employers and workmen including that of a minority union provided it pertains to the employment or non-employment or terms of employment or conditions of labour or workmen. The court, accordingly, held that the government was not debarred from making a reference on the initiative of a minority union. As regards the third

58. The court said : "We cannot sympathise with a party who gambles in litigation to put off the evil day and when that day arrives prays to be saved from his own gamble. The award had given convincing reasons for reinstatement and even reduced the back wages to half. Still, the workmen were dragged to the High Court and worse, when worsted there, were driven from Assam to Delhi to defend their pittance. The logistics of litigation for indigent workmen is a burden the Management tried to use by a covert blackmail through the judicial process." *Id.* at 127.

59. The award of the tribunal directed that half of the back wages between the date of retrenchment and publication of the award would be paid.

60. (1978) II Lab. L.J. 22 (S.C.). In this case the settlement was arrived at otherwise than in the course of conciliation proceedings and, therefore, was contrary to the expression "settlement" as defined by s. 2(p) of the Industrial Disputes Act.

61. *Ramnagar Cane and Sugar Co. Ltd. v. Jatin Chakravorty*, (1960) 3 S.C.R. 968; *Workmen of Dharampal Prem Chand v. Dharampal Prem Chand*, (1965) 3 S.C.R. 394; *Jhagrakhan Collieries (P) Ltd. v. G.C. Agarwal*, (1975) 1 Lab. L.J. 163.

issue, the court, following *Jhagrakhan Collieries (P) Ltd. v. G.C. Agarwal*,⁶² held :

[T]he theory of implied agreement by acquiescence sought to be built up on behalf of the appellant, on the basis of the acceptance of the benefits flowing from the agreement even by the workmen who were not signatories [to] the settlement, is of no avail to the appellant-company and cannot operate as an estoppel against the Sangh (the minority union) or its members.⁶³

The court by laying down that even a minority union despite its acquiescence to an earlier agreement can suo motu raise a dispute afresh, acted as a catalytic agent in promoting the ventilation of grievances by the worker.

*Ameteep Machine Tools v. Labour Court*⁶⁴ is an important decision where the Supreme Court has conferred on the workman a right to participate in proceedings under the Industrial Disputes Act, although section 36(1) of the Act⁶⁵ does not expressly accord this status to him. The facts of the case are that the second respondent-workman was dismissed following an enquiry. The appellant had dismissed certain other workmen also. Subsequently a settlement came to be signed under section 12 of the Act by which the other workmen not only agreed to resume work unconditionally but also that the second respondent should be treated as having been retrenched. The latter disputed that he was not a signatory to the settlement. Thereupon the issue of his dismissal came up before the labour court which set aside the same. The management unsuccessfully challenged the order in the High Court. On appeal, the Supreme Court found that the individual workman had participated in the conciliation proceeding leading to the settlement and had signed the same. The second respondent did not sign and, therefore, the settlement could, on no account, be understood to cover him. It was open to him to assail the dismissal and the labour court was right in saying that the second respondent was entitled to reinstatement with back wages. Giving its judgment the court held that section 36 does not impose any obligation that a workman who is a party to the dispute must be represented by someone else. He may participate in the proceedings himself. The court added that when the conciliation proceedings took place and a settlement is arrived at, it is binding on the parties, even if they be workmen, provided they participated in the proceedings personally and were not represented by any of the persons mentioned in section 36(1).

62. *Supra* note 61.

63. *Supra* note 60 at 28.

64. (1980) II Lab. L.J. 453 (S.C.).

65. S. 36 deals with the representation of parties in dispute.

Award—judicial resuscitation

Does a settlement or award under the Industrial Disputes Act suffer death merely because of a notice issued under section 19(2)? Do the indigent workmen have to suffer for want of legal dues merely because a Gargantuan corporation chooses to go back on its commitment in the guise of paper laws? Justice Krishna Iyer, in one of the most outstanding judicial pronouncements in *Life Insurance Corporation of India v. D.J. Bahadur*,⁶⁶ answered the above-mentioned issues in the negative. The matter arose when the Life Insurance Corporation (L.I.C.) issued notices to its workmen under sections 19(2) and 9A of the Industrial Disputes Act. At the same time the Central Government issued a notification under section 49 of the Life Insurance Corporation Act 1956 substituting a new regulation for the then existing regulation. Since these steps were taken by the L.I.C. to stop payment of bonus as required by earlier settlements, the workmen successfully challenged them by means of a writ petition in the Lucknow Bench of the Allahabad High Court. Thereupon the L.I.C. appealed to the Supreme Court. Similarly, another writ petition on the same subject transferred from the Calcutta High Court came to be decided in a single judgment by the Supreme Court. Dismissing the appeals the majority of the court (per Justice Krishna Iyer) held :

[T]he settlement under I.D. Act does not suffer death merely because of the notice issued under S. 19(2). All that is done is a notice “intimating its intention to terminate the award”. The award even if it ceases to be operative *qua* award continues *qua* contract. Therefore, if the I.D. Act regulates the jural relations between the L.I.C. and its employees...then the rights under the settlements of 1974 remain until replaced by a later “award or settlement”.⁶⁷

The Supreme Court thereupon directed the corporation to fulfil its obligations in terms of the 1974 settlement and start negotiations like a model employer for a fair settlement of the conditions of services between itself and its employees having equitable regard to the prevailing conditions of life, principles of industrial justice and directives underlying part IV of the Constitution.

Jurisdictional competence of tribunals—judicial reinforcement

Can a tribunal set aside its own *ex parte* order in the interest of justice, in the absence of any provision in the Act or in the rules. The Supreme Court gave an affirmative answer in *Grindlays Bank Ltd. v. Central Government Industrial Tribunal*⁶⁸ where the Government of India referred

66. (1981) 1 Lab. L.J. 1 (S.C.).

67. *Id.* at 21.

68. (1981) 1 Lab. L.J. 327 (S.C.).

a dispute between the appellant and the workman to the Central Government Industrial Tribunal for adjudication. The tribunal fixed 28 May 1976 for pre-emptory hearing of reference but it was adjourned time and again on one pretext or the other. Eventually the hearing was fixed for 9 December 1976. But on the said date, the employees' association sought adjournment on the ground that the general secretary of the association had to perform *shradha*⁶⁹ ceremony of his father who died on 25 November 1976. The tribunal refused to grant any further adjournment and proceeded to make an ex parte award. On 19 January 1977 the respondent moved an application before the tribunal for setting aside its ex parte order of 9 December 1976 on the ground that they were prevented by sufficient cause from appearing on the said date. The tribunal accepted the plea of the respondents. On a writ petition preferred by the bank from the tribunal's order, the Calcutta High Court refused to interfere. On appeal by special leave the Supreme Court opined that the tribunal had power to pass the impugned order if it thought fit in the interest of justice. In its view :

It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties.⁷⁰

To afford an aggrieved party (in this case the workman) an opportunity of being heard is in essence to accord him dignity on the bedrock of justice.

In *Tata Consulting Engineers v. Workmen*,⁷¹ the Supreme Court avoided a dogmatic approach and instead adopted a pragmatic path in dealing with the question of wage revision. In this case the appellants challenged the tribunal's order granting ad hoc increases of salaries to the respondents as a part of revision of their wages, contending that the tribunal had acted beyond its competence in the absence of any such power being vested in it by the Act. Negating the contention, the court by majority held :

It cannot possibly be doubted that an Industrial Tribunal deciding upon the wage scales of employees of an establishment would have full liberty to propose *ad hoc* increase of salaries as part of the revision of wages. Nor can it be doubted that fitment into the revised pay scales is certainly a part of the revision of pay scales. This in our opinion is elementary and fundamental to the jurisdiction of the Industrial Tribunal in revising wage scales.⁷²

69. A ceremony by which respects are paid to the departed soul for its salvation.

70. *Supra* note 68 at 328-29.

71. (1981) II Lab. L.J. 147 (S.C.).

72. *Id.* at 156.

Ensuring workers' economic health,⁷³ as this decision does by guaranteeing them a fair living wage,⁷⁴ is the first step towards making the workers equal partners in industrial progress.⁷⁵

There is no express provision either in the Act or in the rules framed thereunder empowering tribunals to frame rules for promotion and to grant promotion. However, the courts have strengthened the hands of tribunals in this respect. In *Workmen of Williamson Magor & Co. Ltd. v. Williamson Magor & Co. Ltd.*,⁷⁶ the appropriate government referred a dispute regarding promotion of junior clerks of the general grade in preference to senior clerks of the same grade for adjudication. The tribunal held that the management's action of promoting junior persons by superseding the claims of senior persons was unjustified. However, the tribunal expressed its inability to grant relief to the affected workmen in the absence of any rules or norms for promotion. Aggrieved by this order the affected workmen filed an appeal by special leave to the Supreme Court. The court opined that the tribunal had the power to frame norms/rules for promotion and accordingly grant the appropriate relief. In its view :

[T]he Industrial Tribunals, as far as practicable, should not be constrained by the formal rules of law and should avoid inability to arrive at an effective award to meet justice in a particular dispute. The Tribunal in the instant case, in view of its findings, first of all should have declared that the promotions of the aforesaid fifteen persons were illegal and unjustified, their promotions being the result of arbitrary action of the management which was nothing but unfair labour practice, and the promotions in question should have been cancelled. The Tribunal also, in our opinion in consultation with the management and the union, should have framed norms/rules of promotions and directed the management to give promotions/upgradation in accordance with these norms/rules.⁷⁷

Vesting the tribunals, straightaway, with the power to cancel illegal promotions and further to frame norms/rules of promotion is cutting at the roots of dilatory litigation and according immediate justice to the workmen.

Is it open to the High Court under article 226 to interfere with a labour court's finding arrived at after considering the entire evidence? No, held the Supreme Court in *D.P. Maheswari v. Delhi Administration*⁷⁸

73. Constitution of India, art. 39, (b), (c) and (e).

74. *Id.*, arts. 39 (a) and 43.

75. *Id.*, art. 43A.

76. (1982) 1 Lab. L.J. 33 (S.C.).

77. *Id.* at 37.

78. (1983) II Lab. L.J. 425 (S.C.).

wherein the appellant was an employee, designated as accounts officer, in a private limited company. A dispute was raised in 1969 consequent upon the termination of his services which was referred to the additional labour court under section 10(1)(c) and 12(5) of the Act in 1970. The management raised a preliminary objection before the labour court that the appellant was not a workman under section 2(s) of the Act. After examining the entire evidence adduced by both the parties the labour court concluded that the appellant was mainly discharging duties of a clerical nature and was a workman. The management then filed a writ petition under article 226 and the High Court allowed the same after rejecting the view of the labour court on the preliminary issue. Allowing the special leave appeal under article 136 with costs the Supreme Court held as follows :

We have now before us a case where a dispute originating in 1969... still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Art. 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Art. 226 of the Constitution nor the jurisdiction of this Court under Art. 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Art. 226 and Art. 136⁷⁹ are not meant to be used to break the resistance of workmen in this fashion.⁸⁰

The court, accordingly, set aside the decision of the High Court and restored the order of the additional labour court and remitted the matter for final disposal to it. The court's concern at securing workmens' health,⁸¹ as revealed by this decision, is indeed a progressive step.

79. The court felt : "It is also worthwhile remembering that the nature of the jurisdiction under Art. 226 is supervisory and not appellate while that under Art. 136 is primarily supervisory but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues." *Id.* at 427.

80. *Id.* at 426-27.

81. By health is meant both physical and economic well-being as entailed by article 39(e) of the Constitution.

Social security

While the Industrial Disputes Act has been the mainstay of judicial activism, social security legislation too has been visited to a certain extent with progressive judicial stances. The bulwark of judicial tinkering has been in the Employees' State Insurance Act 1948. The judicial policy of extending the coverage of the Employees State Insurance Act, by giving a broad interpretation to the word "employee" as defined by the Act,⁸² and thereby ensuring the insurance benefit to them is discernible in *Hyderabad Asbestos Cement Products v. Employees' State Insurance Court*,⁸³ and *Royal Talkies v. Employees State Insurance Court*.⁸⁴

The issue which arose in *Hyderabad Asbestos* was whether employees not working in the factory but employed in connection with the work of the factory were covered by the Employees' State Insurance Act? Before delving into the ratio an appraisal of the facts would be appropriate. The appellant company has a factory situated at Sanatnagar where asbestos sheets are manufactured. The company has zonal sales offices in various cities. In the State of Andhra Pradesh it has such zonal offices at Vijaywada and Vizagapatnam. There are employees in the zonal office at Vijayawada who do work of canvassing for the sale of products manufactured in the factory. The appellant contended that the zonal offices were establishments and not factories and the employees working in the former did not fall within the scope of the Act. The High Court negated the appellant's contention. On appeal, the Supreme Court delineated the scope of section 2(9) of the Act and held that the expression "employee" includes any person working in the factory or establishment with regard to the purchase of raw materials for or the distribution or sale of the products of the factory or establishment. It, accordingly, dismissed the appeal and held that the second respondents were entitled to the benefit of the Act. In the *Royal Talkies*, the management was the owner of the theatre. There was a canteen and a cycle-stand in the premises of the theatre. The canteen and cycle-stand were leased out to contractors under an instrument of lease. The contractors employed their own servants to run the canteen and the cycle-stand. On these facts the question arose as to whether the employees of the canteen and cycle-stand were employees within the meaning of the Act. Answering affirmatively, after laying down the tests⁸⁵

82. See s. 2(9).

83. (1978) 1 Lab. L.J. 181 (S.C.).

84. (1978) II Lab. L.J. 390 (S.C.).

85. The following are the tests for the application of section 2(9) cl. (ii). "Even so, such an employee, if he works (a) on the premises of the establishment, or (b) under the supervision of the principal employer or his agent 'on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment', qualifies under s. 9 (ii). The plurality of persons engaged in various activities who are brought into the definitional net is wide and considerable; and all that is necessary is that the employee be on the premises or be under the supervision of the principal employer or his agent." *Id.* at 395.

for the application of clause (ii) of section 2(9), the court held :

No one can seriously say, that a canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre ...All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it... In our view, clearly keeping a cycle stand and running a canteen are incidental or adjunct to the primary purpose of the theatre.⁸⁶

From the aforesaid decisions it is evident that the court has not only assigned the broadest possible meaning to the word "employee" but also made a "teleological" approach. By adopting this approach the court has also extended the social security benefit under the Act to dependant entrepreneurs.⁸⁷ This is most welcome in a welfare state like India wherein part IV of the Constitution spells out the socio-economic objectives of national policy and, inter alia, declares that state shall strive for public assistance in cases of unemployment, old age, sickness and disablement.⁸⁸

Whether the employer could deduct half day's wages corresponding to the sickness benefit to which the workmen were entitled under the Employees' State Insurance Act in the event of their not availing themselves of the benefits under the employees' state insurance scheme was the question which came up for determination before the Supreme Court, in *Bareilly Electric Supply Co. Ltd. v. Workmen*.⁸⁹ In this case the respondents contended that by the appellant's adoption of the Employees' State Insurance Act in 1957 they became entitled to sickness benefit flowing from it, in addition to the fifteen days of sick leave with full wage per annum accorded to them prior to 1957 in terms of an award. Accordingly, they felt that the appellant's action in reducing half day's wages corresponding to the sickness benefit under the Act, in lieu of their not availing the latter was unjustified. The Supreme Court ruled that under section 46 of the Act, employees covered by it were entitled to certain benefits subject to the provisions of the Act. It held that under the Act a workman becomes entitled to sickness benefit only if he is qualified for it. In other words, the court held that it is only when a workman has, in fact, obtained or received a cash benefit that the employer can exercise his right to make a deduction from wages due to him by way of leave salary. Thus, the court took care to see that a worker is not deprived of benefits so essential to his well-being, in physical and economic terms, which in itself would be a concomitant to capital-labour cooperation.

What is the true intent of the word "damages" occurring in section 14B of the Employees' Provident Fund and Miscellaneous Provisions Act

86. *Id.* at 395-96.

87. See *supra* note 24.

88. Art. 41.

89. (1979) 1 Lab. L.J. 352 (S.C.).

1952 ? Is section 14B unconstitutional inasmuch as it vests unchartered power in authorities to recover damages ? These were two significant issues which arose in *Organo Chemical Industries v. Union of India*.⁹⁰ The appellants raised these issues when the regional provident fund commissioner imposed damages on them under section 14B of the Act for delayed remittance of the employees' provident fund, family pension scheme contributions of their employees, including their own contributions and administrative charges thereon. As regards the first issue the court, giving an employee welfare oriented answer, pointed out that the very object of the legislation would be frustrated if the word "damages" occurring in section 14B was not construed to mean penal damages. According to Justice Sen :

The imposition of damages under S.14B serves both the purposes. It is meant to penalise the defaulting employer as also to provide reparation for the amount of loss suffered by the employees. It is not only a warning to employers in general not to commit a breach of the statutory requirements of S. 6, but at the same time it is meant to provide compensation or redress to the beneficiaries, i.e., to recompense the employees for the loss sustained by them.⁹¹

As regards the second issue, the court rejected the appellant's contention vis-a-vis the constitutionality of section 14B of the Act and held :

The power of the Regional Provident Fund Commissioner to impose damages under S. 14B is a quasi-judicial function. It must be exercised after notice to the defaulter and after giving him a reasonable opportunity of being heard. The discretion to award damages could be exercised within the limits fixed by the Statute. Having regard to the punitive nature of the power exercisable under S.14B and the consequences that ensue therefrom, an order under S.14B must be a "speaking order" containing reasons in support of it.⁹²

The despicable tendency of errant employers to play havoc with the poor employees' allowances has been curbed by this decision which tries to secure the health and strength of workmen.⁹³

The point for determination by the Supreme Court in *Jalan Trading Co. Pvt. Ltd. v. D.M. Aney*⁹⁴ was whether section 10 of the Payment of Bonus Act 1965 was ultra vires articles 19(1)(g) and 301 of the Constitution. The court held that section 10 was not so because the restriction imposed by it in compelling the employer to pay the statutory minimum

90. (1979) II Lab. L.J. 416 (S.C.).

91. *Id.* at 429.

92. *Id.* at 427.

93. See Constitution of India, arts. 39(e) and 41.

94. (1979) I Lab. L.J. 162 (S.C.).

bonus even in years where there had been a loss sustained by the management was reasonable and also in the public interest within the meaning of articles 19(6) and 302. It further observed that reasonableness would depend on a variety of circumstances, the most important being the directive principles of state policy which are fundamental in the governance of the country. Payment of bonus was with a view to implementing these principles⁹⁵ and could not be regarded as unreasonable or contrary to public interest even in the context of articles 19 and 301. Financial security of workers vis-a-vis bonus has been ensured by this decision.

In *Rohtas Industries Ltd. v. Ramlakhan Singh*⁹⁶ the Supreme Court was called upon to interpret the expression "subject of the manufacturing process" occurring in the definition of "worker" under section 2(l)⁹⁶ of the Factories Act 1948. In this case, the respondent was appointed as sectional officer in the waste paper department. He was engaged in supervising and checking quality and weightment of waste papers and rags.⁹⁷ He maintained records of stocks and dealt with receipts. He also passed bills of the supplier of the waste paper and rags. Further, he worked in the precincts of the factory and sometimes he had to go to the paper-sorting house. The management terminated his services without framing any charge or holding any domestic enquiry. He was also not given wages in lieu of notice. On these facts the question that, inter alia, arose before the court was whether the respondent was a "worker" within the meaning of section 2(l) of the Act. Considering the latter part of the definition, which includes persons employed in any other kind of work incidental to or connected with the manufacturing process or subject to the manufacturing process, the court answered affirmatively. It stated that the respondent's job in connection with the raw materials so essential to the manufacturing process, made it a "subject of the manufacturing process". Giving a broad interpretation to the expression "worker" the court has accorded status quo and security flowing from the Act to persons who, though not employed in factory work or its precincts or connected with the manufacturing process, are intrinsically related to it.

The judicial policy of protecting the interests of women workers by implementing the I.L.O. convention⁹⁸ is evident from *B. Shah v. Labour Court*.⁹⁹ In this case the Supreme Court was called upon to interpret the term "week" occurring in sub-sections (1) and (3) of section 5 of the Maternity Benefit Act 1961. The matter arose when the second respondent, who

95. Especially contained in arts. 39 and 43.

96. (1979) 1 Lab. L.J. 515 (S.C.).

97. Basic raw material used for the manufacture of duplex board and vulcanised fibre.

98. No. 103 concerning Maternity Protection (Revised) 1952 adopted by the General Conference of the International Labour Organisation.

99. (1978) 1 Lab. L.J. 29 (S.C.).

was on maternity leave for twelve weeks, received maternity benefits for seventy-two days instead of eighty-four days. The appellant contended that maternity benefits were payable only with regard to the working days in a week, Sunday being a holiday no benefits were required to be paid for the same. The labour court negatived the appellant's contention and so did the division bench of the High Court. On appeal by special leave the Supreme Court had to, in the absence of any statutory definition, decide whether the payment of maternity benefits prescribed by the Act had to be made taking a "week" as signifying a cycle of seven days including a Sunday which was said to be wageless day. Faced with this situation the court took guidance from the dictionary meaning of the term "week"¹⁰⁰ and concluded that in the context of subsections (1) and (3) of section 5 the term "week" meant "a cycle of seven days". The court fortified its conclusion by saying :

[T]he Legislature intended that computation of maternity benefit is to be made for the entire period of the woman worker's actual absence *i.e.* for all the days including Sundays which may be wageless holidays falling within that period.¹⁰¹

It, accordingly, upheld the second respondent's claim that she should receive maternity benefits for eighty-four days. This approach shows the concern of the court to provide greater security to women workers in cases of confinement, miscarriage or sickness arising out of pregnancy or premature birth of a child, etc.

Worker's cause - judicial receptivity

While there are decisions and decisions which go no further than moulding the written law in a benign manner, there are a few rare ones which share the unique distinction of transcending the statute itself. They in fact delve into the realm of evolutionary jurisprudence emerging out of conceptual nexuses. Three such decisions are (i) *People's Union for Democratic Rights v. Union of India*;¹⁰² (ii) *Board of Trustees of the Port of Bombay v. D.R. Nadkarni*¹⁰³ and (iii) *National Textile Workers' Union v. P.R. Ramakrishnan*.¹⁰⁴

People's Union for Democratic Rights is an epoch-making judgment of the Supreme Court which has not only made a distinct contribution to a worker oriented industrial jurisprudence, but has displayed the creative attitude of judges to protect the interests of the weaker sections of society. Further, the court gave a new dimension to several areas such as mini-

100. In the *Shorter Oxford English Dictionary* (3rd ed.) the word "week" has been described as meaning the cycle of seven days.

101. *Supra* note 99 at 35.

102. (1982) II Lab. L.J. 454 (S.C.).

103. (1983) I Lab. L.J. 1 (S.C.).

104. (1983) I Lab. L.J. 45 (S.C.).

minimum wage, employment of children, enforcement of labour laws and public interest litigation. It enlarged the contours of the fundamental rights to equality,¹⁰⁵ life and liberty,¹⁰⁶ prohibition of traffic in human beings and forced labour¹⁰⁷ and prohibition of employment of child labour.¹⁰⁸ The case arose out of the denial of minimum wages to workmen engaged in various Asiad projects and non-enforcement of the provisions contained in some of the legislations relating to labour.¹⁰⁹ However, the court's attention was drawn not by the unlettered aggrieved workers, but by a public spirited organisation by means of a letter addressed to Justice Bhagwati of the Supreme Court. The letter was based on the report made by three social scientists after personal investigation and study.

The court was directly called upon to decide the following main issues :
 (i) Whether a person who has not suffered a legal injury of his legally protected right can file a writ petition, in case of breach of any fundamental right, under article 32 of the Constitution seeking judicial redress for the public wrong? (iii) Whether a writ petition under article 32 is maintainable for mere violation of labour laws and not for any breaches of any fundamental right? (iii) What is the true scope and meaning of the expression "traffic in human beings and *begar* and other similar forms of forced labour" occurring in article 23? (iv) Whether there was any violation of the provisions of the Minimum Wages Act, article 24 of the Constitution, the Equal Remuneration Act, the Contract Labour (Regulation and Abolition) Act and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act? The court through Justice Bhagwati answered all the questions in the affirmative.

The first issue is not a new one. It arose in a catena of cases¹¹⁰ before the Supreme Court and had been examined in detail in *S.P. Gupta v. Union of India*,¹¹¹ popularly known as the *Judges* case. Bhagwati J., in the present case, reiterated the principle of public interest litigation formulated in the *Judges* case wherein he had observed :

[W]here a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law

105. Constitution of India, art. 14.

106. *Id.*, art. 21.

107. *Id.*, art. 23.

108. *Id.*, art. 24.

109. Minimum Wages Act 1948; Equal Remuneration Act 1976; Employment of Children Act 1938; Contract Labour (Regulation and Abolition) Act 1970; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

110. See *Hussainara Khatoon v. State of Bihar*, A.I.R. 1979 S.C. 1360; *Sunil Batra v. Delhi Administration*, A.I.R. 1978 S.C. 1675; *Khatri v. State of Bihar*, (1981) 1 S.C.C. 635; *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149.

111. See *supra* note 110.

or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially, or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ....¹¹²

As regards the second issue the court accepted the contention that the writ petition under article 32 could not be maintained unless there was a violation of a fundamental right. Consequently, on examining this petition it found on facts that there was a violation of articles 24, 14, 21 and 23.¹¹³ It, accordingly, held the writ petition maintainable under article 32.

In regard to the third issue the court pointed out that article 23 *prohibited traffic in human beings and begar and similar forms of forced labour* practised by anyone. Explaining the scope of the underlined expression, the court observed :

What Article 23 prohibits is 'forced labour'....The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.¹¹⁴

The court added :

Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23 by asking the Court to direct payment of the minimum wage to him so that labour or service provided by him ceases to be 'forced labour' and the breach of Art. 23 is remedied.¹¹⁵

112. *Id.* at 188.

113. The court observed : "The complaint of violation of Art. 24 based on the averment that children below the age of 14 years are employed in the construction of the Asiad Projects is clearly a complaint of violation of a fundamental right. So also when the provisions allege non-observance of the provisions of the Equal Remuneration Act, 1976 it is in effect and substance a complaint of breach of the principle of equality before the law enshrined in Art. 14. . . .Then there is the complaint of non-observance of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Art. 21. . . . That leaves for consideration the complaint in regard to non-payment of minimum wages to the workmen under the Minimum Wages Act 1948. We are of the view that this complaint is also one relating to the breach of a fundamental right and for reasons which we shall presently state, it is the fundamental right enshrined in Article 23 which is violated by non-payment of minimum wage to the workmen." *Supra* note 102 at 464-65.

114. *Id.* at 470.

115. *Id.* at 470-71.

In regard to the enforcement of fundamental rights the court observed :

[W]henver any fundamental right which is enforceable against private individuals, such as, for example, a fundamental right enacted in Art. 17 or 23 or 24 is being violated, it is the constitutional obligation of the State to take the necessary steps for the purpose of interdicting such violation and ensuring observance of the fundamental right by the private individual who is transgressing the same. Of course, the person whose fundamental right is violated can always approach the Court for the purpose of enforcement of his fundamental right, but that cannot absolve the State from its constitutional obligation to see that there is no violation of the fundamental right of such person, particularly when he belongs to the weaker sections of humanity and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.¹¹⁶

As to violation of labour law the court pointed out that admittedly there were certain violations committed by the contractors but added that for those violations, prosecutions were launched against them and no violation of any labour law would be allowed to go unpunished. Besides indicting the government for such violations the court maintained that in future construction work carried out by or on behalf of the government, there should be a constant vigil, through periodic checking, that the workmen are not denied the rights and benefits to which they are entitled under the provisions of labour laws. This classic judgment is reflective not only of the judicial attitude of judges who constituted the bench but is an illustration of the recent judicial philosophy of which the Indian Supreme Court is informed.

One of the important principles of natural justice¹¹⁷ has been pounded in the mortar of industrial jurisprudence by the Supreme Court decision in *Port of Bombay*. Two questions of immense significance were raised: First, whether, where in a domestic enquiry the employer appoints a legally trained person as a presenting-cum-prosecuting officer, the enquiry would be vitiated for violation of principles of natural justice, if the employer rejected the delinquent employee's request for permission to defend himself by a legal practitioner? Second, whether the employer's act of not affording the delinquent employee an opportunity to defend himself adequately would run against the spirit of article 21. The facts

116. *Id.* at 471.

117. Right of legal counsel is a principle of natural justice. See Allen, *Administrative Jurisdiction* 79 (1956) where he says that "experience has taught me that to deny persons who are unable to express themselves the services of a competent man is a very mistaken kindness."

of the case were as follows :

In a chargesheet issued against the delinquent employee (respondent) for alleged misconduct the management appointed its legal officer and his assistant as presenting officers. At the same time it rejected the employee's request to engage a legal practitioner for his defence. Meanwhile as the enquiry was in progress, a regulation came into force enabling a delinquent employee to engage a legal practitioner if the presenting officer appointed by the disciplinary authority is a legal practitioner. Even after the regulation came into force neither the enquiry officer nor the disciplinary authority reviewed the earlier decision rejecting the respondent's request to be represented by a legal practitioner. At the end of the enquiry the respondent was dismissed from service. The High Court set aside the order of dismissal on grounds of violation of principles of natural justice. Dismissing the appeal, the Supreme Court stated that though the disciplinary authority, even in the absence of a specific provision,¹¹⁸ could have exercised its discretion to permit the employee to be represented by a legal practitioner, it was exercised against the employee. While the employer was represented by two legally trained persons, the delinquent employee was asked either to fend for himself or have the assistance of another employee who was not a legally trained person. In the circumstances, the delinquent employee was denied reasonable opportunity to defend himself and, therefore, the conclusion arrived at by the disciplinary authority was in violation of one of the principles of natural justice.

As regards the second issue the court held :

Even in a domestic enquiry there can be very serious charges and adverse verdict may completely destroy the future of the delinquent employee. The adverse verdict may so stigmatize him that his future would be bleak and his reputation and livelihood would be at stake.¹¹⁹

In such circumstances it becomes all the more essential that a quasi-judicial function like a domestic enquiry be conducted on the basis of principles of natural justice and fairplay. Denial of legal defence to one party, while allowing the other to take benefit of the latter, is contrary to the procedure established by law,¹²⁰ and depriving a person of his liberty without which life itself would have no meaning, is a blatant violation of article 21. More so in the case of an indigent employee for whom life¹²¹

118. *I.e.*, where the rules of domestic enquiry do not place an embargo on the right of the delinquent employee to be represented by a legal practitioner.

119. *Supra* note 103 at 4-5.

120. Law here is used not merely in terms of statutory law but jurisprudence which entails that the purpose of law is to promote societal justice.

121. The court held : "The expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect

and livelihood are so intrinsically related that the deprivation of the latter would leave the former to be a bleak spectre.

National Textile Workers' Union is an eloquent judicial pronouncement which emerged out of an invitation to the Supreme Court to determine certain issues which in itself are the seeds of a worker oriented industrial jurisprudence. The issues were as follows :

When a petition for winding up a company is filed in court, are the workmen entitled to ask the court to implead them as parties in the winding up petition or to allow them as parties in the petition or to allow them to appear and contest the petition or do they have no locus standi at all as far as the winding up petition is concerned? The bowl of facts is that respondent 6 was a private limited company registered under the Companies Act 1956 and was under the exclusive control and management of the members belonging to one family. There were two groups of shareholders, viz., respondents 1 to 5 and 7 to 14, belonging to two branches of the family. A petition for winding up of the company under clauses (e) and (f) of section 433 of the Companies Act was filed by respondents 1 to 5 as contributories and creditors of the company. An application filed by respondents 1 to 5 for appointment of a provisional liquidator was also allowed by the court appointing the official liquidator as the provisional liquidator. The workmen were members of three different trade unions and these unions applied to the court to implead them as respondents in the winding up petition alleging that their interests had been adversely affected by the interim order. The applications were opposed on the ground that the trade unions, being neither creditors nor shareholders, had no locus standi to be impleaded as respondents to the petition. The company judge dismissed the applications. The division bench of the High Court also dismissed the appeal filed by one of the unions which then filed special leave petition under article 136. The other unions filed special leave petitions directly to the Supreme Court. Allowing the appeals the court by majority held :

It would be contrary to every recognised principle of fair judicial procedure and violative of the rule of *audi alteram partem*, which constitutes one of the basic principles of natural justice, to deny to the workmen the right to be heard before an order is made by the Company Judge prejudicially affecting their interest.¹²²

The court further stated :

[T]he workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it so long as no

reputation or livelihood of a person, some of the finer graces of human civilisation which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures." *Supra* note 103 at 7.

122. *Supra* note 104 at 53.

winding [up] other is made by the court. The workers have a locus [standi] to appear and be heard in the winding up petition both before the winding up petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding up the company. If a winding up order is made and the workers are aggrieved by it, they would also be entitled to prefer an appeal and contend in the appeal that no winding up order should have been made by the Company Judge. But when a winding up order is made and it has become final, the workers ordinarily would not have any right to participate in any proceeding in the course of winding up the company though there may be rare cases where in a proceeding in the course of winding up, the interest of the workers may be involved and in such a case it may be possible to contend that the workers must be heard before an order is made by the court. We think that even when an application for appointment of a provisional liquidator is made by the petitioner in a winding up petition, the workers would have a right to be heard if they so wish because the appointment of a provisional liquidator may adversely affect the interest of the workers. But we may make it clear that neither the petitioner nor the court would be under any obligation to give notice of such applications to the workers. It would be for the workers to apply for being heard and if they do so, they would be entitled to appear and be heard on the application for appointment of provisional liquidator. ...But the circumstance that the workers were not so heard would not have the effect of vitiating the order appointing provisional liquidator, because on the view taken by us, it would be open to the workers to apply to the court for vacating the order and it would be for the court after considering the material produced before it and hearing the parties to decide whether that order should be vacated or not.¹²³

According to the court, a company is no more regarded as the property of the shareholders or as a legal device adopted by shareholders for carrying on trade or business as proprietors. A company is now considered as a species of social organisation with a life and dynamics of its own and having a firm and deep-rooted affiliation with, and duties and responsibilities towards, the contemporary society. Therefore, maximisation of social welfare should be the legitimate goal of a company. The socio-economic objectives, set out in the preamble, articles 23 and 24 and part IV especially article 40A of the Constitution, clearly mandate that the management of the enterprise should not be left entirely in the hands of the suppliers of capital. The workers, who supply labour, being equally, if not more, interested in the enterprise, should also be

123. *Id.* at 61.

entitled to participate in it. The workers should have a voice or a right to be heard in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court.¹²⁴

Justice Bhagwati expounded :

[I]f the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.¹²⁵

Industrial relations will never be the same after this momentous judicial pronouncement which has oxygenated article 43A into an enkindling light which would engage capital and labour in a search for the cherished goal of equality.

To sum up the survey of worker oriented decisions, the inner consciousness queries—Has the Indian Supreme Court tried to evolve a worker oriented industrial jurisprudence? Objectivity says, yes. In the topical perspective what is essential to make the purveyor of labour participate in industry on an equal footing with capital. Such participation would be the consequence of the conglomeration of three elements—dignity, health and strength, which the court has tried to ingrain in any tussle between capital and labour which it was invited to resolve. In other words, it has tried to add muscle to labour through the via media of these three elements, so that once it has laid a strong economic, physical and mental foundation, labour itself, overcoming handicaps,¹²⁶ would raise the superstructure of industrial jurisprudence on the scaffoldings of equality and justice in every sphere of industrial activity ranging from plant management to a share in the profits.

Examined in this light the innovative judicial interpretation of the expressions “industry”, “workman” “employee” and “worker” has tried to ensure that workers are not mere chattels, but a dignified class entitled to statutory protection. The above principle has been judicially reinforced by giving to minority unions and even a single workman participatory benefit or a role under the Act.

The protection of workers’ health and strength, an overwhelming element, in its economic and physical perspective, has been ingrained in the capital-labour nexus in numerous ways—giving broadest possible

124. This is a summary of what Bhagwati J. observed in *id.* at 54-57.

125. *Id.* at 60.

126. In view of the present writer the handicaps are of illiteracy, ignorance, poverty, ill health and superstition.

interpretation to the term “retrenchment” defined under the Act; declaring that workers’ participation in an illegal strike does not necessarily entail dismissal; penalising an employer who indulges in dilatory litigation at the expense of indigent labour and meeting the same treatment to one who plays truant in his obligations towards labour welfare schemes; upholding the constitutionality of statutory minimum bonus; showing concern for a pregnant worker by according her full maternity benefits for the entire period of absence on account of maternity leave; expanding the jurisdiction of tribunals vis-a-vis revision of wages, cancellation of illegal promotions and framing norms/rules for the same, and setting aside their own ex parte orders in the interest of justice; and declaring that a High Court acting under article 226 has no power to interfere with a tribunal’s positive finding.

Judicial transcendency of statutory law has been achieved by according the right to livelihood, constitutional status within the horizon of article 21 by making article 32 a living contrivance to procure/assure justice notwithstanding social, economic and physical disability and finally casting article 43A as the beacon of industrial relations beckoning ships of weary workers to the port of industrial equality. Thus the query—Has the Supreme Court tried to evolve a worker oriented industrial jurisprudence—stands answered.

III Normative equality: how to effect it—some suggestions

Can the judiciary wholly and solely promote a worker oriented industrial jurisprudence, an all encompassing vista of according dignity and status to sweat, toil and tears that lubricate the gearbox of industrial productivity—labour, inspite of its vision, calibre and strength? The answer is, no. If the mills of judiciary can, in a majority of cases, deliver only temporary succour, what is it that would lead us to the stage where capital and labour are fused in mutual sympathy in the cauldron of industrial peace, productivity and progress? Surely not the existing state of capital-labour relations, where the latter has to go on strike and indulge in painful litigation for just a sustenance wage. Transition from antipathy to empathy is not going to be a computerised miracle but a slow and steady psychological drift in the existing mores, only if capital’s mind is so channelised that it thinks in terms of appreciating and giving rather than withholding the worker his legitimate due in terms of dignity and remuneration. Law has but a minimal role to play in this psychological transformation. Well, how is this psychological mortar to be applied in constructing the jurisprudential superstructure, which in the initial stages might be worker oriented, but later on will be a living testimony of capital-labour unity?

Workers’ education is going to be the scaffolding on which this structure has to be raised. Education does not imply a formal school run approach; but a process whereby workers are not only informed of

their inherent strength as an indispensable factor in production but also how to channelise this strength for twin purposes of industrial progress and self-amelioration.¹²⁷ Managements need to be enlightened and made aware that unless they appreciate the good work each individual workman has put in for the establishments' advancement and share the benefits of progress with the worker so that he feels loved and cared for, industrial progress will be interspersed with strife and bad blood.¹²⁸ Japan has the unique distinction of having achieved a complete fusion of capital and labour with one goal—industrial progress.¹²⁹ How has it achieved this position which in terms of pure economics is paying enormous dividends? Well, Japan started its worker and management education programmes much earlier and pursued them with ruthless vigour. The logistics of the Japanese situation in human terms is: "if you care for me, so will I reciprocate your feelings in equal measure". Managements in India adopt a shylockian approach towards the rack-wrecked, indigent mass of working forms—labour. It is this approach that has come under sharp judicial remonstrance. Understanding and empathy are developed only if managements' accord bread with dignity. Only when the management through its policies ensures that there is cheer and happiness in every worker's home and that it will do anything to preserve it, will the latter consider the former to be his well wisher. Once this feeling makes its way into the inner consciousness of the worker the take-off stage of fruitful capital-labour cooperation shall be reached and the plane of cooperation shall cover the whole field of industrial activity beginning with plant management and ending with policy decision making. It does sound utopian, but once upon a time the very idea of man ascending the moon was a flight into utopia.

It is going to be a psychological struggle with forces within¹³⁰ and the first results would show up probably in a decade or two and that too only if workers are made to participate in the capital of the firm by virtue of statutory provisions. But participation has to be to the extent of twenty to thirty percent. It is only then they would start identifying themselves truly with the interests of the company. Corporate progress would then mean economic and material advancement of each worker-shareholder. But no experiment can succeed without the caring touch of the management vis-a-vis the worker in the appropriate psychological climate of dignity and equality.

Indian Supreme Court, as the apex organ of the judicial system, has

127. In the view of the present writer self-amelioration of workers means improvement in their social, economic and physical conditions.

128. As evident in *Gujarat Steel Tubes*.

129. See A.J. Fonesca and Alfred de Souza, "Worker Participation in Industry : A Study of European Models and Indian Experience." 28 *Social Action* 188 (1978).

130. The author is of the view that this implies conquering feelings of self-aggrandisement, distrust and suspicion.

played its vanguard role. Forces revitalising the legal system—educational and social—must play their vital role. In this the legislative organ must activate itself with appropriate law, not only to inject corrective factors but also to provide proper directives and infrastructural institutions; only then can dawn capital-labour unity, on an equal footing. At this juncture would emerge an industrial jurisprudence which would neither be capital nor worker oriented but simply welfare oriented.

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