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# WORKER'S RIGHT AND EMPLOYMENT SECURITY

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## INDUSTRIAL JURISPRUDENCE

During the twentieth century a new branch of jurisprudence known as Industrial Jurisprudence has developed in our country. Industrial jurisprudence, is a development of mainly post-independence period although its birth may be traced back to the industrial revolution. Before independence it existed in a rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from increase in labour and industrial legislations but also from a large number of industrial law matters decided by the Supreme Court and High Courts. It affects directly a considerable population of our country consisting of industrialists, workmen and their families. Those who are affected indirectly constitute a still larger bulk of the country's population. This branch of law modified the traditional law relating to master and servant and had cut down the old theory of laissez faire based upon the 'freedom of contract' in the larger interest of the society because that theory was found wanting for the development of harmonious and amicable' relations between the employers and employees. Individual contracts have been in many respects substituted by a standard form of statutory contract through legislation and judicial interpretation. The traditional right of an employer to hire and fire his workmen at his will has been subjected to many restraints. Industrial Tribunals can by their award make a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award. There is no question of the employer agreeing to the new contract, it is binding even though it is unacceptable to him. The creation of new obligations is not by the parties themselves. Either or both of them may be opposed to it, nevertheless it binds them. Thus, the idea of some authority making a contract for the workmen and employer is a strange and novel idea and is foreign to the basic principle of the law of contract.[1]

The basic principles are:

(1) The right of workmen to combine and form associations or unions.

(2) The right of workmen to bargain collectively for the betterment of their conditions of service.

(3) The realisation that economic struggle is inevitable because it is but natural that labour would agitate for better conditions.

(4) A shift from the aoctrine of "laissez faire" to a "welfare state".

[1] lndustrial. arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligations, or modification of old ones " Ludwig Teller, Labour Disputes and Collective Bargaining, Vol. I. p. 536.

(5) Tripartite consultations i.e., solution of the industrial or labour disputes through the participation of workers, employers and the Government.
(6) The State can no more be a neutral onlooker but must interfere as the protector of the social good.
(7) Minimum standards must be guaranteed through State legislation.

The concept of industrial jurisprudence in our country developed only after independence. Until independence the change in attitude of the government and the benevolent labour legislation only aimed at amelioration of the conditions of labour and it could hardly be said to be a deal in social justice to the working class.[1] The birth of industrial jurisprudence in our country may be ascribed to the Constitution of Indial which made more articulate and clear the industrial relations philosophy of the Republic of India. This philosophy has afforded the broad.and clear guidelines for the development of our industrial jurisprudence and has thus taken India one step forward in her quest for industrial harmony.[2] The Parliament and the Supreme Court have helped in shaping industrial jurisprudence, the former through legislation and the latter as interpreter of the labour laws.

Industrial jurisprudence is of great importance to all developed or developing countries of the world because it is concerned with the study of problems relating to human relations arising out of a large scale development of factory system which has emerged in consequence of industrial revolution. Proper regulation of employer-employee relationship is a condition precedent for planned, progressive and purposeful development of any society. As an instrument of social policy in the present day body-politic the role of industrial jurisprudence has still gained importance.[3] Industrial workers and their families are directly concerned with it.

In spite of its widening scope it cannot be forgotten that its application is limited in certain respects. For example, there are still a vast majority of the people who in their relationship are still governed by the ordinary law of contract based on laissez faire doctrine. Industrial jurisprudence is a developing concept. It derives its main strength from social justice which is dynamic and changing. The concept of social justice itself changes with the social, economic and political changes in society. Therefore, it has yet to take its final shape. Industrial jurisprudence cannot, with all its high ideals, displace general jurisprudence just as no amount of social justice can abrogate altogether the concept of legal justice. Even while dispensing social justice the Courts, tribunals and arbitrators, whoever it may be, cannot ignore the law. Therefore, it would be correct to say that industrial jurisprudence is a species of the same genus jurisprudence4 and industrial jurisprudence in relation to industrial society stands in the same way just as general jurisprudence in relation to the total society.[4]

**Industrial Revolution of India**

Industrialisation in India as in any other country implies the growth of a factory

[1] Mahesh Chandra, Industrial Jurisprudence (1976), p. 31.
[2] Report of the National Commission on Labour, (1969), p. 56.
[3] industrial jurisprudence is the corner stone of the fabric of the entire human race". Mahesh Chandra, Industrial Jurisprudence, (1976), p, 49.
[4] Samant, Industrial Jurisprudence, p. 4.

system with employers and wage earners in varying circumstances and with varying characteristics, yet having some common features and it is the common features that are of interest.[1] As a consequence of the introduction of factory system production became concentrated in a few selected places, resulting in the increase of labour population at all such places. The village workers migrated to the industrial towns because of the difficulty of finding adequate livelihood in their native place. This resulted in disappearance of the popular village handicraft system because they could not compete with machine made goods. The goods produced on a mass scale with the help of machines in the industries were cheaper than the goods produced by handicraft method. But the development of industry in India brought with it a great evil inasmuch as it changed the status of a craftsman into wage-earner. Therefore, the craftsmen had to migrate from village to industrial cities in search of employment in factories.

**Labour Problems**

Labour problems constituted a serious menace to the society, and needed solution, if not to eradicate then at least to mitigate them in the very beginning. Employers paid their sole attention to the maintenance of machines and the improvement of the technical know how to the utter neglect of the human hands employed to man the machines because they were readily available and could be easily replaced.[2] Workers were illiterate and poor and therefore unconscious of their rights. The socio-economic status of the workers was far below the status of their employer. As such they could not exercise their free will in negotiating with the employer for employment. The employer taking advantage of the poor condition of the workers dictated their own terms and conditions with regard to wages, hours of work, leave, etc. The workers were left with no choice but to accept such terms because service was the sole means of earning their livelihood.

Neither the Government nor the law courts took special notice of these problems because they laid too much emphasis on the policy of the non-interference and freedom of contract. Thus, with the lapse of time the situation turned out to be so worse and the society became so much adversely affected that the Government was compelled to take some action to remedy these problems.

**Industrial Peace and Industrial Harmony**

"Industrial Peace" and 'Industrial Harmony" may have the same meaning but the concept of industrial peace is somewhat negative and restrictive. It emphasises absence of strife and struggle. The concept of industrial harmony is positive and comprehensive and it postulates the existence of understanding, co-operation and a sense of partnership between the employers and employees. A quest for industrial harmony is indispensable for economic progress of the country. Economic progress is bound up with both industrial harmony and industrial peace. Industrial harmony leads to more co-operation between employees and employers which results in more productivity. It is founded on healthy industrial relations. Healthy industrial relations cannot, therefore, be regarded as a matter in which only the employers and employees are concerned; it is of vital significance to the community as a whole. Therefore, industrial harmony involves

[1] Indian Law Institute : Labour Law and Labour Relations, p. 6.

[2] V.V. Giri, Labour Problems in Indian Industry, p. 115.

the co-operation of employees and the community at large.

**Social Security**

The mutual conflict between the employer and the employees over the question of adequacy of their respective shares in social produce, constitutes the crux of the labour problem, of which collective bargaining and industrial conflict are the two most important aspects. As industrialisation advances the worker is increasingly alienated from his previous socio-cultural world and thus faces various insecurities with regard to income and employment in addition to the natural ones (i.e., sickness, maternity and old age) for which the new order does not have structural provision. This is how the problem of social security arises and revolution has meant urbanisation. In ancient times if a person was unable to work on a particular day, he was cared for by the village community or by the members of his family. But now urbanisation has so deeply uprooted these values that in times of sickness, unemployment, old age and other similar contingencies a worker has nothing to fall back upon. In modern times social security is influencing both social and economic policy. Social security is the security that the State furnishes against the risks which an individual of small means cannot, today, stand up to by himself even in private combination with his fellows.[1]

The concept of social security is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his county's welfare should be given protection against certain hazards.[2]

Social security means a guarantee provided by the State through its appropriate agencies, against certain risks to which the members of the society may be exposed. Social assistance scheme provides benefit for persons of small means granted as Of right in amount sufficient to meet a minimum standard of need and financed from taxation, and social insurance scheme provides benefits for persons of small earnings granted as of right in amounts which combine the contributory effort of the insured with subsidies from the employer and the State.[3]

***Need to bring Labour Reforms***

There are more than 50 crore workers in the organized and unorganized sector of the country. A majority of these workers i.e. around 90 percent, are in the unorganized sector. Through these four Labour Codes, it has been ensured that all these workers will get the benefit of Labour Laws. Now all workers of the organized and unorganized sector will get the minimum wages and a large section of workers in unorganized sector would also get social security.

The Second National Commission of Labour had submitted its report in 2002 which said that there was multiplicity of Labour Laws in India and therefore, recommended that at the Central level multiple Labour Laws should be codified in 4 or 5 Labour Codes. While discussions were held on it, however, no serious initiative was taken in this direction during the time period from 2004 to 2014.

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[1] V.V. Giri, Labour Problems in Indian Industry, p. 247.

[2] I.L.O., Approaches to Social Security, 1942, p. 80, quoted in Report of the National Commission on Labour (1969), p. 162.

[3] Approaches to Social Security, I.L.O. Montreal, pp.

Labour Reforms also remained untouched during the economic reforms carried out in 1991.

The brainstorming on Labour Codes were fast- tracked when the GST, as One Nation One Tax, was made applicable in the country with consensus and with the strong will of the Hon'ble Prime Minister Modi Ji to take tough decisions for "Sabka Sath Sabka Vikas aur Sabka Vishwas". By taking forward this progressive thinking, the reforms in Labour Laws were also speeded up.

Extensive discussions were held before initiation of Labour Reforms by Ministry of Labour and Employment. Initially, as a part of Government's pre-legislative consultative policy, the Ministry uploaded all the draft Labour Codes on its website for stakeholders and public consultation. During 2015 to 2019, the Ministry organized 9 tripartite discussions in which all the Central Trade Unions, Employers' Associations and representatives of State Governments were invited to give their opinions/suggestions on Labour reforms. All the four Bills were also examined by the Parliamentary Standing Committee which gave its recommendations to the Government.

**Labour Codes and Freedom from the Web of Legislation**

Many provisions of Labour Laws trace their origin to the time of the British Raj. However, with changing times, many of them either became ineffective or did not have any contemporary relevance. Rather than protecting the interests of workers, these provisions became difficulties for them.

The web of legislations was such that workers had to fill four forms to claim a single benefit. Therefore, the present Government has repealed the non-useful Labour Laws. Now 29 Labour Laws have been codified into 4 Labour Codes.

New 4 Codes are beneficial for all

For ensuring workers' right to minimum wages, the Central Government has amalgamated 4 laws in the Wage Code, 9 laws in the Social Security Code, 13 laws in the The Occupational Safety, Health and Working Conditions Code, 2020 and 3 laws in the Industrial Relations Code.

For this, by getting the Bills passed by the Parliament, the Central Government has made a headway towards changing the standard of living of workers in a fundamental manner. This will have positive and far reaching effect on workers and nation building.

These Labour Reforms will enhance Ease of Doing Business in the country. Employment creation and output of workers will also get enhanced.

The benefits of these four Labour Codes will be available to workers of both organized and unorganized sector. Now, Employees' Provident Fund (EPF), Employees' Pension Scheme (EPS) and coverage of all types of medical benefit under Employees' Insurance will be available to all workers.