# ECONOMIC AND COMMERCIAL LAWS

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ON the recommendations of the Press Commission, the Government of India placed on the Statute Book in 1955 an Act to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments. This Act, called the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955, mainly deals with the conditions of service and terms of employment including wage rates for working journalists. It provides for the period of notice to be given for retrenchment of a working journalist, prescribes a gratuity scheme, stipulates working hours, holidays, casual and other kinds of leave. It also provides for the application of the provisions of the Industrial Disputes Act, 14 of 1947, for the settlement of disputes, and of the Industrial Employment (Standing Orders) Act, and the Employees Provident Fund Act. Other Acts, applicable to the newspaper industry vis-a-vis employees, are the Payment of Wages Act and the Payment of Bonus Act.

For a proper and correct appreciation of the effect of these laws on the newspaper industry, one should know the state of the Indian Press prior to 1955.

Considering first the daily newspapers, there were, according to the Press Commission, about 330 newspapers, inclusive of different editions, with a total circulation of over 25 lakhs. The weeklies numbered about 1,190. The Press Commission's study of 110 establishments, covering more than 80 per cent of the total circulation, disclosed that the total proprietary capital invested in the business was around Rs. 7 crores and the capital in terms of loans about Rs. 5 crores, the total working capital thus being about Rs. 12 crores. The net value of fixed assets, that is, cost minus depreciation, was estimated at Rs. 6 crores and the total circulation and advertisement revenue of daily newspapers at about Rs. 11 crores.

Before independence, the Indian Press in general had a single objective in view, namely the political emancipation of the country. Many journalists, imbued with the nationalist fer-

your of those days, were prepared to make sacrifices for the country's cause.

After independence, newspapers became vehicles for the advancement of political and business interests of newspaper proprietors, who failed to appreciate the status and role of journalists. While the Press came to be known as the Fourth Estate, this grandiloquent term had little meaning for the working journalists of the period, who, the employers felt, had no right to a decent wage and better service conditions.

This attitude of the employers literally forced the Government of India to intervene in the matter. The wages fixed for the journalists were miserably inadequate; there were no regulated hours of work and the working journalists did not have rest day for months. Any journalist who thought of asserting his rights was shown the door by the employer. Such were the conditions which led journalists to organise themselves into the Indian Federation of Working Journalists.

When the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act was placed on the statute book, protests were voiced by the employers that the provisions of the Act, if implemented, would "kill' the newspaper industry and pose a danger to the freedom of the Press. It was argued by them that "it was utterly impossible to regulate the working hours of journalists and that the provisions relating to payment of gratuity, hours of work, leave and fixation of rates of wages would have the effect of laying a direct burden on the Press. Besides they would tend to curtail circulation and thereby narrow down the scope of dissemination of information, fetter the hands of newspaper owners from choosing the means exercising their rights and possibly undermine the independence of the Press by compelling them to seek Government aid".

Subsequent developments in the newspaper industry established beyond doubt that these fears were totally imaginary. The employers attempted to scuttle the Act by challenging the validity of the Working Journalists (Fixation of Rates of Wages) Act 129 of 1958, which empowered the Government to constitute a Committee to fix rates of wages for working journalists.

The first attempt at wage control, as provided for in the Wage Order of the Government of India, did not achieve what the Journalists had hoped for, although working conditions registered some improvement. Every attempt was made by the employers to circumvent the provisions of the Wage Order and

journalists were dragged to courts. The litigation however proved beneficial to the working journalists to the extent that it helped plug the loopholes in the laws applicable to them by an amendment of the Act later. For the large majority of working journalists the new wage rates that were brought into force in 1959 brought no salary advancement worth the name.

During the period between the date of appointment of the Press Commission and the date of operation of the Wage Order, there was, as the then Labour Minister, Shri Gulzari Lal Nanda himself admitted, a virtual wage freeze in the majority of newspapers. Many of well-established principles of wage fixation, laid down by courts and tribunals and approved by the Supreme Court, were bypassed by the official Wage Committee, which adopted sub-units in the industry as criterion for fixing wages instead of taking a fair cross-section of the industry or a class of the industry divided on the basis of gross revenue. Against a minimum wage of Rs. 225, as suggested by Press Commission and Rs. 180 as suggested by the first Wage Board, the Wage Committee fixed a wage of Rs. 115 in 1959.

Though the statute enjoined upon the Wage Committee to fix wages for all categories of working journalists in the newspaper industry, the Wage Committee, without rhyme or reason, excluded a large number of working journalists employed in the periodicals other than weeklies and the editors from the purview of the order. The Committee also conveniently ignored the mandatory provision in the Act that the cost of living was one of the factors that should be taken into consideration. This factor was never considered in the right sense.

If the Wage Order is critically examined, it will be seen that the order lacked flexibility. Its definition of metropolitan areas was rigid. There was no scope left for other up and coming centres to compete with the cities mentioned in the Order. Its method of categorisation of working journalists was irrational. Its restriction of gross revenue to circulation and advertisement revenues was arbitrary. There was no legal basis for the subdivision of gross revenue for the classification of newspapers belonging to groups, chains, or multiple units.

All accepted principles were violated and the assumption of the Wage Committee that there could be a weak unit in the chain, group, or multiple unit was fallacious. If a chain was strong, a prudent employer would continue to strengthen it instead of allowing a unit to grow weak by indulging in unproductive activities. The very fact that an employer in the newspaper industry went on expanding despite avowed losses, proved that

there was something profitable in the Act, directly or indirectly. In the case of a chain, income-tax was not paid on the basis of individual units. Why then should a hue and cry be raised when it came to the question of wage fixation?

A study of the activities of chains, groups and multiple units would reveal how unfair the Wage Committee had been in respect of classification of newspaper establishments. Whenever a newspaper begins to show substantial profit or increase in revenue, the employer ventures a new edition or a new publication altogether from the same centre or elsewhere so as to divert the profits and convert these into a loss, thus depriving the employees of the legitimate share of the prosperity of the establishment. Should this kind of practice be accorded official and legal recognition?

Whatever may be the small advantages which the working journalists have obtained through the enforcement of the provisions of the Working Journalists Act, the advantages that have accrued to newspaper employers are substantial. The law has contributed to the development of the industry, since employers have begun to appreciate the dynamics of the newspaper industry. With wages pegged at the lowest levels and with spurt in circulations of newspapers of all categories, the industry's revenues have increased substantially. Fixed assets of the industry have shown remarkable increase.

Between 1959, the year in which the Wage Order came into force, and 1963, the total circulation of newspapers (according to the report of the Press Registrar) rose from 169 lakhs to 235 lakhs or by 39 per cent. The real rise was more if the fact is taken into account that the 1959 figure is based on claimed instead of verified circulation. The circulation of dailies rose, during the same period by 28.7 per cent, from 44.5 lakhs to 66.9 lakhs or by 40 per cent. Between 1963 and 1965, circulation of newspapers has recorded a further substantial increase. Between 1959 and 1965 more and more new newspapers came into existence.

The Industrial Disputes Act, made applicable to working journalists, was a comprehensive Act for settlement and adjudication of industrial disputes. Immediately after the application of the Act, there was a spate of disputes, particularly relating to victimisation of working journalists for their trade union activities. Though employers cried hoarse about the freedom of the press, they did not like their employees to have freedom to organise themselves for collective bargaining. The employers' hatred to new laws was so great that some of the employers made

journalists go to courts to depose against their own colleagues. The bait was additional increments and special promotions.

However, the unfettered system of hire and fire, which prevailed in the newspaper industry prior to 1955, no longer obtains in the industry on such a large scale. The Standing Orders helped to maintain discipline in the industry. While Courts have held that "the power of the management to direct its internal administration, which includes enforcement of the discipline of the personnel, cannot be denied" this power has been subjected to certain restrictions with the emergence of the modern concept of social justice that an employee should be protected against vindictive or capricious action on the part of the management that may affect his security of service.

Rights and duties of working journalists have been laid down with a fair amount of precision by the provisions of the laws and if points of conflicts still arise between the working journalists and the employers, it is mainly because of the employers' lack of understanding of laws relating to working journalists.

Industrial disputes machinery is still inadequate and slow in rendering justice. It takes many years to see the result of a case. The machinery suffers from various shortcomings and defects. The procedure should be simplified for quick settlement of disputes. Further, litigation which is forced on employees has become very costly. The employees cannot afford it. For instance, the Industrial Disputes Act provides for the settlement of disputes by mutual agreement and settlement under S. 12(3) and S. 18 of the said Act. Often it becomes necessary to let in as evidence settlements and agreements reached under S. 12(3) and S. 18 before the Industrial Tribunals to substantiate the claims of the employees. The agreements or settlements are not usually stamped under the Stamp Act.

Of late some Industrial Tribunals have refused to receive agreements and settlements in evidence on the ground that they are not duly stamped under the Stamp Act. These documents are impounded and forwarded to the Collector for adjudication and determination of penalty for stamping. Normally, the penalty ranges up to 10 times the value. Particularly when one has to file a large number of documents, the cost becomes very heavy which he cannot afford.

This defeats the very purpose of industrial adjudication. The appropriate Governments have adequate powers under Section 9 of the Stamp Act to exempt all documents relating to agreements and settlements from the scope of the Stamp Act prospec-

tively and retrospectively. But nothing has been done so far.

It is more than a decade now since the provisions of the Working Journalists Act and the Industrial Disputes Act were put to use. Yet the employers are not fully reconciled to these laws essentially meant for the amelioration of working journalists. The highest Court of the land has laid down the principles of industrial law and these should be accepted both by the employers and the employees in the spirit in which they were framed so that social justice and peace could be established in the newspaper industry.

The fact that the main object of the Working Journalists Act is to keep the journalist above want and to provide him with a certain measure of economic security so that he may discharge his functions efficiently and fearlessly should not be lost sight of by the employers. Francis Williams in his book "Dangerous Estate", has correctly summed up the role and status of a journalist. He has pointed out that :

> "The defence of journalism as more than a trade and greater than an entertainment technique—although a trade it is and entertaining it must be—is properly the journalist's and no one else's. It is they who are the legatees of history in this respect. They have both a professional and a public duty to look after their inheritance....The freedom of the journalist—freedom not only from censorship or intimidation by the State but from censorship or intimidation by any one including his own employer—is an essential part of Press Freedom....The freedom of the Press differs from, and ought always to be recognised as greater than, the simple freedom of entrepreneur to do what he pleases with his own property. A journalist has commitments to the commercial interest of those who employ him. But he has other loyalties also and these embrace the whole relationship of a newspaper to its public".

The Act 45 of 1955 has extended the benefits of gratuity and provident fund to working journalists. These benefits are meagre and would just enable a working journalist to live only in tolerable comfort in the evening of his life. He should also have the benefit of pension.

In this connexion it would be relevant to recall the observations of the Madras High Court in a recent case relating to working journalists. Dismissing a writ appeal filed by a newspaper establishment in Madras, the Division Bench of the Madras

High Court, as obiter, suggested to the legislature to consider pension instead of or in addition to the gratuity to working journalists who had put in long years of service as one of the principles of compensation on retirement or retrenchment. The system of pension prevails in some establishments and this system should be made applicable to all establishments. The industry can afford it.

There is also a strong case for the extension of the Workmen's Compensation Act, with suitable modification to working journalists engaged in outdoor assignments. They risk their lives to cover dangerous assignments in these days of intense political activity.

The enactment of the Payment of Bonus Act has not only solved the problems relating to bonus determination but also created new complications to the disadvantage of employees. Their existing rights and privileges were whittled down if not wiped out by this legislation. Of course the Act ensures the payment of a minimum bonus of four per cent of the annual earnings of an employee. The Act has also fixed the maximum at 20 per cent. It is common knowledge that many establishments in all industries including the newspaper industry have been paying more than 20 per cent of the annual earnings as bonus before the enactment of the Act. This existing practice is protected under the Act only in name. The provisions of the Act in this regard are vague and not specific. An attempt has been made in the Act to enable the employees in any establishment or a class of establishments to enter into agreements with the employer for granting them an amount of bonus under a formula which is different from that under the Bonus Act.

One of the immediate effects of the Act is that the minimum bonus prescribed has become the maximum bonus. Now no employer as a rule is willing to pay more than the minimum even though his capacity to pay is more. The Act provides an opportunity for an employer to argue that "all awards, agreements, settlements, or contracts of service involving bonus made before May 29, 1965 automatically become invalid because they necessarily would not be in accordance with the provisions of the Payment of Bonus Act and therefore would have to be considered inconsistent with that Act". However, the original object of S. 34 of the Payment of Bonus Act appears to be thus :

> "In certain establishments the employees are getting bonus under an award, agreement, settlement, or contract of service which would be higher than that payable under the Act. The clause seeks to safeguard such employees providing that

they would get bonus either on the existing basis or on the basis of the formula provided in the Act whichever is higher".

The cumbersome provisions of the S. 34 have led to many complications like widespread industrial unrest and it is bound to continue if the defect is not cured. Different interpretations are being put on S. 34(1) and S. 34(2). Normally, from a layman's point of view, S. 34(1) must be interpreted after taking into account the original objects of the Act and particularly the object mentioned in the Statement of Objects and Reasons. If the Legislature had intended to render null and void any term for the payment of bonus in any award, agreement, settlement or contract of service, then it would have stated so specifically and unambiguously.

The entire matter about the scope of S. 34 is now before the Supreme Court and any discussion on this will be academic at this stage. However, from the employees' point of view, Section 34(1) should be amended at the earliest opportunity on the lines of S. 16 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act or Section 25J(1) of the Industrial Disputes Act. Section 34(2) is superfluous and need not be retained. However, Section 34(3) should be retained as it is, because it allows the employees to opt out of the Act with only one proviso namely that the eight of minimum bonus should remain intact.

The Newsprint Control Order, a commercial law, cannot be said to have adversely affected the newspaper industry as a whole. There should be some more flexibility to meet the needs of increased circulation. It was stated on behalf of the Government that the Order had the effect of price page schedule order indirectly. It is not known why the Government should feel shy of introducing the price page schedule directly. The judgement of the Supreme Court in the *Sakal* Case at present stands in the way. On several occasions in the past, the Constitution was amended to meet the requirements of changed conditions.

After the *Sakal* case much water has flowed under the bridge. If the newspapers do not voluntarily agree to the introduction of price page schedule, the Government should re-enact the measure after amending the Constitution for this purpose. As stated by the Small Newspapers Inquiry Committee, "both under conditions of scarce foreign exchange earnings coupled with national emergency and under normal conditions, the introduction of a statutory Price Page Schedule is an inescapable necessity".

The publication of the Draft Rules by the Central Board of Revenue limiting advertisement expenditure upset the newspaper

industry very much. Because of strong opposition from the newspaper industry and advertisers, the first draft was modified substantially. Later, the four per cent Rules were published for comments by the industry. Though less penal in general terms, it is stated, that the revised draft Rules tend to be somewhat discriminatory since they now affect only those manufacturers who operate in certain product groups. It is now fairly certain that the Rules may not be given affect to retrospectively.

In conclusion it should be stated that the economic laws meant for the welfare and amelioration of employees are only means to an end and not the end itself. They cannot provide for every contingency. Laws alone will not lead us anywhere if there is no change of heart. Employers and employees should sit across the table and devise measures to solve the problems and disputes as and when they arise to their mutual satisfaction. Suspicion and distrust should go. The newspaper industry should set an example to other industries by establishing bi-partite machinery at the Central and State levels for amicable settlement of all disputes and differences without recourse to litigation. That is the only way for the healthy development of the industry.