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NOTES AND COMMENTS

RIGHT TO STRIKE: A CONCEPTUAL AND CONTEXTUAL ANATHEMA

I Introduction

IT WOULD not be an exaggeration to say that *T.K. Rangarajan* v. *State of T.N. and Ors.*[1] is an epoch-making judgment. The apex court reiterated in no uncertain terms that there is no fundamental right to strike.[2] The division bench[3] minced no words in castigating the reckless tendency to resort to strikes. The verdict was, of course, a culmination point.[4] Though the judgment was widely welcomed, it also met with stiff opposition from the trade unions. The plea of the unions was that the *Rangarajan* case[5] deprived workers of their fundamental right to strike.[6]

An attempt is made in this article to analyse the *raison d'etre* of the proposition, advanced by the author, that there is no right to strike. The circumstances leading to the 'no-right to strike' case,[7] and the subsequent developments provide the necessary backdrop for the discussion.

II Strike: Meaning and Concept

Industrial Disputes Act, 1947 (ID Act) may be regarded as the source of the meaning and definition of strike. In ordinary parlance, it may be understood to mean "stoppage of work". The Little Oxford Dictionary describes it as "employees' concerted refusal to work until some grievance is remedied; similar refusal to participate in other expected activity."

I D Act defines strike as: "a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal,

1. (2003) 6 SCC 581.
2. *Id*. at 589-91. The court held that there is no fundamental and legal/statutory right to go on strike, and there is no moral or equitable justification to go on strike.
3. The bench consisted of M.B. Shah and A. R. Lakshmanan, JJ.
4. The earlier prominent judgments on the subject are: *All India Bank Employees' Assn.* v. *National Industrial Tribunal,* AIR 1962 SC 171; *Kameshwar Prasad* v. *State of Bihar*, AIR 1962 SC 1166; *Radhey Shyam* v. *Post Master-General*, AIR 1965 SC 311; *Communist Party of India (M)* v. *Bharat Kumar,* (1998) 1 SCC 201; *Ex-Capt. Harish Uppal* v. *Union of India,* (2003) 2 SCC 45.
5. *Supra* note 1.
6. Claimed through and under art.19 (1) (c) of the Constitution.
7. *Supra* note 1.

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or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment."[8]

The crux of the matter, as is evident from the definition, is the refusal to work, effected by mutual agreement. The paramount object of any striking workmen is to coerce their employer to concede to their demands. "Strikes", it is, therefore, said, "are as old as work itself."[9] Strike is regarded as the most potent weapon in the armoury of the trade unions.

Ever since the employer-employee relationship began, strikes have played an instrumental role in the shaping of industrial relations, and strengthened them, i.e., the workers to negotiate with the employers effectively.

The relevance of strikes is well appreciated if they are examined in the context of the conflicting interests of employers and the organised employees. As pointed out by V. V. Giri: "an individual in isolation is weak and powerless and unable to defend his interests effectively and that power and strength lie in unity."[10] In fact, this vulnerable position of the individuals is the root cause for the emergence of trade unions whose paramount purpose was collective bargaining. Pitted against the omnipotent employers, the workmen frequently resort to strikes to bargain effectively with the former. It is universally accepted that trade unions seek "to improve the economic and social status of the workers through industrial action…"[11] Obviously, industrial action implies stoppage of work by workmen acting in concert. History is replete with instances of strikes, which have made the trade unions relevant to the community.

It is true that strikes have played a very vital role in the past. But that is hardly a justification to confer on them the status of a "Right". They were justified and, therefore, made valid as they led to industrial peace and development. However, they were never accepted as, or as part of, a "Right". Some of the earlier judicial pronouncements are indicative of this trend.[12]

Today, the situation is such that a demand for a right to strike evokes contempt for the agitators. Scores of concessions given to workmen, coupled with the demands of liberalisation, privatisation and globalisation have obviated the need even for recognition of strike, let alone the right to strike.

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8. S. 2 (q).

9. Knowles, *Strikes: A Study in Industrial Conflict*, quoted in V.B.Karnik, *Strikes in India* 357 (1967).

10. V.V.Giri, *Labour Problems in Indian Industry* 58 (2nd ed., 1965).

11. *Id.* at 452.

12. See *All India Bank Employees' Assn.*, *supra* note 4; *Kameshwar Prasad*, *supra* note 4; *Radhey Shyam Sharma*, *supra* note 4.

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An attempt is made to elucidate the same in the succeeding paragraphs.

III Strike as "Right": A Conceptual Conundrum

One of the well established conceptual exercises in jurisprudence is the Hohfeldian analysis of jural relations.[13] The kernel of the analysis is that all legal relations can be classified into "rights", "privileges", "powers" and "immunities" and their corresponding correlatives - "duties", "no-rights", "liabilities" and "disabilities", respectively.[14] These distinctions were arrived at gradually.[15] It was Hohfeld, an American jurist, who gave a logical conclusion to his predecessors' efforts.[16]

Of the four classes, the first one, i.e., rights and their correlative duties are by far the most important. "So predominant are they, indeed, that we may regard them as constituting the principal subject-matter of the law, while the others are merely accessory."[17] The term 'right' is used here in its strictest and narrowest sense. A wider sense is attributed to the other three terms.[18]

Hohfeld pointed out that the genesis of "right (*stricto sensu*)" lies in the corresponding "duty"[19]. Dias asserts that every claim[20] implies the existence of a correlative duty, since it has no content apart from the duty.[21] Salmond drives home the point with a touch of an artist when he says: "there can be no right without a corresponding duty… any more than there can be a husband without a wife."[22] A duty is, roughly speaking an act, which one ought to do.[23] If law recognises an act as a duty, it may be termed as a legal duty. A duty is legal because it is legally recognised, not necessarily because it is legally enforced or sanctioned.[24]

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13. W.N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (ed. Cook, 1923), Chap.1, quoted in *Lloyd's Introduction to Jurisprudence* 510 (7th ed.).
14. *Ibid*.
15. R.W.M. Dias, *Jurisprudence* 24 (5th ed.).
16. Hohfeld added the fourth term, 'immunity', to Salmond's scheme who had already distinguished the first three terms, i.e., right, liberty and power and the corresponding ideas of duty, no- right and liability, and worked out a table of jural relations.
17. Salmond, *Jurisprudence* 232 (12th ed.).
18. Liberty (privilege), power and immunity.
19. *Supra* note 13.
20. His equivalent for 'right'.
21. See *supra* note 15 at 26.
22. *Supra* note 17 at 220.
23. *Id*. at 216.
24. *Id*. at 217.

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The pertinent question is whether strike fits snugly into the right-duty scheme as discussed above. The answer to this depends upon what kind of duty, if any, may be imposed on or attributed to whom. It may be submitted here that any talk of right-duty scheme with reference to strike defies any and every kind of logic.

The concept has to be analyzed, of course, in the light of employer-employee relationship. The two are "partners in production."[25] The predominant motto of their coming together is the production and distribution of goods and services for the benefit of the society. Neither of them can deviate from their chosen path.

Strike, by definition,[26] is stoppage of work. Conceding the same as a right suffers from an inherent defect inasmuch as it violates the underlying spirit of employer-employee relationship. In other words, instead of promoting and multiplying, it scuttles and retards the production and distribution of goods. Hence, such a proposition can hardly be accepted.

Secondly, strike as a 'right' must have a concomitant 'duty'. Admittedly, no right can exist in vacuum. Thus, some kind of a duty must be attributed to the employer. But such a duty is neither imaginable nor conceivable since such a concession would be abstract, self-defeating and meaningless. In other words, it makes no sense to say that workmen have a right to strike and employers have a corresponding duty to bear that.

Any such hypothesis would result in pushing the employer towards the receiving end wherein the employer would buckle under pressure to yield to all kinds of demands of employees.

Instead, one might also put forth that a duty may be prescribed in specific terms, and the employer may be compelled to adhere to it as part of a right to strike. Such a duty might take, for instance, the form of a mandate to pay some compensation, or to grant a benefit and so on. But any such duty would be concomitant to the workmen's right to claim such compensation or receive such benefit and not any right to strike. Besides, imposition of any duty of such a nature, i.e., an abstract and hollow concomitant duty corresponding to a right to strike surely jeopardises the right chemistry of industrial relations and brings the industry to a standstill.

Of course, every employer is under a pious obligation to meet the reasonable and just demands of his employees. As has been seen, trade unions and strikes emerged as a reaction against the persecutory and

25. Phrase borrowed from *LIC of India* v. *D. J .Bahadur,* (1980) Lab I C 1218 at 1226 *per* Krishna Iyer, J.

26. *Supra* note 8.

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exploitative measures of the employers.[27] Workmen were able to call the shots by virtue of their sheer strength. But such an attitude could not decide the criteria of reasonableness and validity. Hence, the state had to intervene to lay down the rights and corresponding duties governing the employer-employee relations and consequently, several labour legislations, ensuring the just and reasonable needs of workmen, were enacted.[28] This has surely made redundant the prospect of a right to strike.

One must also not forget that state has a duty cast on it to ensure uninterrupted production of goods and for supply of services and, therefore, a balance has been tried to be achieved between the conflicting claims of rival parties. In such a scheme, strike possesses no ideological base to raise it to the altar of a 'right'.

IV The Legislative Intent

A reference to I D Act is a *sine qua non* to ascertain the legislative intent with regard to right to strike. An analysis of the Act reveals that none of its provisions confers a right to strike on any one. Except defining strike,[29] the I D Act contains no provisions either favouring or encouraging strike.

In fact, the I D Act 1947 has several provisions that make the resorting to strikes very difficult. Section 22 of the Act provides that a person employed in a public utility service cannot go on strike in breach of contract without giving to the employer six weeks' notice and/or during the pendency of any conciliation proceedings. Section 23 also contains certain general prohibitions. According to this provision a workman employed in any industrial establishment cannot resort to strike in breach of contract and when conciliation proceedings are pending before a board, labour court, tribunal/national tribunal or an arbitrator. Strike is also barred during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

The I D Act also contains provisions which empower the 'appropriate government'[30] to prohibit continuance of strike under certain circumstances. Thus, where an 'industrial dispute'[31] is referred[32] to a

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27. See part II, *supra*.
28. See part I, *Infra*.
29. *Supra* note 8.
30. *Id*., s. 2(a)
31. *Id*., s. 2(k).
32. *Id*., s. 10, generally.

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board,[33] labour court,[34] tribunal[35] or national tribunal,[36] the appropriate government may by order prohibit the continuance of any strike in connection with such dispute, which may be in existence on the date of the reference.[37] Similarly, where an industrial dispute is referred to arbitration[38] and a notification[39] is issued, the appropriate government may, by order, prohibit the continuance of any strike in connection with such dispute which may be in existence on the date of the reference.[40]

Thus, it goes without saying that the legislature never contemplated the grant of a right to strike. In fact, it has provided strike as a tool to be resorted to in extreme situations when all other measures have failed to yield desired result.

V The Judicial Response Towards a "Strike-Free Society"

It is heartening to know that the judiciary, from early on, has been antipathetic to strikes. The apex court has, in the larger interests of the society, left no stone unturned in denouncing strikes. Donning the robes of a crusader, right from the days of *All India Bank Employees' Association* case[41] (hereinafter referred to as AIBEA), the Supreme Court has tried its best to rid the society of the menace of strike.

In *AIBEA* it was contended, *inter alia* that workman enjoyed a fundamental right to strike as a necessary corollary of the right conferred by virtue of article 19(1)(c), the relevant portion of which reads, 'All citizens shall have the right… to form associations or unions.' It was contended that right to strike was inherent in the right to form unions and that the state was free to impose restrictions for the preservation of public order and morality only. The right to form unions or associations would be without sheen and substance if people did not have the right to go on strike.

The Supreme Court negatived these contentions. Writing for the constitution bench,[42] Ayyangar J observed: "… Art.19 - as contrasted with certain other articles like arts. 26, 29, and 30 - grants rights to the

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33. *Id*., s. 2 (c).
34. *Id*., s. 2 (k k b).
35. *Id*., s. 2 (r).
36. *Id*., s. 2 (ll). .
37. *Id*., s. 10 (3).
38. *Id*., s. 10-A.
39. *Id*., s. 10-A (3-A).
40. *Id*., s. 10-A (4-A).
41. *All India Bank Employees' Assn. Supra* note 4.
42. The bench consisted of B P Sinha, C J, S K Das, A K Sarkar, N Rajagopala Ayyangar and J R Mudholkar JJ.

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citizen as such, and associations can lay claim to the fundamental rights guaranteed by that article solely on the basis of their being an aggregation of citizens, i.e., in right of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens composing it are subject."[43]

The court reasoned that the right to form associations and unions is confined to citizens individually and this cannot be stretched to cover the groups to achieve the object for which they had united themselves. "It is one thing to interpret each of the freedoms guaranteed by the several articles in Part-III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result."[44]

To drive home the point, the apex court also observed, "…it may be pointed out that both under the Trade Unions Act as well as under Industrial Disputes Act, the expression 'union' signifies not merely a union of workers but includes also unions of employers. If the fulfilment of every object for which a union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to a union of employers which would result in an absurdity".[45] Implicit in these observations is the danger involved in conceding a fundamental right to strike.

Thus, in conclusion, the court observed that if right to strike were by implication a right guaranteed under article 19(1)(c), the qualifications, therefore, would be more numerous and different from the ones under article 19(4). This, the court noted, might take the form of qualifications like forbidding strikes in protected industries as well as in the event of a reference of the dispute to adjudication under the I D Act. Because, the court said, if such qualifications are not read into such an implication, the restriction on it in the interest of general public, namely, of national economy, might not be sustained as a reasonable restriction for reasons of morality or public order only. Hence, the court observed: "… even a very liberal interpretation of sub-cl. (c) of Cl. (1) of art.19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective

43. *Supra* note 41 at 180.
44. *Ibid.*
45. *Ibid.*

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bargaining or otherwise."[46]

This position in the *AIEBA* was emphatically reiterated and upheld subsequently in two cases *viz.*, *Kameshwar Prasad* v. *State of Bihar*[47] and *Radhey Shyam Sharma* v. *Post Master-General,*[48] respectively. Interestingly, both of them were decided by constitution benches.[49]

Though the immediate parties to strike are workmen and employer, the ultimate sufferer is the society at large. Strike spreads its vicious tentacles to various cross–sections of the society, and devours each and everything that comes its way. It is not surprising that strikes have a tendency to throw the society out of gear, and trample upon others' rights. Hence, a three judge bench[50] of the Supreme Court in *Communist Party of India (M)* v. *Bharat Kumar*,[51] while approving *Bharat Kumar K. Palicha* v. *State of Kerala,*[52] held thus: "There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the high court has rightly concluded that there cannot be any right to call or enforce a '*bundh*' which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways…"[53] Earlier, the Kerala High Court had, in the latter case, observed: "No political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire state or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the state or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right…."[54] Needless to say, the Supreme Court was in full agreement with this view while pronouncing the judgment in the former.

Lest it may be misunderstood, it is pertinent to note here that the apex court has not targeted strike by workmen alone, but strike by anybody and everybody. In other words, its aim has always been eradication of strike as a concept, no matter who resorts to it.

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46. *Id*. at 181.
47. AIR 1962 SC 1166.
48. *Ibid*.
49. The bench comprised of, in *Kameshwar Prasad*, P. B. Gajendragadkar, A. K. Sarkar, K N Wanchoo, K L Das Gupta and N Rajagopala Ayyangar, JJ. In *Radhey Shayam*, the bench comprised of P.B. Gajendragadkar C J, K N Wanchoo, J C Shah, N Rajagopala Ayyangar and S M Sikri JJ.
50. J S Verma, C J, B N Kirpal and V N Khare JJ.
51. (1998)1 SCC 201.
52. AIR 1997 Ker 291 (FB).
53. *Supra* note 51 at 202, para 3.
54. *Supra* note 52 at 300.

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That is why, in *Ex-Capt. Harish Uppal* v. *Union of India*,[55] the constitution bench[56] of the Supreme Court came down heavily upon the lawyers' strike. The court held: "… lawyers have no right to go on strike or give a call for boycott, not even for a token strike…"[57] Commenting on the pernicious effects of strike, the court further observed: "For just or unjust cause, strike cannot be justified in the present day situation. Take strike in any field, it can be easily realized that that weapon does more harm than any justice. Sufferer is the society-public at large."[58] Thus, it is evident, that, of late, the devastating and catastrophic effects of strikes on the society, and annihilation of the fundamental rights of the citizenry by the strikers, have captured the attention of the court. The *Rangarajan* case[59] was no exception. The case arose out of an unprecedented action of the Tamil Nadu Government terminating the services of all employees who had resorted to strike for their demands. Castigating the anarchy and chaos unleashed by the striking employees, the court expressed its anguish and disapprobation thus: "… government employees cannot claim that they can take the society to ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare state, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike *en masse*, the entire administration comes to a grinding halt. In the case of strike by teachers, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike."[60]

The court also agreed with the submission made by the counsel appearing for the State of Tamil Nadu that in a society where there is large scale unemployment and number of qualified persons are eagerly waiting for employment in government departments or in public sector

55. (2003) 2 SCC 45.
56. The bench consisted of G B Pattanaik, CJ, M B Shah, Doraiswamy Raju, S.N. Variava and D.M. Dharmadhikari JJ.
57. *Supra* note 55 per Variava, J.
58. *Ibid*., per Shah J.
59. *Supra* note 1.
60. *Id.* at 591, *per* Shah, J.

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undertakings, strikes cannot be justified on any equitable ground.

The apex court also took the opportunity to remind the employees in particular, and the public in general, of their duties. The bench observed: "In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large..."[61]

It is thus discernible, from the foregoing, that the judiciary has spoken the mind of common citizenry of this country, on such a highly emotive but contentious issue. The reaction of Khare CJ, a few days before his retirement, to an issue involving judges of Punjab and Haryana High Court, speaks volumes about the judiciary's stand on strikes. The action of 25 judges of the Punjab and Haryana High Court in proceeding on leave *en masse* over difference of opinion with their chief justice, came in for sharp criticism by Khare CJ. He is reported to have told them point blank that their going on leave amounted to strike and such "trade unionism" adopted by them has caused "irreparable damage" to the judiciary. They were asked to desist from such activity in future since the apex court and several high courts have been giving rulings against strikes.[62]

VI Are Strikes Anachronistic?

The brief answer to this question may be in the affirmative. The reasons for this are not far to seek. Strikes, *inter alia*, have outlived the purpose for which they were made.

Strikes, as hereinbefore mentioned, emerged as a reaction to the highhandedness and arbitrariness of ruthless employers that denied even basic necessities to their workmen, benefits which were life-sustaining and work-enabling in nature. Such a pathetic position united the workmen into trade unions, who, through the medium of strikes, could derive the basic necessities.

Trade unionism in India also passed through these phases of struggle and agony. But, the Indian trade unionists did not have to exert themselves to the extent to which their western comrades did. Our trade unions were conceded several benefits, as it were, on a silver platter. The legacies of freedom struggle and socialist moorings of successive governments since independence ensured enactment of scores of legislations conferring several benefits on workmen. The affiliation of

61. *Id*. at 591-92.
62. Reported in *Deccan Herald*, 6 (27.4.2004)

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major trade unions to national political parties also played a significant role in this process. While Industrial Disputes Act, 1947, Trade Unions Act, 1926, Workmen's Compensation Act, 1923 and Payment of Wages Act, 1936 are the four major pre-independence enactments, the post-independent India witnessed the passing of other significant Acts.[63] The gamut of these Acts is so wide that they touch almost all the aspects of workmen's lives.[64] The result is - India today abounds with labour laws mandating the employers to cater to the needs of the workmen from "womb to tomb". Under such circumstances, it would be ridiculous to talk of unleashing the weapon of strike. Of course, in-built mechanisms are provided to ensure scrupulous compliance from the employers.[65] Hence, strikes have become sort of outdated today.

VII Conclusion

Strikes have played a crucial role in shaping and moulding the employer-employee relations and emancipation of workmen but with the passage of time and enactment of several social-welfare laws, they have lost their relevance. As Shah J observes: "Strike does more harm than justice. Sufferer is the society-public at large."[66] The strikers and their supporters would do well to pay heed to the advice of Shah J[67], and contribute their mite to ensure harmony in society.

Sandeep S. Desai[*]

63. *E.g.*, Employees State Insurance Act, 1948; Factories Act, 1948; Employees Provident Fund and Miscellaneous Provisions Act, 1952; Payment of Gratuity Act, 1972; Maternity Benefit Act, 1961; Payment of Bonus Act, 1965; Contract Labour (Abolition and Regulation) Act, 1970.

64. *E.g.*, Compensation for injuries sustained out of and in the course of employment, maternity benefit, gratuity, bonus, provident fund, insurance, compensation for retrenchment, lay-off and closure, resolution of industrial disputes, trade unions, etc.

65. *E.g.*, the machinery and procedure for the investigation and settlement of industrial disputes, prohibition of, and penalty for, committing unfair labour practices, special provisions under s. 33 of the *Industrial Disputes Act*, 1947.

66. See *Harish Uppal,* s*upra* note 4.

67. *Supra* note 1, para 21.

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