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Seminar

on

The Problems of Law of Torts

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Liability in India resulting from Damages through  
Actions of Combinations of Men in Furthering  
their Interests both Through Permitted and Non-  
permitted means - with particular stress on Gheraos

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Conspiracy as an independent tort has now become too well established and it is so longer controversial. The speeches in the three cases in the House of Lords -

Mogaul steamship Co. v. Mc Gregor (1892 A.C.25)

Allen v. Flood (1898 A.C.1)

Quinn v. Leathem (1901 A.C.495)

previous caused some confusion. But the speeches in Crofter Hand Woven Harris Tweed Co. v. Veitch (1942 A.C. 435, 489) have introduced order and have made it possible to state the law with some confidence.

Viscount Cave, L.C. in an opinion (with which Lord Atkinson concurred) laid down that -

- "1) a combination of two or more persons wilfully to injure a man in his trade is an unlawful act and if it results in damage to him, is actionable.
- 2) if the real purpose of the combination is not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues." (Refer Sorrell v. Smith 1925 A.C. 700).

The Crofter Ruling

A combination wilfully to do an act causing damage to a

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man in his trade or other interests is unlawful and if damage in fact is caused is actionable as conspiracy. The exception to this rule is - "where the defendants' real and predominant purpose is to advance their own lawful interests in a matter in which they honestly believe that those interests would directly suffer if the action against the plaintiff was not taken." Existence of 'malice' or 'dis-interested malevolence' are not essential to make it actionable. Even the fact that the damage inflicted to secure such a legitimate selfish purpose is disproportionately severe, though it may throw doubts on the bonafides of the avowed purpose, does not necessarily involve liability (per Viscount Simon L.C. P.447). A combination would be actionable if its object was to demonstrate the power of those combining to dictate policy or to prove themselves masters in a given situation or 'if it were inspired by a dislike of the religious views or the politics or the race or the colour of the plaintiff or by mere wantonness. (Refer Huntley v. Thornton 1957 W.L.R.321). Strike is a powerful weapon in the armoury of workers. It is a permitted means of furthering the interests of workers provided it is 'peaceful'. According to the observation of the High Court of Calcutta in the "Jay Engineering Works v. State" (A.I.R. 1968 Calcutta.407) - Sections 17 and 18 of the Indian Trade Unions Act of 1926 grant certain exemption to members of a trade union. But there is no exemption against either an agreement to commit an offence or intimidation, molestation or violence, where they amount to an offence. Members of the trade union may resort to a peaceful strike, that is to say, cessation of work with the common object of enforcing their claims. A concerted movement by workmen by gathering together either outside the industrial establishment or inside within the working hours is permissible, when it is peaceful and does not violate the provisions of law. But when such a gathering is unlawful or commits an offence, the exemption is lost. Thus where it resorts to unlawful confinement of persons, criminal trespass or where it becomes violent and indulges in criminal force or criminal assault or mischief to person or property or molestation or intimidation, the exemption can no longer be claimed." Similar would be the case of liability for tortious acts like intimidation, assault and battery false imprisonment or causing of nuisance or trespass incidental to such concerted movements. The High Court further observed - "There are no express provisions in the Trade Unions Act of 1926 regulating strikes or picketing. But these are recognized weapons in the armoury of labour .... There is no provision in law which exempts a workman taking part in a strike from the Criminal laws of the land." The

same is true of the liability in torts as well. Because workmen as a privileged class cannot claim exemption from liability in torts. S. 17 of the Trade Unions Act, of course exempts workmen from being charged with criminal conspiracy. But nothing would bar an action in tort for damage occurring as a result of conspiracy as per the canonistic interpretation of the House of Lords in the Crofter Case.'

### Gheraos and Tort Liability

It is indeed difficult to give a precise definition of the term 'Gherao'. As per J. Sinha - it means "the physical blockade of a target, either by encirclement intended to blockade the egress and ingree from and to a particular office, workshop, factory or even residence or forcible occupation. The blockade may be complete or partial and is invariably accompanied by wrongful restraint and/or wrongful confinement and occasionally accompanied by assault, criminal trespass, mischief to person and property, unlawful assembly and various other criminal offences. Some of the offences are cruel and inhuman like confinement in a small space without lights or fans and for long periods without food or communications with the outside world. The persons confined were beaten, humiliated by abuses, and not allowed even to answer calls of nature and subjected to various other forms of torture and are completely at the mercy of the besiegers. The object is to compel those who control industry to submit to the demands of the workers without recourse to the machinery provided for by law and in wanton disregard of it - in short - to achieve their object not by peaceful means but by violence. Such a gherao invariably involves the Commission of offences." At the same time it may result in damages for torts as well.

As per Justice Banerji - "Gherao as such to say simple encirclement is no offence under the Criminal law of the country. But a gherao accompanied by violence .... is a criminal activity" (Jay Engineering Co. Case).

"Gherao" means, according to J. Amaresh Roy, collective action by large number of persons surrounding, encircling or besitting some other person or place for the purposes of using coercive methods to compel acceptance of demands or claims, generally resorted to by workers and employees against the authority or employers or their officers and staff .... Such coercive methods in Gherao may take many forms ... crowding of public places and roads may be of a degree which is nuisance in law." (Jay Engineering Co. case).

Justice B.C. Mitra opnes that - "Gherao is encirclement by the workers of the employers and their managerial staff followed by various hostile manifestations. Such manifestations take crude and abnoxious forms and involve physical and mental torture."

Ultimately elaborating the legal position with respect to Gheraos the Calcutta High Court said - "If it is accompanied by assault, criminal trespass, mischief to person or property .... such a Gherao is unconstitutional and violative of the Laws of the Land."

Gherao is not protected under the Trade Unions Act and as such it is not a permitted means of furthering the interests of workers.

Any amount of thinking and rethinking on this issue, would never make one even in the least feel towards justifying gheraos. It is indeed obnoxious to human decency, even to imagine that as a form of democratic agitation. It is indeed true that the workers have a right to agitate for the redress of their grievances. But a worker, like any other national of India, is bound by the Constitution of India, which is the supreme Law of the land. He can never claim any exceptional exemption from the laws of the land, criminal or civil, while he agitates in furtherance of his interests. He has to agitate within the framework of law and get his grievances redressed through the procedure laid down by law. Causing mental torture to the employer or the managerial staff by way of physical pressures of the crudest type, could never be justified as a legitimate form of labour agitation. Hence the High Court of Calcutta is undoubtedly correct in arriving at the conclusion that Gherao is not a "Labour problem but a Law and Order problem."

Would anyone in the least doubt the liability in torts that would arise from Gheraos as a consequence of false imprisonment, nuisance, or for causing mental torture? If in case we commit the blunder of recognizing Gherao as a legitimate form of labour agitation, it is as good as tarpedoing the entire law and order structure of the country. The development of law during the course of human civilization is a saga of putting an end to practice of self-help (practice of adrolepsia as it was called in Primitive Communities) and preventing men from taking law to their hands. We will be putting the clock four thousand years behind by recognising the Gherao as the legitimate mode of the agitation. It is as good as giving a free licence for committing violence.

In the Jay Engineering Case His Lordship Chief Justice

observed "the strength of the judiciary is in the command it has over the hearts and minds of men. The court that rises its head against the mob may be temporarily unpopular, but it soon wins the confidence of the Nation." Judiciary must always act as a guardian of the conscience of the people. The most regrettable factor is the encouragement given to Gheraos by the United Front Government of West Bengal by styling it essentially as a Labour Problem and Legitimate mode of agitation. Labour Leaders comparing 'Gheraos' to 'Satyagraha' is indeed ridiculous because Satyagraha rules out violence and means infliction of suffering not to any one, but on the Satyagrahi himself. Hence Gheraos are diametrically opposite to Satyagraha.

Dr. Arjun P. Aggarwal in his work "Gheraos and Industrial Relations" writes that there were 1018 cases of Gherao affecting 583 establishments, Indian and foreign, over a period of six months in 1967 in West Bengal. These Gheraos affected the Private as well as Public Sector undertakings. The duration of the Gheraos ranged from 1/2 hour to 48 hours and more. The learned author has also listed up the causes of Gheraos as being for new demands, for discharge and disciplinary action, for non-payment of wages or bonus, for non-implementation of Wage Boards' Recommendations, for retrenchment and lay-off, for promotion and transfers, for non-industrial causes, for non-recognition of Union, for non-implementation of awards etc. These observations are sufficient to indicate the enormity of the problem and the threat it has posed to the law and order situation in the country. Hence the Tripartite Standing Labour Committee that met in Delhi on May 10, 1967 passed a resolution. - "This session of the Standing Labour Committee disapproves coercive and intimidating tactics including Gheraos (Wrongful confinement) for resolving industrial disputes."

Professor S.N. Dhyani, reviewing the book "Strikes, Lockouts and Gheraos - Law and Practice" written by Sri V.P. Arya states - "The author has rightly condemned Gheraos as illegal and unlawful. The judgment of the Calcutta High Court in Gherao case has been correctly quoted in support of his thesis. However author's remarks on Gheraos are neither adequate nor objective. While condemning Gheraos as illegal within the matrix of existing Indian law, he perhaps deliberately ignores the circumstances leading to Gheraos. He has ignored the political, economic and human motivations which lead to gheraos in the industry." Undoubtedly Gherao is not a legitimate trade union weapon for achieving industrial goals of the workers. Management in India being despotic and traditional has not yet realised the Industry has social functions and obligations. No amount of legislation or judicial fiat can abolish Gheraos from the

industrial scene for good without removing the causes that give rise to such situation in the industry." (Refer Journal of the Indian Law Institute, vol. 10 No.2 1968 p. 351). The learned reviewer seems to contradict himself that while he himself states that Gherao is not a trade union weapon, yet he seems to be sympathetic to the causes that lead to it. Most of the crimes like theft, extortion and robbery may also have similar social causes behind them. That could never justify the acts done. The plea of necessity has been rejected in the case of Dudley and Stephens (Dudley and Stephens v. Emperor (1884)14 QBD 273), however laudable the statement 'Necessity knows no law' be. The socio-economic causes that are listed up by Dr. Arjun P. Aggarwal (cited above) can all be remedied by resorting to appropriate procedures laid down by law. Under no circumstance can these causes justify damages caused by combinations of men by resorting to Gheraos and it can never exempt them from liability in tort.

#### Bibliography

- 1) A.I.R. 1968, Sept. vol. 55. p.407.
- 2) Labour Law and Labour Relations (Indian Law Institute 1968).
- 3) CITRINE's Trade Union Law - Ed. by M.A. Hickling (London 1967)
- 4) Journal of the Indian Law Institute vol. 10 No. 2 (1968) p. 357.
- 5) Gheraos and Industrial Relations by Dr. Arjun P. Aggarwal (Bombay 1968).
- 6) Salmond on Torts - 14th ed. by R.F.V. Heuston (Sweet and Maxwell 1965).