# FROM THE PREFACE TO THE FIRST EDITION

Indian law teachers and jurists quite generally agree that teaching law by means of the study and discussion of cases holds certain advantages over more traditional methods. No way of teaching can be perfect. Method and style must always be personal matters. A method that works well for one teacher may be uncongenial to another. The preparation of this book does not imply, therefore, that every teacher of labour law will or should find the case—or discussion—method the most useful and congenial way to teach labour law. Many will prefer to continue with the accepted method, either in whole or in part.

But even so no book is now available in India, either a case book like this one or a teachable text book, to help with the teaching of labour law by any method. For that reason this book should prove a useful tool, hopefully, for teachers following either method. Its emphasis on human situations and human problems, as contrasted to dry rules of law, should help serve, in whatever way the book be used, to bring out the human interest and the drama of this fascinating subject.

With all this said, however, it is still true that one important purpose of the book is to facilitate experiments with the case, or discussion, method. The editors' faith is that method stimulates independent and creative thinking by the students in a way no other can. For experiments seeking to prove or disprove this thesis, labour law will have the important advantage that the subject is not yet, very broadly established. It has not, like many papers, become rigidly orthodox and embalmed, so to speak, in syllabi. Thus the subject remains flexible and therefore more hospitable to innovations. This is important because the innovations needed, to use this book for teaching by discussion, must be rather drastic. A copy of it, for one thing, ought to be in the hands of every student, or easily available to him, so that he can prepare in advance to discuss the assigned cases and materials. The teacher should then use most of the time of each class in asking questions or putting suggestions concerning the cases, bringing out the reasons for the contrasts between them, and focussing the students' attention on the wisdom or lack of wisdom of each particular decision. He can explore the social values, and the individual and group interests, involved in any solution; encourage his students, and fan the flames of their arguments. He can gently lead them into indefensible positions (not to humiliate them, but to show them, rather, the dangers of jumping to conclusions and sweeping generalizations). He can annoy them by neo-Socratic questionings. Such teaching can stir interest and encourage zestful thought.

Those who argue against these techniques will say, and with reason, that they will confuse the slower students and perhaps retard them. These critics will also say, and again with reason, that coverage will fall victim to the slow pace which intensive discussion compels. (The slowness may require some lecturing, at intervals, to cover the uncovered ground and to comment.)

The infrequency of papers on labour law also involves one disadvantage that offsets some of its attractiveness for experimental teaching. Since it is not taught as generally as are papers like contracts, property, and torts, the "radiation" of new thinking, as Arnold Toynbee calls it, may thus be less rapid and intense. The editors hope, however, that the advantages of flexibility may outweigh this dis-advantage.

This book was conceived at a conference held at Ranikhet in April 1964 and sponsored by the Indian Law Institute. At the conference were some score of young labour-law teachers from various Indian law faculties, doctoral candidates, members of the Institute's research staff and other interested persons. Dr. M.P. Jain, then the Research Director of the Institute, was in the chair.

The old, old dilemma at once asserted itself: extensive coverage, or intensive? The conferees discussed this at length, and agreed at last that the book should not try to deal with the whole vast subject of labour law but with one special aspect of it. Most papers in labour law take up eight statutes, including those called protective labour laws. Our book starts not from statutes but from problems. It concentrates on relations between employers, employees, unions, and Government, conveniently called labour-management relations. The reason is not that such relations are more important than protective legislation, but that teach himself they constitute a peculiarly difficult field for a student to teach himself without guidance. If he becomes an advocate practising in the labour law field, he will often have to apply one or more of the protective statutes to his clients' affairs, but from the texts of the statutes and the annotations he can in most cases find the answers without great difficulty. In the area of labour relations, however, this is less true. The concepts of union recognition, of a tribunal's power to create new rights and duties, of a collective bargaining contract, of grievances, of labour arbitration, of the effect of award or contract to bind or benefit a shifting group of workmen-for a student of conventional law, all these open windows into a strange new world. These concepts, bearing no more than faint resemblances to laws of contract or property or tort, mark this subject as a recondite one needing study in law school. If the student does not learn it here he may find it hard to learn it later.

A word may be of interest about an earlier undertaking in the United States which had some bearing on the Ranikhet Conference. In 1947 a group of American labour-law teachers, labour lawyers, and experts in labour relations, met to discuss what a law student should know if he were to practise in this field. The conferees all voiced a basic dissatisfaction with labour-law teaching in the United States: the

teaching materials then available concentrated on strikes, boycotts, lockouts, and the goondas (on both sides) that affected and often poisoned relations between management and labour. (Gheraos had not been thought of yet.) None of the teaching materials emphasized the peaceful resolution of disputes by compromise and by agreement.

The result of that 1947 effort was *Labour Relations and the Law,* now in its third edition.* It stresses the peaceful administration of the collective bargaining contract (the typical regulator of industrial life in the United States, as standing orders may be in India). In both countries the objectives sought are similar: the attainment of industrial harmony, which conduces to richer production and to greater human happiness. Adjudication and statutes are central to this search in India, while voluntary agreements are, as noted, central to it in the United States. That neither system works perfectly can hardly cause surprise, given the sharp clashes of interest and the stormy qualities of human-kind. Adjudication is vulnerable for its delays, its bitterness, and its expense; and for its many wrong decisions. Collective bargaining is vulnerable for its encouragement of strikes, for its lack of principled decisions, and for its failure to protect consumers' interests.

One similarity between this book and that earlier book is that each is a product of the joint efforts of a group. As one of the editors of that book, and now as a visiting professor at the Indian Law Institute, I have been in a position to supply something of a link between the two groups.

The active editors have been so many that it is impracticable to mention the details of the contribution made by each. Most are either teachers of labour law or members of the staff of the Indian Law Institute. All are listed on a separate page. To each my gratitude.

This book owes most to three of these editors whose able and devoted work has been central to its growth. Each has given time and effort unsparingly. Mr. Shahid Siddiqi worked almost continuously from Ranikhet in 1964 through the summer of 1966 (until he left India) and did much to organize the entire project. Mr. Balkishan Rathi and Mr. Mohammed Ghouse most generously sacrificed their long vacations in 1966, and again in 1967, to work, intensively and long hours, to make possible the completion of the project.

Mr. V. Krishna Murthy contributed much fine material and did good editorial work, as did also Messrs S. L. Agarwal, K. Natesan, and Durga Prasad. Earlier Mr. Gopal Krishnan, in Lucknow and in Delhi, had pioneered with preliminary digesting of cases. From Jaipur Mr. S. N. Dhyani and Mr. N. K. Joshi sent us valuable materials.

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* With different editors-in-charge for each edition: Mathews (1953) Aaron & Wollett (1960); Williams (1965). There are also various pamphlet supplements.

One other editor must have special mention. Dr. V. B. Singh, labour economist at Lucknow, reviewed many chapters to insert notes on non-legal materials; he also wrote the opening section on the economic background of labour relations.

The editors gratefully acknowledge the cooperative helpfulness of the Indian Law Institute and its Director, Dr. Gyan S. Sharma, in making unstintingly available to them its resources and in facilitating their work in every possible way.

A Committee, chaired by the retired Supreme Court Justice S. K. Das, carefully reviewed the plans for the book as they had emerged from the Ranikhet Conference, and set the course which the editors have done their best to follow.

The editors have wrestled with the delicate task of correcting, with or without calling attention to, small errors in the texts of judgments, most of which are doubtless slips by a typist or a printer. By the use of *"sic"*, or by some of the footnotes signed *"Eds.,"* the editors have called attention to the most troublesome of these. But this they did only where there was some real question about what was correct, or where the matter was too serious to make an informal correction seem permissible. In other cases the editors have ventured simply to correct such small and obvious slips, without flagging them, trusting to the good nature of judges tribunals to forgive any inaccuracies of quotation resulting from and tribunals to forgive any well-intentioned alterations.

Cases have been chosen for their teachability, their importance, and their interest, roughly in that order. The book does not try to include or to mention all important decisions. It is not for the practitioner, but for the student and the teacher. Old cases which have lost importance are sometimes omitted; so also are many new cases that do little more than repeat old doctrine. Where a case is important on more than one point it is sometimes divided; but more usually it is inserted at the more important spot, perhaps with a cross-reference to the other. It may not be a bad thing for the student to pick up some points out of order—as he will often do in the real life of legal research and practice.

There is more of textual material, and less of excerpts from judgments and awards, than one might expect. This is in part because much labour-relations law is not found, in India, in statutes or in judgments. And in part it is because the editors judged that a good many such textual props would be needed to help the students to understand the problems of this unfamiliar field.

The book contains six parts and an appendix.

The editors gratefully acknowledge consents for extensive quotations from Dean K. Tripathi, Mr. R. F. Rustamji, Professor Van D. Kennedy, Mr. Peter Seitz, Manaktalas Publishers, Asia Publishing House, and *American Labour.*

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The editors were able to see the first couple of hundred pages through the press. Thereafter, the heavy tasks involved in completing the book were graciously taken over by Mr. K. R. Dixit, assisted by Mr. R. K. Raizada, with invaluable help in indexing from Mr. V. D. Kulshreshtha. To all these, for their arduous and painstaking work, the editors record their gratitude.

That the book will have many defects—and grave ones—the editors are painfully aware. But it will serve a major purpose if it stimulates others to improve upon it. The proof of this pudding will be in the teaching. The editors hope that the book will find a useful place in some papers on labour law, and that it may have some influence, not entirely confined to that subject, in familiarizing law students and law teachers with a method that can do much to strengthen the breadth and toughness of legal thinking in this country.

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