BOOK REVIEWS

THE LAW OF INDUSTRIAL DISPUTES (4th ed. in two volumes, 1985). By O. P. Malhotra. N. M. Tripathi (P) Ltd., 164 Samaldas Gandhi Marg, Bombay-400 002. Pp. vol. 1: lllxx+712; vol. II: xliii+713 to 1748. Price Rs. 700.

LEGAL TREATISES in India have followed one of two methods. Either they expound the law according to the topics or they are a section-wise commentary of the statute. The former method is suitable when the law is broadly worded. The Constitution of India is the best example of a broadly worded statute. Much of it is concerned with the objectives to be achieved and values to be protected. Even the remedies are wide ranging. Exposition of the Constitution has, therefore, been made topic-wise with great success in a book like that by Seervai.[1] Of course even the Constitution can be the subject of commentary article-wise as is done by Durga Das Basu. But perhaps, the discussions on the role of judges, the consideration of appropriate values and the ethical judgments and governmental policies are suited more to the topic-wise exposition.

On the other hand are the majority of commentaries section-wise on the various Indian statutes which have attained varying degrees of success in conveying the meaning and depth of understanding the statutes.

Where does the Industrial Disputes Act stand between these two types of statutes? Perhaps it stands mid-way. On the one hand it is a statute dealing with industrial disputes. It is not concerned so much with objectives, values and ethical decisions as the Constitution is. But at the same time it is not an ordinary statute. It deals with labour in industry. In this way it is concerned with the largest segment of working population. The subject of the legislation is human beings. Their work in industry is the centre of the economic activity of most of the people in the country. The Constitution which came after the Act was enacted, has infused the Act with the broad philosophy of a welfare state. The preamble, the fundamental rights and the directive principles of state policy have provided a basis for the making of the statutory provisions and also the ends to be achieved by their enforcement. The statute which was already sensitive because it deals with human beings with their aspirations has become more so in the background of the Constitution.

The most distinguishing feature of labour law has been its enrichment by the decisions of the Supreme Court and the High Courts. The provision of article 136 of the Constitution has been used by employees and

1. H.M. Seervai, *Constitutional Law of India* (1984).

employers for seeking special leave to appeal against the decisions of industrial tribunals and labour courts. The Supreme Court and High Courts have treated labour disputes as a special category and have entertained special leave petitions under article 136 as also writ petitions under articles 32, 226 and 227 liberally. The abolition of the labour appellate tribunal made the Supreme Court and High Courts as the courts of first resort against the decisions of industrial tribunals and labour courts. While this had the disadvantage of flooding these courts with labour law cases, the labour jurisprudence has gained immensely in richness and plenitude by the wealth of these decisions. Perhaps, there is no other statute except of course the Constitution on which the Supreme Court and High Courts have so lavishly pronounced their opinions.

The task of a commentator on the Industrial Disputes Act is truly daunting under the circumstances. This has had a double effect. No ordinary commentator on the Industrial Disputes Act has been found satisfactory. The one commentary which has proved not only satisfactory but also rewarding to scholars, lawyers and judges alike is that by O.P. Malhotra. It has been indisputably *the* commentery on the statute. Why? The reasons for the success of the book perhaps lie in the unique understanding of the above mentioned characteristics of labour law by the learned author. To enter the heart of labour law and to bring out its full import with all the nice shades of meanings and subtleties is no work for the run-of-the-mill lawyer. O. P. Malhotra has been the rare type of a scholar committed to a deep understanding of labour law. His devotion to this study has been long and thorough. He has produced a commentary on the Industrial Disputes Act in which every aspect of the law is fully investigated and commented upon. The wealth of case law is matched by the extensive knowledge and analytical capacity of the author. In addition to the Indian case law, he has also referred to English and Australian cases whenever they are relevant. The book has, therefore, become satisfying not only because of its thoroughness but also from the jurisprudential point of view. Every decision of labour law has been studied, analysed and woven into the web of fine exposition of the various provisions of the statute.

But the labour law is not only expanding in the wealth of case law but is developing towards certain goals. This development has been watched, expounded and criticised by the author in the different editions from time to time. On a subject like this there are bound to be different schools of thought among the policy makers of the government, legislators, judges, lawyers and commentators. Some have given importance to the sanctity of the contract of employment and tried to hold the balance between the capital and labour strictly in the interpretation of the statutory provisions. Since the parties to the contract are not equal this method has not satisfied the labour. The trend to treat the statute as a remedial one and interpret it liberally with the definite goal of labour welfare has been evident in the deve-

lopment of the case law from the very beginning starting as early as from the decision in *Western India Automobile Association* v. *The Industrial Tribunal.*[1a] Prominent among the judges of the Supreme Court who gave this welfare orientation to the labour law was Gajendragadkar who as a judge and the Chief Justice of the Supreme Court gave a definitely pro-labour orientation to the industrial law. He also influenced legislative and judicial thinking through the National Labour Commission Report which he wrote as the chairman. More recently V. R. Krishna Iyer and O. Chinnappa Reddy JJ., Y.V. Chandrachud C. J. and P. N. Bhagwati C. J. have all combined to make the labour law pronouncedly welfare oriented. The sanctity of contract has of course suffered in the process. No wonder a jurist like Hidayatullah and a scholar-commentator like O. P. Malhotra have had the unpleasant task of voicing their protests against some of the results of these labour oriented decisions of the Supreme Court and government policies. The foreword by Justice Hidayatullah, former Chief Justice of India, is the most recent repetition of the protests he has been lodging against this trend from time to time. The erudite discussion of the controversial decisions by the author in the body of the book also exposes those aspects which do call for criticism.

Some of the controversies probably deserve to be treated in a broader context. Justice Hidayatullah has criticised the failure of the government to implement fully the provisions of the two amending Acts, *viz.*, the Industrial Disputes (Amendment) Act 1982 and the Industrial Disputes (Amendment) Act 1984. For instance, the definition of "Industry" in section 2 (*j*), expounded and expanded by the Supreme Court in the landmark decision in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*[2] has been amended by the Act of 1982 to exempt certain activities from the operation of the statute such as hospitals, educational and charitable institutions, as also the activity of the government relatable to sovereign functions. But this crucial provision has not been brought into force even now. Justice Hidayatullah has an acerbic comment on this. He says, "When an enacted law is delayed for weeks, months or years one gets the impression that all the thinking takes place after the enactment and not before."[3]

This is one way of looking at it. Justice Hidayatullah could express such an impression of the inactivity of the government probably because, as he himself says:

> [S]ome of the unanimous decisions of the Supreme Court under my captaincy and authored by me were overturned with

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1[a]. A. I. R. 1949 F. C. 111.

2. A I. R. 1978 S. C. 548.

3. O. P. Malhotra, *The Law of Industrial Disputes*, vol. 1, foreword at viii (4th ed. 1985).

dialectical materialism misapplied or applied where it did not apply.[4]

While the chief justice deserves to be listened with the greatest respect, one may suggest another possible view. Can it be that the amendment was made by the government to provide for future action, if necessary? Could it be that a framework of the change in the notion of industry should be provided to be given effect to, if and when necessary? The analogy of part XVIII of the Constitution providing for emergency provisions comes to the mind. These provisions were inserted in the Constitution to be used only if an emergency arose. Could it be that the government thought that the amendment of the definition of "Industry" should be used only if the wider application of the Act based on the wide construction placed on the notion of industry by the Supreme Court creates such difficulty that the amended definition has to be brought into force? If such a charitable view is taken perhaps the delay on the part of the government in enforcing the amendment may be found to be due to some understandable reason.

Another controversy fully treated by the learned author at the appropriates places is the extension of the construction of "retrenchment" initially by the decisions of V. R. Krishna Iyer J., subsequently adopted by larger Benches of the Supreme Court which had the effect of making the previous law based on Full Bench decisions out of date. Here the government has amended the original definition of "retrenchment" and given effect to the expanded version of it by the amending Act of 1984. The very fact that the government has acted quickly in giving effect to this amendment and has yet abstained from giving effect to it in the definition of "Industry" by the earlier Act of 1982 shows a design and not mere inaction. The learned author has shown a complete grasp of the subject matter so far as the law is concerned in dealing with these controversies and has been outspoken in expressing his views as an influential commentator has the right to do.

All these features have made this exposition of the law of industrial disputes the only one of its kind. To add to the uniqueness of the book, the fourth edition has the following new features. The bulk of the volumes in the third edition has been drastically reduced. The second volume of the third edition contained analogous statutes. The fourth edition has done away with the reproduction of these statutes. For, the analogous statutes are themselves too many. For instance, a book like that by Malik[5] which attempts to contain all of them has itself grown into a very big volume and no purpose is served by attempting that task in a

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4. *Ibid.*
5. P. L. Malik, *Industrial Law* (14th ed. 1985).

book like the present one. What is most refreshing is that the superior paper and binding used in this edition makes it a work comparable to a good foreign publication. It is also easier to handle. Of course, the greatest attraction to a reader and the practitioner is the wealth of learning contained in the book which it is a pleasure to taste on every occasion one likes to dip into it. The book has become a classic and will continue to be so under the learned author.

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