OUR INDUSTRIAL JURISPRUDENCE (1987). By Gulab Gupta. The Central India Law Institutute, Jabalpur. Pp. xlvi+372. Price Rs. 70 paperback edition; Rs.80, library edition.

THE BOOK[1] under review is perhaps the most scholarly critical survey of the industrial jurisprudence as it has been developed in India through adjudicating authorities and ultimately by the Supreme Court. The author fully deserves the compliment in the foreword by Justice G.L. Oza, Judge of the Supreme Court, when he says that "[t]his is a unique attempt where theoretical and applied aspects of our industrial law have been studied side by side and analysed." To this we may add that the author's objectivity unencumbered by preconceived notions and populist considerations is another aspect for which he deserves high praise.

The author, who is a sitting judge of the Madhya Pradesh High Court, is a unique blend of scholarship and experience. He made a scholarly study of labour law at the Yale Law School. Previously, he had distinguished record of scholarship from the Allahabad University. This has been supplemented by his personal involvement with labour relations at grassroots level. He appeared as counsel for coal miners in important labour disputes. While doing so, he had friendly relationship with those against whom he appeared, *i.e.*, employers and their representatives. It is praiseworthy that even while fighting for just demands of workers, he never encouraged indiscipline or violence — a belief which won him many friends from those handling cases on behalf of employers.

It is no longer a matter of controversy that there should be a harmonious balance of part III of the Constitution, dealing with fundamental rights, and part IV, containing directive principles of state policy, so as to give effect to the vision of the great generation of leaders who were involved in drafting our Constitution after periods in prisons while fighting for Indian freedom.

Justice N.D. Ojha, then Chief Justice of the Madhya Pradesh High Court, and now a judge of the Supreme Court, has rightly emphasised that it is the function of the judiciary to strike a proper balance between conflicting and competing claims. There is the duty of the welfare state to ensure, apart from political justice, social and economic as well. At the same time, workmen have to play their role by giving a fair deal to the community by maintaining discipline and augmenting production. Merely giving high wages, social security and job protection to them, without a corresponding increased commitment of labour to discipline and higher production in the interest of the general welfare of the people, will not enure to the benefit of the country as a whole.

In the sphere of regulating industrial relations, rule 81*A* of the Defence

1. Gulab Gupta, *Our Industrial Jurisprudence* (1987).

of India Rules played an important role. It put drastic restrictions on strikes and lockouts. But at the same time, it provided for an effective substitute by enabling the government to refer disputes to adjudicators appointed *ad hoc* to deal with each dispute. Their awards were made binding on employers. The adjudicators gave substantial benefits to labour they could not have achieved through strikes, which generally ended in failure and disappointment, followed by large scale victimisation. This is why, when India achieved independence, the Indian National Trade Union Congress and trade union wing of the Indian National Congress opted for compulsory adjudication even though it was accompanied by drastic restrictions on their right to strike. This led to the passing of the Industrial Disputes Act 1947 which has provided the framework for state regulation of industrial disputes till now.

The author has, in the second chapter on the historical perspective, rightly observed that our industrial jurisprudence reflects more of Gandhian than Marxist approach to the problems of labour and management.[2] We may add that the Gandhian approach is a humane approach which seeks to establish harmony and to shed hatred. If independence could be achieved by non-violence, there is no reason why social justice cannot be achieved through non-violence, provided that there are enough persons dedicated to such approach.

The author refers to the jurisprudence of *Minerva Mills Ltd.* v. *Union of India*,[3] which seeks to bring a rational synthesis of claims of employers based on fundamental rights and aspirations of employees based on directive principles. He is right when he says that the function of industrial jurisprudence "is to evolve a rational synthesis between the conflicting claims of the employers and employees in the wider interest of the society...."[4] The main function of the law relating to industrial relations is to lay down the means of such synthesis.

Law in relation to labour has developed in a twofold manner—through statutory law and judicial law making. Legislation and courts have both moved towards the common goal of securing social and economic justice not only to labour but to other segments of society. The author has also rightly emphasised the importance of the norms laid down by the International Labour Organization, which constitute a system of international industrial jurisprudence based on social justice. In many a case, where there has been inactivity on the part of the legislature, the judiciary has stepped in to fill the gap. The most classical example of this is Justice V.K. Krishna Iyer's judgment in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*[5] where he enlarged the concept of industry to every

2. *Id.* at 10.
3. A.I.R. 1980 S.C. 1789.
4. *Supra* note 1 at 3.
5. A.I.R. 1978 S.C. 548.

type of organised effort in which labour and capital cooperate to produce material goods or render material services. Through this process, the ambit of industrial jurisprudence has been expanded to include educational and research organisations, hospitals and other organised activity. The provocation for this judgment was the inactivity of the legislature.

Dealing with social justice, the author has rightly emphasised that social justice operates at two levels, *i.e.*, distributive and corrective justice. In this connection, it may be worth noticing that through various judgments of the Supreme Court, a measure of job security has been ensured to the industrial worker for which there is hardly any parallel in other judicial systems.

No one can deny that job security and fair conditions of service are imperatives insofar as the Indian worker is concerned. This is the distributive part of social justice. But, somehow, in recent years, the law has gone off the rails by not putting enough emphasis on the corrective part of social justice. This requires that in return for security of employment and fair conditions of service, labour should be required to work as a disciplined force and strive for more production. In this connection, the author has dealt with some anomalies which have tended to distort the happy balance between distributive and corrective part of social justice. Examples of these are settlements arrived at in public sector undertakings, where wages and benefits have been freely given periodically, even though the industries concerned have been suffering losses. Workmen have been given higher wages, but there has been no corresponding improvement in the efficiency or productivity of labour leading to continued mounting losses. Most of these losses have been passed on to the country when there are so many urgent demands on its scarce resources. In this context, the following extract from the present study is worthy of note :

> Social interest inherent in 'social justice' cannot and should not be ignored long. It would do immense good to the idea and the society if our Government appoints an agency to study ways and means of linking wages and financial benefits with productivity, so that the workers are assured of their share in the prosperity and the society and consumers are saved of unnecessary increase in price structure.[6]

This is an approach, which, to our mind, is the only correct one for deciding labour disputes. In the last decade or so, the Supreme Court has, through the judgments of Justices Krishna Iyer, D.A. Desai and Chinnappa Reddy, focused on the distributive part of social justice. In doing so, however, they have tended not to give enough importance to its corrective part and social responsibility of labour, particularly in the public sector. They have admonished this sector to be the "ideal employer," but have not asked its employees to be the 'ideal employees.'

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6. *Supra* note 1 at 134.

One can already see in judgments of the Supreme Court in the last two years or so, such a balanced approach being adopted. It is hoped that this will be kept up, so that the society at large gets the benefit of increased production in return for a fair deal to labour, in the matter of fair conditions of service and job security. This is indeed a timely book and deserves serious attention of all participants in the shaping of industrial jurisprudence—the worker, the employer, the legal practioner and most importantly, the judiciary.

There is no doubt whatsoever that the author has made an outstanding contribution to the on-going debate on how industrial jurisprudence should be shaped in a manner so that all concerned feel that equal justice is rendered to all concerned—the worker, the employer and the society at large.

That way, and that way only, constitutional imperatives as laid down in parts III and IV can be achieved.

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