BOOK REVIEWS

INDUSTRIAL RELATIONS AND LABOUR LAWS (INCLUDING LABOUR LAWS ON SOCIAL SECURITY, WAGES AND MINIMUM STANDARDS OF EMPLOYMENT) (2020). By S.C. Srivasatava, Vikas Publishing House, New Delhi. Pp. 248 Price Rs.650/.

Industrial relations and labour law

IN TWENTY-EIGHT crisp chapters, Professor Suresh C. Srivastava has admirably explained, and critiqued, industrial relations and labour law in the seventh edition of an indefatigably researched work. [1]The first edition was published in 1982, and the book has stood the test of time. Obviously, it is in considerable demand by learners in the fields of law and management sciences and Vikas Publishing House deserves felicitations for maintaining this work though several editions.

In this short period, the contexts of industrial relations and labour law have changed vastly, and latter has now been reformed thoroughly, though it had been in the antechamber of reform for at least a few decades. The author has maintained a steady gaze on these developments, as shown by his very recent publication in this journal which is about the plight of unorganized labour during the recent national lockdown owing to COVID-19.[2] Readers of his textbook will benefit greatly by recourse to his other publications in between the editions of this work.

I am not a specialist in the field and have learnt a great deal from his works. My own experience is rather limited and engages, both in theory and activism, mainly sex-based discrimination in industry and the plight of 'unorganized' workers in India. I put this label in quotes because I think the correct expression should be 'disorganized workers' as they are systematically rendered so by the forces of the capital and the state.[3] As an active member of the Second Gujarat Labour Laws Committee (presided over by the late Justice M. U. Shah), I had the privilege of drafting the bulk of the report, and particularly the concluding chapter on the state as a saboteur of labour

1 S. C, Srivastava, *Industrial Relations and Labour Laws (Including Labour Laws on Social Security, Wages and Minimum Standards of Employment),* New Delhi, Vikas Publishing House (2020). The page number in parenthesis refer to the pagination of the book.

2 See 'A Crisis in Legal Protection of Inter-State Migrant Workers' 67(2) *JILI* 195- 207 (2020).

3 Upendra Baxi,'Unorganized labour? Unorganized Law?" in Debi S Saini (ed.), *Labour Law, Work and Development-Essays in Honour of P.G. Krishnan* 1 (Westville Pub. House, Delhi, 1995).

law.[4] I also led a law reform commission on unorganized workers (named after Shri Jinabhai Darjee, a labour leader from South Gujarat. And , I was able (as a vice chancellor of South Gujarat) to persuade both the department of sociology to submit in a first biblio petition the entire thesis on the sad plight of powerloom workers in the city of Surat; this led to a further report of an in-depth study which we were able to prepare with the help of the entire faculty of the University and student body. On these bases, the court issued a slew of directions on legal literacy and legal aid in which the entire campus community remained involved.[5] I was also puzzled by the fact that this field was either described as 'industrial' or 'labour' law and I had raised the question of difference it made. The doyens of both — the legendary O. P. Malhotra and G. B. Pai- impressed upon me the ideological difference between the two; calling it a field of knowledge, 'industrial law' inclines one to think of industry (the management prerogative); whereas thinking of the field of labour law makes one more attentive to worker's rights and justice.[6]

Professor Srivastava very interestingly combines the two fields of knowledge—those of the capital and labour by the very title of the work. While at best the industry is inclined to regard most of the inunctions of labour law as mere advisories for corporate governance, and the CEO's normally use companies' deep pockets to litigate at every step the assertion of legal rights by the workers, the unions and workers have to wage

4 I have to be content with this brief allusion as I presently do not have the text of this report. The Ministry of Labour, State of Gujarat, has no reference to either the First or the Second Committee Report, each one of them was scathing in certain respects! But see Upendra Baxi, 'Industrial Justice Dispensation: The Dynamics of Delay' in D S Saini (ed), *Labour Judiciary Adjudication and Industrial Justice,* (Oxford and IBH, New Delhi, 1994) K.R. Shyam Sunder recalls this and Justice Gajendrgadkar's quip as follows: 'Upendra Baxi when asked to be a member of Second Labour Law Review Committee, Gujarat in 1982 asked Sanat Mehta,"what happened to the recommendations made in the first one". Sanat Mehta replied: "That was ten years ago. Now, wehave to have the second one" … Gajendragadkar jocularly (perhaps painfully) remarks: 'if 'Bullock' (report on Industrial Democracy) can be shelved in the United Kingdom, why should an 'Elephant'(Gajendra) in India not get the same treatment? …' See his 'Second National Commission on Labour: Not up to the Task', *Economic and Political Weekly* at 2607*,* (July 22, 2000).

5 See, *Working and Living Conditions of the Surat Textile Workers: A Survey Submitted to the Honourable Chief Justice of Gujarat High Court*, (Dec. 17, 1984; South Gujarat University, Surat 395007).

6 G. B. Pai, *Labour Law in India* (Butterworth's India, New Delhi, 2001); O.P. Malhotra's *The Law of Industrial Disputes* (Delhi, LexisNexis, 2004; E. M. Rao ed.)There are many who still maintain that capital has little or nothing to do with labour! And a similar view is held about the non-relation as regards development. An exasperated Justice E. R. Venkatramiah once said from the high bench(writing also with Justice A.P. Sen) that in effect that capital has nothing to do with labour in winding up petitions! In contrast, the majority(written by Justice P. N. Bhagwati maintained that the company adjudication must rethink changing conceptions of social justice and worker's rights. See, *National Textile Workers' Union* v. *P.R. Ramakrishnan* (1983) 1 SCC 228. See my comments on this in, 'Pre-Marxist Socialism and the Supreme Court of India' in this case.

an uphill struggle to implement the meagre standards for protection afforded to them by some labour law enunciations. Thus, we witness in the evolution of labour law the growth of impunity through a style of corporate governance which can only be described as fly-now-pay-later rationality. By the same token, the forms of protest taken by the workers such as recourse to strikes, indulgence in *gherao*, and often outright violence against the company officials (sometimes resulting in death or murder) have been condemned by courts and denied the dignity of constitutional protection, the judiciary has to play an incredible mediating role in the process to such an extent that the study of judicial process in India is simply impossible without a close study of labour law's methods of the institutionalization of conflict, contradiction, and complexity in adjudication. Professor Srivastava describes these three Cs of industrial relations and labour law rather well, and at times acutely.

Chapter two gives us some detailed information about industrial relations. These extend to (i) employer to individual employee relationship; (ii) management relations with trade union or group of workers: and (iii) industrial peace and productivity [29]. These admirably capture the complexities of the 'dynamic socio-economic process' [26] of what John Rawls called the process of just social cooperation. [7] I believe that it would be useful to revisit the conceptions of industrial relations from even at the outskirts of moral philosophies of distributive justice, despite the feeling that the theories as originally developed do not directly concern labour law and jurisprudence.[8] But the learned author is generally right in insisting that 'in view of sharply divided

7 See for an important effort of bringing together John Rawls's *Theory of Justice* and we take the ILO's declaration of international convention on labour rights, Richard Croucher and Liliad Miles, 'A Rawlsian Basis for Core Labour Rights'] https://www.researchgate.net/publication/236873894_A_Rawlsian_basis_for_core_lab(2012). This basis is more realized when we move away from the principle of non- interference to that of non-domination, as suggested by Phillip Petit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997).

8 Guy Davidov, 'Distributive Justice and Labour Law' in *Philosophical Foundations of Labour Law* , Ch. 8 (Hugh Collins, Gillian Lester & Virginia Mantouvalou eds., OUP 2018). Carefully distinguishing desert-based distributive justice' , distributional equality theories', and 'relational equality theories', he suggests that: (a) desert-based distributive justice theories 'can support anti-discrimination laws, pay equity laws (not only gender-based but also pay equity for part-time, fixed-term and temporary employment agency workers), as well as corrections of market failures leading to under-valuation of workers in specific jobs or sectors, given their level of contribution'(b) distributional equality theories 'support anti-discrimination and pay equity law (broadly conceived), as well as laws supporting unionisation and collective bargaining; and minimum wage law' and (c) relational equality theories 'support minimum wage laws; accommodation for people with disabilities; protection for precarious workers; and potentially (if adopting a broad view) also laws supporting unions and collective bargaining, and various other employment standards'. Further, if we were to 'adopt a broad view of distributional equality and include the distribution of risks as well, we find justification for unjust dismissal laws' and 'inspiration from Rawls's difference principle can provide support for laws that protect/advance the situation of low-wage, precarious workers'.

and vociferously pressed rival claims, the objectives of labour and management are not amenable to easy reconciliation' [27]. What, then, we know as labour law is precisely an archive of these competing claims and difficult 'reconciliation'?

Judicial ambivalences and labour rights

Not many works in this genre engage the constitutional framework of values and goals which animate shifting patterns of judicial interpretation, which in some situations occurs even as interpretation *in terroram*, where individual human life-choices remain hostage to manifestly arbitrary judicial process and outcomes. A special strength of this book lies in not just setting aside a whole chapter three [34-51] for understanding the constitutional framework but also in live understating of the judicial process itself. The chapter itself illustrates (though it does not use these general categories — the horizontal rights (the basic rights of all human persons and as citizens) and vertical rights (the group differentiated rights). All citizens have equal rights under the Part III of the Constitution but 'reasonable restrictions' on the rights, either explicitly or implicitly exist. In addition, some have rights (vertically) because they belong to certain designated communities deprived at law or the Constitution. It will be rewarding to read this chapter as listing out both kinds of rights and what the juridical analysis of conflicts among these may mean in terms of socially changeful relations.

But the equally important thing to note (Professor Srivastava notes) are articles 23 and 24. These have been identified asrights against exploitation' in the marginal notes to these articles. This is the first, and the only time, that the term 'exploitation' appears in the text of the Constitution. Exploitation comes as naturally to the capitalist entrepreneur as social justice to the human rights, and social movement activist. I think that constitutionalising emancipation was among the greatest endowments of B. R. Ambedkar who sculpted these articles, and article 35, which conferred power coupled with duty on Parliament to make law, regardless of the federal design and detail. Srivastava considers articles 23 and 24 (although in my view article 17 making any discrimination on the ground of untouchability an offence also counts) as core assurances of (what the ILO calls) 'decent work 'enunciated as a basic human right of dignity of labour.

Professor Srivastava adds a somewhat detailed analysis of the Sexual Harassment Act, 2013, which is juridification-plus of what the Supreme Court of India first enunciated in *Vishaka* (41-58). He also draws attention to allied constitutionalization of labour law by highlighting the changing fortunes of applicability of natural justice principles (45-48), and the decision in *Uma Devi*, and the progeny of exceptions to which that decision may not apply (49-52). Perhaps, the most crucial aspect of this chapter is the just appreciation of the idea of forced labour. The author rightly applauds the 'creative role played by the Judiciary' (in *People's Union for Democratic Rights* v. *Union of India*– popularly known as the *Asiad* case) in which the Supreme Court 'gave a new dimension

to several areas such as minimum wages, employment of children, enforcement of labour laws and public interest litigation' and it also enlarged the contours of fundamental right' [40]. Indeed, no praise is too high for this germinal decision. The learned author is right, too, to note that the forces of globalization have led to some major transformations in the attitude of the state and even the judiciary. Gone is the pro-labour 'attitude of the government' which is 'being diluted'. The author records as instances the widespread use of 'contract labour 'in all the activities of an organization including 'core activities', 'retrenchment of workmen is permissible without obtaining permission of the government where the strength of the organization is less than 100 workmen' and the establishment of 'special economic zones' to which no labour or environmental laws may apply. Equally, the author notes is the changing ' attitude of judiciary' on 'contract labour, discipline and disciplinary action, absenteeism and strikes' which show that even the Supreme Court ' looks at the problem from the viewpoint of economic reforms and global competition' [32].

The votaries of de-constitutionalization of labour law were always around but were effectively resisted by the Four Musketeers of constitutionalism (as I fondly call Justices Krishna Iyer, P.N. Bhagwati, D.A. Desai, and O. Chinnappa Reddy) but have gained more fierce strength now despite occasional judicial resistance offered (and the names, for example, of Justices M.P. Thakkar, V. Ramaswamy, Sudarshan Reddy, and Venkate Gopala Gowda) should now be acknowledged for continuing that tradition.

The sea change in attitudes is, indeed, remarkable, as the author notes: 'Pro-labour attitude of the government is being diluted. Contract labour have been employed in all the activities of an organization including core activities, retrenchment of workmen is permissible without obtaining permission of the government where the strength of the organization is less than 100 workmen'[vii]. The establishment of 'special economic zones' is another area which shows the attitude of the government towards emerging business scenario [vii]. The attitude of judiciary is also changing. One has only to look at some contemporary decisions to fully realize this. The author instances judgments of the Supreme Court on 'contract labour, discipline and disciplinary action, absenteeism and strikes show the problem is looked from the viewpoint of economic reforms and global competition.

We may lament this judicial retrogression or cheer it according to whether one takes the corporate governance perspective, or that of labour rights. But in the process the nature of judicial process remains untheorized. The choice between grand mega political decision strategy versus incremental change has caused (and continues to do so) controversy among the votaries of revolutionary versus evolutionary social change. We do not intend here to revisit the considerable literature surrounding the issue but engage primarily with Professor Charles Lindblom's notion of case by case 'muddling through' or 'disjointed incrementalism'. This has been (or can be described as the strategy courts have always adopted. It has emphasized both the discipline and freedom

of the workers. It has, like all common law courts, moved from cases to case.[9] Put slightly differently, adjudication as 'partisan mutual adjustment' tends to follow a zigzag (rather than a big bang) pattern of decision-making in which decision-makers are disposed to arrive at decisions step by step as a problem unfolds and are loosely integrated with the prior moves. [10] To take this approach disturbs and disarrays grand explanatory narratives of globalization as these were also present in ordinary pre-globalization monitoring of corporate governance. The Supreme Court in 1981 in *Fertiliser Corporation Kamgar Union* said that:'… certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the Court. To do so, is in competent and improper and, therefore, out of bounds.' It is small consolation that the court also said : 'Nevertheless, the broad parameters of fairness in administration, *bona fides* in action and the fundamental rules of reasonable management of public business, if breached, will become justiciable.'[11]

The doctrine of 'indoor management' was thus settled in pre-globalization era. This fact, of course, does not justify this adjudicative doctrine of self-restraint (and noting can ever 'justify judicial abdication (that is the abandonment of judicial duty, ever-active in the Third Schedule constitutional oath to do justice according to the constitution and without fear and favour). And I have joined many in my critique of globalization);[12] but it cautions us, however, against laying all the ills at the doorstep .of economic and juridical globalization.

The reach and reform of labour law

As the author notes in the Preface: 'The reach of this law is so wide that it touches the lives of millions of men and women who constitute the labour force' but at the same

9 See, Charles E. Lindblom 'The Science of 'Muddling Through' *Public Administration Review,* 19, 79–88' (1959); *Id., The Intelligence of Democracy: Decision Making through Mutual Adjustment (*New York: The Free Press 1965); *Id.*, 'Still Muddling, Not yet Through'. *Public Administration Review,* 39, 517–526 (1979); *Id., Inquiry and Change: The Troubled Attempt to Understand and Shape Society* (New York: Yale University Press, 1990).

10 Michael M. Atkinson, 'Lindblom's lament: Incrementalism and the Persistent Pull of the Status Quo' 30(1) *Policy and Society* 9-18 (2011).

11 *Fertiliser Corporation Kamgar Union (Regd.), Sindri* v. *Union of India* MANU/SC/0010/1980: (1981) ILLJ 193 SC. What the court does is to reiterate these observations in *Hindustan Lever Employees' Union* v. *Hindustan Lever Limited* (*per* M.N. Venkatachaliah, C.J.I., R.M. Sahai and S.C. Sen, JJ), MANU/SC/0101/1995 but the seeds were sawn much earlier in the pre-globalization era.

12 Upendra Baxi*, The Future of Human Rights* Ch. 8(Oxford University Press 4th edn., 2013 now in press).

time it is 'unfortunate that barring a few statutes such as the Minimum Wages Act, 1948 and the Unorganized Workers Social Security Act, 2008, most labour laws are, in effect, not applicable to unorganized labour which constitutes about 93 per cent of the entire labour force'. The question of legal change has always been how to begin to protect the unorganized/disorganized sector of the Indian law, which today emerges as an aspect of demosprudential co-governance of the nation.

And 'labour legislation is more than seven decades old'. Professor Srivastava also notes that it is ' felt that our labour laws are overprotective, over-reactive, fragmented, out-dated and irrelevant and have created hurdles in achieving economic targets, particularly given the global competition and economic recession'. Accordingly, the author has given a synoptic view of the proposed reforms in the First (1968) and the Second National Commission on Labour, (2002), and the 2019 Ministry of Labour and Employment, Government of India, comprising the four proposed Labour Codes, *viz.,* (i) Code on Industrial Relations, (ii) Code on Wages, (iii) Code on Social Security and Welfare, and (iv) Code on Occupational Safety, Health and Working Conditions [14-25]. The first Code was enacted in 2019 and the remaining three codes have been introduced and passed in the truncated monsoon session of Parliament.[13] Pages 15-25 of the book highlight the principal features of the Code; this is, of course, valuable but this performance would have been enhanced if the valuable report of Parliamentary Select Committee on the first code had also been highlighted. It is noteworthy that 17 out of its 24 recommendations were accepted by the government. All the Codes are marked by the concern for the development of welfare of labour as well as by concern for improvement in the World Bank criteria of 'ease for doing business'; the latter emphasis is distinct to the present regime and , according to some critics overwhelming the ends of social justice to workmen. The adoption of the first code in 2019 has been generally welcomed because it applies to all workmen everywhere regardless of the wage-ceiling and sector of employment, the adoption of the concept of floor wage providing all employees with a basic standard of living and disabling states to provide a minimum wage below the floor wage, and the innovation of the device of inspector-

13 Parliament was declared adjourned *sine die* on Sep. 23, 2020. It is truncated in two senses at least: (1) it occurred in the midst of the COVID -19 pandemic where its actual day long working hours were curtailed and the legislative timings were shortened for both the Houses; and (2) the extraordinary events following the tearing of the rule book in the well of Parliament, expulsion for a week of several opposition members, and eventual walkout of the Congress and many other opposition parties have made this session particularly tumultuous .

14 The Peoples' Charter is (according to its website) a network of more than 150 provincial, local organizations of informal workers, founded in 2013. It helps wage struggles at provincial and national level. The capacity building includes understanding of laws pertaining to informal workers, including the proposed bills on wage, industrial relations, occupational health and safety and social security in the legislature.

cum-facilitators who ,in addition to the function of inquiry and investigation, will now also be equipped with an advisory function regarding effective compliance with the law. Much in future will depend on how the code will be actually enforced. The Working People's Charter in its briefing note for Parliamentarians[14](on September 21, 2020), predictably denounces the entire legislative endeavour as colonial repression and states that in 'one stroke… the government intends to put the last nail into the coffin of labour protection'. The entire process is dubbed as 'anti working class'. Good as polemic, such interventions are not of much help in evaluating the entire effort at re-writing labour law. At the same time, the trade union distrust is widespread.[15]

Labour militant protest mount against the governments of Uttar Pradesh, Gujarat, Rajasthan, Assam, Punjab and Madhya Pradesh who have proposed, through ordinances and notifications, the (i) suspension of many important provisions of the Industrial Disputes Act; (ii) the Factories Act, (iii) exemption from the Factories Act for three years,(iv) weakening of safety provisions,(v) allowing resolution of disputes without labour courts, (iv) extension of the working day to 12 hours without curbs on overtime;(vii) dilution of rights pertaining to maternity benefits and (viii) complexities in trade union recognition. As ' race to the bottom' which specializes in divesting labouring population of core labour rights is certainly akin to medieval torture, forbidden both by the notions of decent and dignified work in article 21 of the constitution and the concepts of a constitutional good governance.[16]

The seventh edition of this book occurs in the year marking the centenary of the International Labour Organization [17] and culmination of the clamour of the 'reform'—though some would say the end—of labour law (as we knew it). Both the contexts

15 Amir Ullah Khan, "Why India's labour is rejecting a new deal", *Mint* Jan. 6, 2020. See also, Babu Mathew, Chirayu Jain, "Reviewing the Labour Code on Industrial Relations Bill, 2015" 53: 21 *Economic and Political Weekly in India* (May 26, 2018); Alok Prasnna Kumar, "The Code on Wages and the Gig Economy" 54:34 *EPW* (Aug. 24, 2019). See also, Jane Cox and Sanjay Signvi's trilogy of posts on new labour codes in the, *Leaflet,* beginning Oct. 1, 2020.

16 The matter is now in the Supreme Court through a writ petition in *Pankaj Kumar Yadav* v. *Union of India* arguing that some of the present measures by state governments are constitutionally invalid because 'various statutes constituting "Labour Laws" are benevolent legislations intended to protect the "Oppressed Class" by the "Oppressor Class". However ,in the present circumstances, the State is depriving the "Oppressed Class" from the welfare measures, which are already available to them for facilitating the "Oppressor Class", that too when the former is worst affected by the global pandemic "COVID-19" having lost their livelihood and are compelled to lead their lives at the mercy of none but the Almighty God.' The petition proceeds to make some constitutional law arguments questioning the validity of relevant notifications, orders, and directions. See also, Arundati Katju, "Changes Proposed to Labour laws are Unconstitutional" *Indian Express* May 19, 2020.

17 See, George P. Politakis, Tomi Kohiyama, Thomas Lieby (ed), *ILO100: Law for Social Justice* (Geneva, International Labour Organization, 2019); Upendra Baxi, "Sexual Violence and Harassment at Workplaces Needs Parliament's Attention" *Indian Express*, Aug. 23, 2019.

warrant the background expertise that Professor Srivastava brings to us, and one hopes for an incisive future writing concerning the progression of several reforms now normatively undertaken in these Codes.

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