

PART I

TRADE UNIONISM AND TRIPARTISM

A. SOCIAL AND ECONOMIC BACKGROUND

That labour law exists in books is an illusion and a myth. To be sure books describe. But it exists, realistically, not in books but in factories, in mines, and in offices where people labour; on roads and rails, in stores, and on plantations. In books we find not the law of labour itself but merely pictures of that law.

SOCIAL FUNCTION OF LAW

All law has a social function, whether it is created by religion as in *Manusmriti*, or in the *Bible* or in the *Quran*; or whether it is created by an Act of Parliament. Sociologists and institutional economists and jurists have emphasized a two-way traffic between law on the one hand and social economic changes on the other. Mr. P. B. Gajendragadkar, recently Chief Justice of India, has said concerning the social functions of law:

. . . Law in relation to liberty and social justice has to be considered in its aspect of a flexible instrument of social change and social adjustment. In this context, law is not merely a command of the legislature or the monarch. Its functional aspect is of the utmost significance. It is a social institution, democratically evolved in order to achieve the object of making social adjustments to meet the challenge which necessarily and incessantly flows from unsatisfied, legitimate human desires and ambitions. . . .

[Y]esterday cannot overpower today, and cannot obstruct today's attempt to build a social structure so as to meet the challenge that

faces it. That is why Law is never static and must always be dynamic if it is to discharge its functions properly. . . . Call it pragmatism, or call it scepticism, the approach in dealing with the problem must not be burdened with belief in any absolute. . . .¹

Mr Justice William O. Douglas, of the United States Supreme Court, in similar vein, has written:

When we speak of law, we normally think of statutes which legislatures enact, rules that judges announce, and orders laid down by an administrative agency, by a military official, or by some other spokesman of the executive department. . . .

Yet law in its broader general sense embraces all the influences that shape and condition human conduct. The most effective law is the command which comes from the hearts of the people. It may be rooted in village custom, family tradition, ecclesiastical teachings, or tribal attitudes. These. . . can be, and often are, more powerful than any directives of government. Governmental edicts can, indeed, be empty phrases if they run counter to deep-seated customs that have long directed human affairs in families, tribes, villages, or even in larger entities.

Theoretically then, the rule of law for a given community or nation should reflect the *mores* of the people affected and not depart drastically from their traditions and habits.²

Thus, law reflects changing patterns of society; but this reflection is more or less distorted. The law's influence may retard or may accelerate the pace with which society moves in any particular direction.

ENGLAND AND THE INDUSTRIAL REVOLUTION

Before the Industrial Revolution one could not conceive of labour law in the modern sense. That Revolution in England was an *evolutionary* process, but the changes it brought were so *revolutionary* and fundamental that its name is a well-deserved one. Lord John Maynard Keynes in his essay "Economic Possibilities for Our Grandchildren" writes :

1. P. B. Gajendragadkar, *Law, Liberty and Social Justice* 45-49 (1965)..

2. *A New Survey of Social Sciences* 9-10 (B. N. Varma ed. 1962).

From the earliest times of which we have record—back, say, to two thousand years before Christ—down to the beginning of the eighteenth century, there was no very great change in the standard of life of the average man living in the civilised centres of the earth. Ups and downs certainly. Visitations of plague, famine, and war. Golden intervals. But no progressive, violent change. Some periods perhaps 50 per cent better than others—at the utmost 100 per cent better—in the four thousand years which ended (say) in A.D. 1700.³

The Industrial Revolution in England was the preface to such changes in the rest of the world. (India is now in the early stages of its own industrial revolution.)

For improving his ways of life, man had already achieved many technological landmarks, such as discovery and taming of fire; domestication of animals; invention of the wheel, of agriculture, of irrigation, and of the smelting of ores and use of metals; finding of writing, paper, and printing, and of the marine compass, gunpowder, Indian numerals, and methods of calculation. Learning to navigate ships across the seas and camels across the deserts had expanded tribal and parochial horizons. But all these changes were slow and partial by comparison to the Industrial Revolution. Therein, as by a thunderclap, the usual sources of crude power — man, animal, fire, wind, and water — were fortified thousands of fold by steam. Thus a genie rose from the crude kettle of Watt's engine. That was a staggering change on the technological side. On the social side another transformation occurred, equally momentous: two rival social classes rose up, the entrepreneur on the one hand and the earner of wages on the other.⁴

The truly revolutionary part of England's Industrial Revolution, M. H. Dobb observes, was the tempo of change. This affected the structure of industry and of social relationships, the volume of output and the extent and variety of trade. It nourished the growth of capitalism, led to an increase in the ranks of the proletariat, and simultaneously widened the market for consumers' goods and the field for investment to an unprecedented degree.⁵

The Industrial Revolution, in short, gave rise to the factory system. This changed the country's way of life. As Mantoux says: "The factory

3. J. M. Keynes, *Essays in Persuasion* 360 (1931).

4. Cf. V. B. Singh, *Essays in Indian Political Economy* (1967).

5. M. H. Dobb, *Studies in the Development of Capitalism* 256-257 (1946).

system, science and democracy are the forces which, from the economic, intellectual and political points of view, control the evolution of modern societies....”⁶ By creating the factory system, the Industrial Revolution made England by the nineteenth century the world’s most powerful nation, economically, and technologically. The needs of her growing industries demanded colonies, to supply raw materials for those industries; and to furnish markets for their products.

INDIA AND THE INDUSTRIAL REVOLUTION

The economic effects of the British conquest of India in the preceding century are well summarized in the following words of Romesh Chandra Dutt :

India in the eighteenth century was a great manufacturing as well as a great agricultural country, and the products of the Indian loom supplied the markets of Asia and of Europe. It is unfortunately true that the East India Company and the British Parliament,... discouraged Indian manufacturers . . . in order to encourage the rising manufactures of England. Their fixed policy . . . was to make India subservient to the industries of Great Britain, and to make the Indian people grow raw produce only....⁷

Without the Indian wealth which began to reach Britain after Plassey in 1757, it would probably not have been possible for the Industrial Revolution to mature in Britain. Inventions alone are not enough to change the economy of a country, unless those inventions are integrated with profitable processes of production and of trade. In the 1730’s, for example, Kay and Lewis Paul made discoveries of first importance, but these inventions lay then almost unused. But thirty years later other inventions, notably by Hargreaves, Arkwright, Watt, and Crompton, brought utterly dramatic changes, and continued to do so for another quarter of a century.⁸ The aggregate of these inventions and their utilization for production on a large scale, heralded the true dawn of the Industrial Revolution. Why? Because after 1757, Indian wealth had begun to flood England. Here is the testimony of Brooks Adams :

6. P. Mantoux, *The Industrial Revolution in the Eighteenth Century* 28 (1961).

7. R. Dutt, *Economic History of India under early British Rule* viii-x (1950).

8. S. Lilley, *Men, Machines and History* 78—87 (1948).

Before the influx of the Indian treasure, and the expansion of credit which followed, no force sufficient for this purpose existed, and had Watt lived fifty years earlier, he and his inventions must have perished together. Possibly since the world began, no investment has ever yielded the profit reaped from the Indian plunder, because for nearly fifty years Great Britain stood without a competitor. From 1694 to Plassey (1757) the growth had been relatively slow. Between 1760 and 1815 the growth was very rapid and prodigious.⁹

The century between the Battle of Plassey (1757) and the First Battle of Indian Independence (1857) marked the maturity of the Industrial Revolution in England and England's conquests of Indian agriculture, manufacture, trade, commerce, and political power, culminating in the establishment of the British Raj. *Laissez faire* at home and colonialism abroad became the bases of British policy. Manufacturers in India were prevented from establishing factories.

The development of the railways under governmental control (a perfect deviation from perfect competition) was not in response to the internal needs either of traffic or of trade; it was dictated by the needs of imperialist and administrative strategy. This laid the foundation—what now may be called a tradition—of government intervention and participation in economic activities. Again, the British investment in plantations was a device to exploit serf labour and natural resources, and so to divert the Indian surplus for use abroad. The exploitation and ruthless plunder quite naturally perpetuated, in India, a static economy whose rate of growth was zero.

Every oppressive action may bring about reaction. In India British oppression led to the growth of Indian nationalism and to a vigorous renaissance. Nationalism has an obvious economic aspect, which in India was reflected in the urge for economic reforms and for industrialisation. In the twentieth century the national movement generated a local demand for Indian goods, *via* the *swadeshi* movement, favouring home-made goods and boycotting foreign goods. This began to give some unofficial protection to nascent industries. The non-cooperation campaigns synchronized with periods of economic crises—thus promoting industrialization. It was these popular movements that made it possible for the Indian private sector to grow and come of age. Indian economic ideas drew

9. B. Adams, *The Law of Civilization and Decay* 260; 263-64.

their inspiration from the British classical economists; but the Indian economists outgrew those ideas. So they advocated *swadeshi* in place of free trade. Political economy, expressed in the United Kingdom as "An Inquiry into the Nature and Causes of the Wealth of Nations",¹⁰ was used by Indians to inquire into the nature and causes of poverty; and an attempt was made to construct a comprehensive theory of under-development (as also of economic development and planning) suited to Indian conditions. After the Great Depression of the thirties the national movement accepted planning as its economic ideology.¹¹ Thus India turned to a planned industrialisation as her main goal.

PROCESSES OF INDUSTRIALISATION

Industrialisation in India, as in any other country, implies the growth of a factory system, with employers (individuals, corporations, or governments) and wage earners, in varying circumstances and with varying characteristics, yet having some common features; and it is the common features that are of interest here. "The factory is more than a place of work; it is also a market place for labour, a place where some of the actions of different occupational and union groups occur, and where the norms of the communal or societal status systems influence people's behaviour."¹²

In the eyes of the law, wage labour is qualitatively different from slave labour and from serf labour, inasmuch as the workman is not in bondage but is free to sell his capacity to work (manual or mental) to an employer at his own free will. Because of economic compulsions, his legal freedom to work or not to work (and to starve) may be little more than a legal fiction. But for students of law it is important to note that the relationship between the worker and the employer is contractual; and that the two are free participants in the contract of employment—whether the contract be explicit or implicit.¹³

The introduction of a system of large factories brought concentration of production in single places, and the employment at each such

10. Adam Smith (6th ed. 1950).

11. Cf. V. B. Singh, *Indian Economy: Yesterday and Today* 2-3 (1964).

12. A. Feldman & W. Moore, *Labour Commitment and Social Change in Developing Areas* 15 (1960).

13. *Id.* at 238.

place of many workers. The source of supply of these workers has of course been the villages.

This is exactly what the British-introduced land tenure in India brought about. Whether intended or not, one of the effects of this new land system and the fragmented land holdings it produced, was an unprecedented rural emigration. The causes of rural exodus to the industrial centres, as the Royal Commission on Labour in India pointed out, lie mainly in the "difficulty of finding an adequate livelihood in one's native place."¹⁴

RECRUITMENT

It remains to consider how these migrants from the villages are recruited into the factories. As of 1930 the Royal Commission's finding on this was: "Overseers, labour contractors and others, stimulated thereto by promises of commissions, journeyed to distant villages and brought back recruits to the mills, paying their fares and expenses to the city."¹⁵

The role of the jobber in such recruitments was then most crucial¹⁶ Now with the establishment of a network of employment exchanges, the methods of recruitment have improved, and the evils of the old system have grown less.

After the recruitment of unskilled labour to factory employment, there are the crucial problems of training and of placement. These problems the Indian factory employers on the whole have neglected.

There has been much doubt about the attachment of India's industrial labourer to its factory life. It is said that he comes, mainly, from a peasant stock and has a strong propensity to return home after earning some money; or, at any rate, that he feels he must go to help the family during agricultural operations. Whatever may have been the truth about the non-commitment of industrial labour in the past—during the twenties, thirties and forties of this century—it is not correct now. That a workman should be willing to strike for a redress of his grievances, rather than to

14. For details see *Report of the Royal Commission on Labour in India* 14 (1931).

15. *Id.* at 22-23.

16. *Id.* at 23-24.

desert the factory and return to the village, is in itself proof of a new sense of commitment.¹⁷

SOCIAL AND LABOUR PROBLEMS OF INDUSTRIALISATION

Urbanisation and industrialisation have many consequences: social disorganisation, over-crowding, slums, sex disparity, immoral traffic. As a 1956 UNESCO report, published in Calcutta, put it:

[T]here are many . . . problems: of health, hygiene, recreation; of social disorganisation because of disrupted family life; of lack of social control which bewilders particularly the former villager who used to live under the immediate control of the joint family and the village; of other food and clothes; of different working times and working discipline; of loneliness.¹⁸

During the forties Professor Radha Kamal Mukerjee had pointed out that throughout Calcutta and the Bengal jute mill towns, Bombay and Kanpur there were only five to seven women for every ten men; and that prostitution was rife. He added:

The prostitute is regarded not only as inevitable but as necessary in the modern industrial town . . . assuring stability to the labour force, and in fact many employers as they build bustees and bazars provide accommodation also for brothels in the mill neighbourhood. The 'single' man comes back to the village tainted and diseased, while the women workers lose their self-respect and virtue and are looked down on by the village population. In the thousand slums of the Indian industrial centres, manhood is, unquestionably, brutalized womanhood dishonoured and childhood poisoned at its very source.¹⁹

Once the worker reaches the factory premises, it is the end of farm problems for him, but it is the beginning of factory problems. These may conveniently be grouped under: (i) wages and collective bargaining, (ii) social security, and (iii) industrial relations.²⁰

17. For support of this viewpoint see A. Feldman & W. Moore, *Labour Commitment and Social Change in Developing Areas* (1960); M. Morris, *Emergence of an Industrial Labour Force in India: A Study of Bombay Cotton Mills 1854-1947* (1965); and V. B. Singh *Wage Patterns in Kanpur Cotton Industry* (in press).

18. UNESCO, *The Social Implications of Industrialisation and Urbanization* vi (1956). This report was the result of five studies in Asia sponsored by UNESCO.

19. R. K. Mukerjee, *Indian Working Class* 262-63 (1945).

20. *Industrial Labour in India* xi (V. B. Singh ed. 1963).

The mutual conflict between the employer and the employees over the question of the adequacy of their respective shares in the social produce (that is, real wages and profits in the widest sense of the terms) thus constitutes the crux of the labour problem, of which collective bargaining and industrial conflict are the two most important aspects. As industrialisation advances, the worker is increasingly alienated from his previous socio-cultural world (joint-family, caste, village, home) and he thus faces various insecurities with regard to income and employment in addition to the natural ones (sickness, maternity, old age) for which the new order does not have structural provision. This is how the problem of social security arises and assumes increasing importance.²¹

In India we have undertaken to solve the problems of labour welfare,²² social security,²³ and social justice by adopting a democratic constitution which makes labour a concurrent subject, and furnishes comprehensive directive principles on state policy. The labour policies of the Government are also stated in the various five-year plans. For implementing the labour policies there is machinery at the Central and state levels. The working of the machinery is in practice of course deeply influenced by the trade unions and the employers' organisations. At the top of all this

21. *Id.* at xii.

22. See *The Labour Investigation Committee (1944-45) Report* 336. While recognizing the elastic nature of the term depending upon the circumstances of each case, the Committee preferred "to include under welfare activities anything done for the intellectual, physical, moral and economic betterment of the workers, whether by employers, or by Government or by other agencies, over and above what is laid down by law or what is expected as part of the contractual benefits for which the workers may have bargained. Thus, under this definition, we may include housing, medical and educational facilities, nutrition (including provision of canteens), facilities for rest and recreation, cooperative societies, day nurseries and creches, provision of sanitary accommodation; holidays with pay, social insurance measures undertaken voluntarily by employers alone or jointly with workers, including sickness and maternity benefit schemes, Provident Funds, Gratuities and Pensions, etc."

23. "Social Security is a device provided by society against a number of insecurities arising out of natural (e.g. death or sickness), social (e.g. slums), individual (e.g. incapacity) and economic (e.g. inadequate wages and unemployment) causes. Viewed thus, social security is as old as society itself, but its forms have been changing according to the needs and the level of social consciousness of the people. In fact there have been and could be so many patterns of social security with far-reaching differences between some of them..." *Industrial Labour in India* 79 (V. B. Singh ed. 1963).

machinery are the law courts and their judges. Their role, in the solution of labour problems, is evaluated by Professor Laski in quoting the following words of President Franklin Roosevelt:

Every time they [the judges] interpret contract, property, vested interests, due process, liberty, they necessarily enact into the law parts of a system of social philosophy. . . . The decisions of the court upon economic and social questions depend on their economic and social philosophy and for the peaceful progress of our people during the twentieth-century we shall owe most to those judges who hold to a social philosophy, and not to a long-outgrown philosophy, which was then the product of primitive economic conditions.²⁴

B. HISTORY OF THE TRADE UNION MOVEMENT

Origins

Indian trade unions did not grow out of institutions already in existence. They developed, with industrialization, as something substantially new.

Before the first unions were formed there had been sporadic attempts by groups of workers to get better working conditions. These efforts had been fostered, strangely, by both selfish and unselfish influences. Humanitarianism was one influence, in India as it had been in the United Kingdom, in cleaning up the inequities and the iniquities. But in India the humanitarianism was abetted by the selfish interests of British employers, who feared the competition of Indian goods, especially textiles, made at low cost.

In 1875, therefore, British textile magnates secured the appointment of a commission to look into labour conditions in India. (It was to be the first of many.) At first this commission would not recommend any regulation, wherefore the Indian Government did nothing. The British magnates, unsatisfied, kept up their pressures. Mr. S. S. Bengalee, a leading Indian philanthropist, prepared a bill on child labour, but the Bombay Legislative Council refused to let him introduce it. He appealed to British opinion, with the result that his bill was printed in the *London Times* in 1878. This stirred further agitation in England, and the next year the House of Commons passed a resolution in favour of factory

24. H. J. Laski, *Trade Unions in the New Society* 112 (1950).