

PROBLEM OF ENFORCEMENT

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IN MODERN times, the concept of state has undergone a radical change. The individualistic view of the functions of the state has been replaced by the concept of welfare state. The socio-economic uplift, particularly of the weaker sections of the society or the masses, has become one of the cherished objectives of the modern states. The labour is one of the most vulnerable sections of the society. Its emancipation is one of the fundamentals of many political philosophies. In India, the socio-economic uplift of labour constituted one of the main objectives of the national movement. The resolution of Karachi congress (1931) spoke for a "living wage for Industrial workers, limited hours of labour, healthy conditions of the work, protection against economic consequences of age, sickness and unemployment; freeing labour from serfdom or conditions bordering on serfdom; protection of women workers and special leave during maternity period; protection against employment of children of school going age in factory". Further, it stated about the right of the labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration etc. These declarations were reiterated in subsequent resolutions of the congress.

This social objective was embodied in "Objective Resolution" adopted by the Constituent Assembly on 22nd January 1947 which framed the Indian Constitution. The social and economic objectives are clearly and forcefully expressed in the Preamble of the Constitution. These objectives have been elaborately stated in the 'Directive Principles of State Policy'. The provisions of the Directive Principles of State Policy that particularly relate to labour are under articles 39, 42, 43, 43A. These direct the state : to ensure that the health and strength of workers, men and women, and the tender age of children is not abused and that the citizens are not forced by their economic necessity to enter into avocations unsuited to their age or strength; that the state shall make provisions for securing just and humane conditions of work and for maternity relief; that the state shall endeavor to secure by suitable legislation or economic organization or in any other way to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure

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and social and cultural opportunities; and that the state shall take steps by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment or other organisations; engaged in any industry..

In view of the concept of state envisaged in the Constitution and in pursuance of the provisions of Directive Principles of State Policy and elsewhere, numerous legislations relating to labour have been passed. The new labour laws are primarily concerned with the welfare of the working class and aim at bringing industrial peace that will in its turn increase productivity leading to economic growth. This legislation in our country has become an important part of the social and economic legislation that derives its inspiration from the recognition of the wider responsibilities, which the state has undertaken to protect the economically weaker sections of the community. The Supreme Court has on its part very liberally interpreted the provisions of labour laws to give wider protection to labour. However, the labour laws are suffering from chronic malady of poor enforcement.

It is to be stated that a system of law loses its efficacy and credibility if prompt enforcement is not secured. The rule of law suffers heavily if proper attention is not given to enforcement at every stage. Non-enforcement may create chaotic conditions in the society. Prompt enforcement of laws is, therefore, a must for a civilized society.

The problem of enforcement of labour laws may be traced at three levels, namely: the legislative level, the judicial level and the executive level.

The Legislative Level

(a) Multiplicity of labour laws

There are multiple Acts relating to labour, viz., Industrial Disputes Act, 1947, Payment of Bonus Act, 1965, Contract Labour (Regulation and Abolition) Act, 1970, Payment of Gratuity Act, 1972, Payment of Wages Act, 1936, Minimum Wages Act, Employees State Insurance Act, 1948, Factories Act, 1948, Workmen's Compensation Act, 1923, Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1946, etc. The multiplicity of laws creates confusion and several difficulties in enforcement. If all these Acts are consolidated into one, and all these benefits are conferred by a single enactment, it would be much easier to enforce them as there would be a single and effective enforcement machinery and identical provisions for enforcement.

(b) Education of workmen

A poor workman, with much poorer understanding and almost

insignificant knowledge and education cannot acquaint himself with numerous Acts passed for his protection. A worker is unable to comprehend what, where, and how the law can give him protection. He has to work without speaking and projecting about injustices perpetrated on him. He cannot claim the rights conferred on him and many a times becomes an object of exploitation. He cannot insist for his appointment letter, minimum prescribed wages, proper working conditions and other benefits conferred on him by law. Education of workers in this respect has to be organised either by the state, union or other agencies.

(c) Accountability of enforcement machinery

The government has prescribed authorities for enforcement of labour laws but the concerned officers in connivance with employers omit to enforce these laws and make use of these powers when they are denied favours and illicit gratification by the employers. It is to be seriously examined whether powers vested in the enforcement machinery are adequate and the provisions are such that those responsible for exercising these powers are constantly under supervision, and that the powers are being properly and honestly used by them without any neglect or indifference. If appointment letters to the employees are not issued, or are issued without a copy of standing orders, benefits like minimum wages as prescribed are not paid, provident fund, medical facilities, bonus etc., are not given, if names of all workers are not entered into the forms prescribed and enforcement staff fails to implement these provisions and also fails in regular periodical check, they should be penalised and the burden of proving that they were not guilty of non-compliance of these provisions should be put on them. Unless a specific penalty, which should be exemplary and deterrent and there is a specific time frame for implementation of such penal provisions, provided by law, the expeditious enforcement will continue to be a wild cry. Penal provisions are needed not only for the employers but also against the enforcement agencies. Unless enforcement machinery is brought to book for collusion, commission and omission with the burden of proof on them to establish that they have not so colluded, the concerned officers will continue to rule the roost and exploit the legal provisions for their personal advantage. The government should be alive to the situation before the enactment is passed.

(d) Some other reasons for delayed enforcement

The reference for adjudication by the government is also proving a dilatory process. In the present day circumstances, it is useless to think that much can be achieved expeditiously through reconciliation process.

Finding suitable, competent, capable reconciliation officers with dedicated spirit has been a wishful thinking. Unions are also not educating the workers properly nor conducting themselves in such a manner that the interests of workers are protected without letting the production suffer or widening the conflict between the employers and the employees. The reconciliation proceedings can go on simultaneously along with adjudication providing an opportunity to the worker for directly seeking the redressal of the grievances through adjudication. In any case this is likely to cut short the time taken in reconciliation, adjudication and settlement in successive stages. There is no rationale in forcing or imposing employment on a person who cannot smoothly carry on with the entrepreneur. The policy dictate demands that neither the production suffers nor the workers are exploited. The legislature has to keep both things in view and carry out the amendments taking into account the interpretation given by the courts without letting these objectives suffer.

Judicial Level

Enforcement at judicial level also has its shortcomings. It is well known that adjudication takes a long time. There is no denying the fact that justice delayed is justice denied. It is to be continuously and seriously examined as to what are the reasons for accumulation of cases in every court and why so much time is taken in their disposal. Time is admittedly wasted in making a reference, registering it and summoning the parties. It appears as if everybody is contributing to the delays caused except the worker who is unable to exercise any effective influence for expeditious disposal. The delay in reference can be cut short by authorising the worker to directly approach the court for adjudication. The enforcement machinery which is supposed to regularly contact the employers in their respective areas can be assigned the duty of serving the summons. Registered notice by the employee to an employer regarding industrial dispute can also be treated as sufficient information additionally.

There should be growing realization among adjudicating / judicial authorities that interpretation should be clear simple and final and should not be used as an instrument of creating new law in a circuitous manner: for example, no procedure has been prescribed for disciplinary proceedings in Industrial Disputes Act but the courts have created elaborate law in this respect. The interpretation and conflicting opinions of the superior courts have caused great difficulties and complicated the implementation of law and the enforcement of rule of law. India is a welfare state and any interpretation which is likely to prejudice the safeguarding of the interest of the weaker sections even by delays caused

in the enforcement of labour laws should be carefully avoided. Prosperity is linked with production and production with peace and settlement. Delays in judicial process are in no way conducive to peace and industrial production and it vitiates the climate needed for industrial peace. Continuous monitoring is required to ensure that delays are not caused at judicial level. The rules have to be tailored in such a fashion that delays are not permitted and the adjudicating authorities are vested with ample powers to cut short these delays. In USA, a special bench of the Federal Court has been constituted which regularly and continuously studies and suggests ways and means to cut short the delays at adjudication level. The imposition of heavy penalties and exemplary punishments are infallible weapons for creating an atmosphere of compliance. We are all aware of the efficacy of heavy penalties for enforcement of laws. Adjudicating authorities can very well take lessons from such experiences.

Executive Level

Valid orders passed by properly constituted judicial tribunals, if not enforced, are likely to result in loss of confidence in the entire system which may have disastrous consequences. Delays in enforcement occur at executive level because enforcement is not properly supervised and controlled by any independent set-up under the adjudicating authority and there is lack of co-ordination between the adjudicating and executing authorities. Enforcement is mainly an administrative job and degeneration in administrative machinery is well known. Good governance has become the most important thing. The accountability is not being properly ensured and those responsible for setting the lapses right are themselves causing lapses. Speedy enforcement, therefore, requires a radical crossing in the state of affairs. Adding layers of supervision to achieve this objective has proved futile. Unless minimum heavy punishment is imposed for commissions and omissions for causing delayed enforcement and political influence on enforcement machinery is kept under check, the prompt enforcement would continue to remain a distant dream. How to make enforcement machinery free from political influence in the present day set-up requires a serious debate. It is urgently needed that the lost credibility, efficiency and efficacy of enforcement machinery may be restored by breaking nexus between politician, bureaucrat and industrialist.

Following suggestions are made in this regard:

1. The laws should be simple and clear so that these can be understood by the class for whose upliftment they are enacted.
2. While legislating we must thoroughly examine the provisions for enforcement, their efficacy and adequacy.

3. **Adjudicating authorities should refrain from giving contradictory interpretations to avoid confusions.**
4. **Machinery to monitor the execution and enforcement of the orders should be made a part of the adjudicating authority.**
5. **Time schedule for enforcement should be specifically provided and omissions and commissions in this regard should be punishable.**
6. **Burden of proof that there was no omission or commission in failure of enforcement should lie on the enforcement officer.**
7. **Enforcement machinery should be made free from political influence.**

We must endeavour for a work culture that results in industrial peace and prosperity and should take steps to reform laws which cloud our objectives of peace and prosperity.