

PREFACE

A wishful desire of every human being, for which one keeps striving throughout his life, is 'dignity'. It is basically a matter of 'self possession' — a fair social adjustment with dependable economic and ethical support. This is most essential for the growth, development and stability of an individual's personality. Accordingly 'dignity of all' is indispensable for social peace and equilibrium. There is no alternative to it. Historical scanning, however, reveals that the 'dignity of all' has been an exception rather than a rule in almost every human aggregate and culture. This has been particularly true with respect to 'dignity of labour'. But, there have been benefactors in every age who have ever kept striving for an egalitarian society; a society in which all could be equal and no one is either ranked in terms of his might or disdained because of his feebleness. The goal has, however, remained unattained in perpetuity. Notable has been the plight of the people in the working class. Being in a state of oppression, they have carried many derogatory labels on them, like, 'slaves', 'serfs' etc., reflecting their state of deprivation with no legal rights. Bereft of enforceable claims, they have remained a vendible commodity even up to the recent days of history. That all remained valid either under the approbating 'unwritten commands of the lords' or 'privileged inscriptions on the vellum' dictated by unchallenged masters of human property. Change has been reported since the specialized division of labour commenced, the industrialization expanded and the sense of contract strengthened. This was the dawn of the new era. Painful cries of suffering millions, with last hope to survive, came out from the vents of 'the factory' shooting out a demand for dignity through law and not by mere courtesy. This led to the recognition of labour as a subject of justice and initiated the development of the corresponding legal regime. Though many issues have got the eye, the main task however, is yet unfinished.

Virtually industrial civilization began with change in production system due to, primarily, the invention of steam engine, power looms, spinning machines and improved transport system in the eighteenth century. The economic beliefs getting revolutionized broke the earlier system asunder. The labour was drawn to factory. They later developed self-bonds to face exploitation and insecurity from the industrial masters. Sense of respect for individual developed and the concept of a respectable human being with his infinite potentialities started acquiring shape. The culmination of this awareness was a technical shift from master-servant

relationship to employer-employee relationship. The sceptre of 'hire and fire' began to fade out. The courts in the first part of the nineteenth century started conceiving a law for labour in contemplation of a belief that a free inter-play of economic forces would ensure the good of the society. That was the beginning without a real impact on labour conditions. The employees did not have a much choice between hunger or the given conditions of work. No redressal was available even for injury from inherent danger of work. The time was, however, ripe for workers to be more and more congregated and assertive.

As is generally understood, the workers first emerged as a distinct class in England. Machine breaking in Luddite riots was the first protest. The employers with power reacted. In 1817 the 'London Corresponding Society' was proscribed, which had been founded earlier in 1792 to organize the working class. Voice raised against it in Manchester was crushed by the Massacre of Piterloo in 1819. But protest meetings followed in Liverpool, Norwich, Westminster, Nottingham, Bristol and York. Common Council of London also made a strong protest against the 'Piterloo Massacre'. These protests, turning the tide, set in the era of beneficial legislation in the area of labour protection. A large number of statutes have since been framed. The ball then set to roll is expected to find no halt, though the pace is sometimes dejecting. The reality is that it is very difficult to keep an account of the legislations which have come up in the area till date in the different parts of the globe. On the other hand, the on going reshaping of the economies may require a total overhauling of all earlier legislations.

As regards India, the people in ancient days were not merely a pastoral band. Though not "industry" in the modern sense of the term, among others, industries, like handicrafts of export quality, mining, metal processing and general manufacturing, especially jewellery, were existing in India prior to the advent of modern 'industrialisation'. As a natural corollary to this, it may safely be presumed that there might have existed some system of regulation of industrial relationship also. *Narad Smriti* contains a specific mention of agriculture labourers and herdsmen. It also speaks of slaves whose ownership could be transferred. Regarding wages, mode of their payment and fixation, details are available in *Yagyavalk*, *Brahaspati*, and *Narad Smrities*. Some regulations about availability of leave to workers, like grant of leave on providing a substitute, have also existed in earlier periods.

New trends started developing in India during British period when indigo factories multiplied and the Britishers sought the production of more blue dye in their factories at Lancashire and Manchester. Hundreds of such factories came up in Bengal. Textile factories developed in Bombay, Madras, Ahmedabad, Sholapur, Calcutta, Nagpur and Kanpur. Lac, tea and jute industries also developed. The Industrialists had the

support of the rulers. Probably because of that Workman's Breach of Contract Act, 1859 and Plantation Act, 1863 were enacted which are generally termed as anti-labour legislations. Labour organisation was declared as illegal as is evident from sections 490, 491 and 492, IPC 1860 (now repealed). In spite of such measures, under compelled situations, the labourers of Bombay Textile Mills went on strike in 1877. They were the first to go on strike. It was during that initial phase of discontent that the first Factories Act was passed in 1881.

The Royal Commission on labour in its *Report on the Labour Question in India* (1892) took note of the dissatisfactory state of labour and their non-assertive position with respect to wages etc. Later the *Report of the Indian Factory Labour Commission* (1908) also took its cognizance. The first Textiles Union was formed in Madras in 1918 but the High Court at Madras declared the Union as illegal. In 1919, at the global level, the first International Labour Conference was held in Washington, DC and in the year 1920, at home, the first Trade Disputes Act was passed. It, however, did not recognize the free play of natural rights of the labour. In 1926, the Trade Unions Act was enacted and in 1929 the Trade Disputes Act of 1920 was replaced by the Trade Disputes Act of 1929 which was comparatively a liberal legislation but under the continued *laissez faire* and selective intervention policy the Act was not extensively used. Till then the labour force had considerably swelled in India and new problems had emerged which were again formally focused by the *Report of the Royal Commission on Labour in India* (1931). During the Second World War, the Defence of India Rules were framed of which Rule 81-A provided for compulsory conciliation and adjudication. Besides that, it made the awards binding and prohibited lock-outs and strikes during conciliation and adjudication and for two months thereafter. Strikes not arising out of genuine trade disputes were prohibited. Then followed the enactment of the Industrial Employment (Standing Orders) Act, 1946, the present Industrial Dispute Act, 1947 and some other regulatory and welfare legislations. The Constitution of India was adopted in 1950 which vide article 43-A provides that "the State shall take steps, by suitable legislation or in any way to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry". This provides a sound basis for developing the industrial jurisprudence of the country. The Second National Commission on Labour (1999) has now been appointed which would examine the existing labour laws and suggest changes in view of the on going economic reforms.

As a matter of fact, under extended legal regime, the deprivation and dejection of workers did not end. Rather new areas of conflict have emerged with the further expansion of industrial civilization, more so due to recent globalisation and liberalization. Labour is an important

factor of growth. The situation as such is in fluid state and the apprehensions on the side of labour, being a weaker party, are heavier. At the same time it needs to be realized that the capital resources cannot be utilized properly without an effective control upon human resource. Shifting all power on the side of the workers may, therefore, not be a wiser step. The attempt must be made to turn the relationship of subordination and command into that of coordination through law. To make the system of coordination succeed a suitable adjudicatory mechanism needs to be adopted, which may be supplemented by alternative techniques of conciliation and bargaining.

The book in hand is a compilation of papers contributed by various specialists in labour laws including, among others, Mr. J.B. Pai, Mr. O.P. Malhotra and Mr. T.S. Shankaran. It gives a comprehensive view of the developments and the present status of labour adjudication in India in the light of related legislations and judicial decisions. Nature of labour sufferings as well as problems of enforcement of relevant laws are very much in focus in the book. Mr. Pai, in his explanatory paper, gives an account of the social welfare legislations in India, both before and after independence. As regards, the pre-independence period, Mr. Pai describes the developments in law with reference to the 'victory of Champaran', 'trial of Gandhiji' and the resolution adopted by Congress at its Lahore Session in 1929. As regards the post independence period he mainly focuses on the adoption of Industrial Truce Resolution, Industrial Disputes Act, and other legislations regulating monetary terms of employment, maintenance of physical conditions of labour and social security.

Mr. Malhotra, in his comprehensive write up offers probing insights into the three fold machinery for settlement of industrial disputes: (a) negotiations—collective bargaining (b) mediation—conciliation, and (c) adjudication—arbitration. He explains the merits of these modes of settlement of disputes and also describes their limitations. The jurisdiction of the arbitrator and nature of relief which can be granted by him has been discussed with reference to case law and considerations of social justice. Relevant procedures and practices are also described and the extent of judicial review defined.

In his wide-ranging contribution, Mr. R.K.A. Subrahmanya gives an exhaustive account of legislations about labour adjudication in India. Mr. Subrahmanya makes a specific mention of the legislative developments which have taken place in India, from time to time, beginning with the passage of Employers and Workmen Disputes Act, 1860 till date. The discussion has been oriented in the historical perspective with an attempt to make the issues about labour adjudication clearly understandable. The birth and demise of the Labour Appellate Tribunal constitutes a part of the paper. Significant references in this

paper, *inter alia*, relate to observations of National Commission on Labour, Law Commission of India and the Draft Labour Code, 1994, about core concerns of labour.

Specific issues have been addressed by other contributors. Issues relating to immunity of trade unions, such as, extent of their protection, impact of the immunity on community interest and the effect of 'agreements in restraint of trade', have been dealt with by Professor S.C. Srivastava. He has also discussed the 'non-immunity' of trade unions before consumer fora. A comprehensive account of the issues related to enforcement of awards is given by Mr. H.L. Kumar. He has lucidly defined the expressions 'award' and 'interim award' in the light of statutes as well as case law. Matters concerning, operation of an award, its binding nature and effects of breach of award have also been dealt by him. In his separate contribution he discusses the problem of dismissal and discharge of employees in the light of the assumption that an employer has the freedom to select anybody according to his requirements but does not have the liberty to fire a workman at will. Grounds for discharge and dismissal of an employee have been specifically worked out by him in the light of judicial precedent. Also, approvable procedures for any such action have been defined with lucidity and precision. Mr. K.L. Gupta, in his contribution, deals with issues involved in the general enforcement of laws relating to labour adjudication, specifically referring to the problems at legislative, executive and judicial levels. Additionally, he has detailed out the reasons for delay in adjudication and has put forth suggestions for improvement of the laws. The genesis of the retrenchment law in India is given by Mr. Bushan Tilak Kaul. He has also analysed the provisions dealing with compensation of workmen for loss of their employment as a measure of subsistence till they get a fresh employment. These provisions have an added importance in India in view of lack of appropriate social security measures necessary to meet such eventuality. To have a clear view of the retrenchment policy, relevant concepts and the prescribed statutory schemes have been assessed in the light of judicial decisions.

An evaluation of the implementation of laws pertaining to unorganized workers, especially those relating to child labour, minimum wages and bonded labour, is given by Prof. Z.M. Shahid Siddiqi. In view of the urgencies brought to fore by factual presentation and analysis of the events, he has proposed creation of boards for the enforcement of the rights of unorganized workers. Matters relating to unfair labour practices, especially ILO approach, the Indian policy and some state level initiatives have been probed into by Dr. Kamala Sankaran. She has, after giving a comparative view of the approaches, expressed a need for suitable modification of laws in the context of changes taking place in the economy and labour market in India following the process

of liberalization and de-regulation. Prof. Rajiv Khanna gives a critical treatment to the current law on industrial disputes and points out its inadequacies. The ways and methods by which governments in power can be restricted from utilizing a dispute for promoting its political interests have also been explained by him. Lastly, Mr. T.S. Sankaran proposes a new adjudicatory system in the light of the Indian Labour Code 1994 (Draft) prepared by the National Labour Law Association under the guidance of a Committee of Direction headed by Justice O.A. Desai, formerly Judge, Supreme Court of India and Chairman, Law Commission of India.

An updated text of the Trade Unions Act, 1926, the Industrial Employees (Standing Orders) Act, 1946, the Industrial Disputes Act, 1947, and the rules having been made thereunder is given at the end of the book for the benefit of readers as a ready reference.

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