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THE POLITICAL-ECONOMY OF INDUSTRIAL RELATIONS LAW IN INDIA

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Abstract

The Industrial Relations law in any country are the result of the constant interaction and interrelationship among labour, capital, the state and the economy. This paper is an attempt to trace the evolution of the same in India. The author charts the course of the Industrial Disputes Act in a three-stage periodisation: the Colonial Phase, the Post-Colonial Phase and the Post-Liberalisation Phase. In the Colonial Phase, the Indian labour policy was dictated by the interest of the Colonial capital. Even though the policy has evolved over the years, in this Post-Liberalisation Phase, it continues to be dictated, more than ever, by the foreign interests, perhaps through different dynamics, more subtle and forceful.

The framework of Industrial relations law in any country is the result of a complex process of interaction and interrelationships between the main actors, namely labour, capital, the state and society. In the outline of this paper we examine the contours of this relationship as it occurred and evolved in the Indian context.

In order to undertake this exercise with some clarity I have resorted to a three-stage periodisation of the history of the Industrial Disputes Act 1947, (I. D.

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Act.) which is the central piece of labour legislation dealing with Industrial Relations in India. Interestingly it may be noticed that such a periodisation quite neatly converges with the important stages in the evolution of the political economy of the country, which in turn has greatly influenced the attitude of all the important actors on the stage of Industrial Relations.

The periodisation adopted falls into the Colonial Phase, the Post-Colonial Phase and the Post-Liberalisation Phase. Incidentally the stages of periodisation suggested here are easily recognised and accepted by all those who are concerned with the study of India.

The Colonial Phase

British presence in India is usually traced back to the days when the East India Company first set up its trading operations in 1600. From our point of view, a traditionally accepted starting point for tracing the origin of labour legislation is the first Factories Act of 1881. Indeed, the British had a very important role to play in this piece of legislation. The motivation for this law was not labour welfare by any stretch of imagination. It was the interests of the textile magnates of Lancashire and Manchester that required making Indian labour as costly as possible so that British textile goods had a better chance for competition in the export market.

The next important piece of legislation that arrived on the scene was the Trade Union Act of 1926. This was preceded by labour agitation and protest when the employers went to the Civil Court in Madras against a strike led by B. P. Wadia in Buckingham Carnatic Mills and obtained an order for damages against the trade union leader for inducing a breach of contract. Against this background the British were willing to introduce the Trade Union Bill, which primarily gave immunity against Civil and Criminal liability in respect of a trade dispute. The law did assist the labour movement of the day, though the labour movement was not entirely satisfied with the content of the law[1].

After the trade union Bill became a law, the next important law legislation with much more far reaching consequences than was ever imagined at the time of its introduction, was the Trade Disputes Bill of 1929.(T. D. Act.)[2]. In order to understand the true implication of this law both at the time of its introduction as well as now, it would be useful to take note of the overall political climate that existed at that relevant point of time.

The most important event of this period, of the very year in question, was the infamous Meerut Conspiracy Case. Thirty-one persons from various parts of India were arrested on a charge of criminal conspiracy to deprive the King of his sovereignty over British India. Most of the arrested were from the Presidency towns of Bombay and Calcutta, which were the industrial centres. The complaint traced very elaborately the links between the accused and the communist international and traced the establishment of a branch of the communist international to the year 1921. Activists and leaders of the trade union movement were implicated in the trial. There was a genuine fear that the accused persons were bent upon the complete paralysis and overthrow of the existing Governments in every country by means of general strike and armed uprising. It is therefore strongly suggested that the convergence of the filing of the Meerut conspiracy case and The Trade Disputes Act in the year 1929 was not just accidental. The Trade Disputes Act was not intended merely to regulate industrial relations but intended to control the labour movement itself and prevent it from playing a political role against His Majesty's Government.

It is equally important to note that Public Safety Ordinance was the very next step taken by the Colonial Government after the Trade Disputes Act was passed. This Ordinance also was introduced in the year 1929 itself and despite legal difficulties pertaining to legislative practice, the law was promulgated, thus emphasising the political importance attached to these measures.

Yet another feature to be noted is the situation relating to industrial strife during the relevant period. In the year 1921 seven million working days were lost on account of strikes and lockouts, in 1925 this went upto[3] twelve and a half million, and by 1928 it had crossed thirty one million working days.

It was against this background that the Bill was introduced and at every stage of its debate the Indian National leaders opposed the Bill tooth and nail.They succeeded in sending the Bill to a Select Committee. The trade union leaders appear to have even won over the representative of the Indian Merchant's Chamber of Bombay, in the select committee on the limited question of banning picketing, but finally after a clause-by-clause debate and opposition from the side of the labour representatives, the Bill was adopted by 56 votes to 38. The story of the passing of this law does not end with the voting of the Bill. As soon as the Bill was declared to have passed, two bombs were thrown from the gallery into the Hall of the Legislature and the House dispersed in panic at once. Two men were arrested of whom one was the legendary Bhagat Singh. They were charged with alleged attempted murder under the Indian Penal Code[4].

The Post-Colonial Phase

After Colonialism and before independence

The only other piece of legislation which is indeed the one that holds the field even now is the Industrial Dispute Act 1947. Even though the Act carries the year of Indian Independence as the year of its enactment, it is important to note that it was passed by the interim government before India won formal Independence on 15th August 1947. This law was therefore not passed by the duly elected government of post colonial India, yet this is not a sufficient reason to suggest that those who passed the I. D. Act did not have the mandate to do so. Those who led the interim Government were the best leaders of the Independence movement[5] and hence questioning the legitimacy of this law is no easy task. A factor, which would have clearly operated on the minds of these leaders, is the fact that strikes had started increasing on the eve of independence and were drawn into many political battles of the time. While the number of mandays lost in 1945 on account of strikes was about four million, this figure rose to more than sixteen million in the year 1947[6].

For the purpose of this paper it is unnecessary to examine all the provisions of the I. D. Act in detail. Even though such an excercise is not entirely extraneous to the overall theme being addressed here, many constraints dissaude the writer from such a course. We will therefore focus on a comparative study of the two enactments mentioned above in order to study the trends that emerge from such a comparison.

The existing I. D. Act has several elements which, when read together, lay down the framework for Industrial Relations law in India today. The most revealing aspect of this comparison is the fact that critical inputs for this framework have actually been transplanted from two sources namely, the Trade Disputes Act of 1929 and Section 81-A of the Defence of India Rules of 1939. The operative definitions of workman, lockout, strike, public utility trade and industrial dispute found in the I. D. Act are virtually lifted from the T. D. Act. More important, is the virtual prohibition of strike and lockout on Public Utility and penalisation of workers found to be in violation of this law. Another feature that was introduced into the I. R. scenario by the T. D. Act, was the creation of a dispute settlement machinery consisting of Courts of Inquiry and Conciliation proceedings. These institutions continue in the I. D. Act also. The idea of making a Reference to a Government authority is also similarly derived. One important feature present in the I. D. Act, which did not owe its origin to the T. D. Act, is the power of the Government not only to refer a matter to a

governmental authority but also to prohibit the continuation of a strike or a lockout. Interestingly however, a further analysis of the relevant legislative history reveals that this power contained in Section 10(3) of the I. D. Act was in fact borrowed from Rule 81-A of the Defence of India Rules 1939.

The author wishes to submit therefore that all the important features of the I. D. Act owe their origin to British-inspired legislative interventions. Such legislation was clearly intended to help capital through uninterrupted production. Undoubtedly it was in the nature of State intervention into the realm of the market forces but clearly these interventions were designed to limit the power of labour and take care of the interests of capital.

Post-Independence Legislation

There has been a distinctly different effort during the post independence period to add certain unique features to the industrial relations framework. Immediately after independence the new Government took a very critical initiative in order to adopt a friendly attitude to labour. The Nehruvian dream of building a prosperous India in which labour got its due share obviously inspired this approach. One of the first initiatives that were taken in this regard, therefore, was the adoption of the famous Industrial Truce Resolution in 1947 under which all parties agreed to avoid industrial strife for the next three years.

In 1953, the Government took a major initiative, under which a new chapter was introduced into the I. D. Act. This was chapter V-A, which only stipulated that before an employer resorted to Lay-Off or Retrenchment, a notice would have to be served on the Government and that certain compensation by way of severance pay (called Lay-Off or Retrenchment or Closure Compensation, as the case may be), must be paid.

A much more far reaching amendment was the introduction of Chapter V-B in the year 1976. This chapter stipulated that lay-off, retrenchment or closure cannot be declared without the employer making an application to Government, under a copy to the trade union, seeking explicit approval of the Government to initiate any of the said measures. The chapter also laid down the procedure for making the relevant application, the type of disclosure necessary and the considerations that must weigh on the mind of the Government while dealing with the application. This was the first serious step

provided for in law by way of regulating the rights of capital under the I. D. Act and this measure was motivated in no small measure due to the fact that very often the private sector in India in fact set up their production centers relying very heavily on borrowings from public institutions, such as nationalised banks and Industrial credit agencies.

This legislation was challenged before the Supreme Court of India[7] by the Employers on the ground that it violated the fundamental right guaranteed under the Constitution of India, to carry on any trade or business of the citizen's choice. In a famous case the Supreme Court struck down the relevant law and gave relief to the employers. The state, however, did not accede to this judicial dictum. In 1982, yet another amendment was introduced in Parliament through which Chapter V-B was re-enacted curing all the lacunae which the law suffered from. The critical constitutional law question that arose was whether there could be a reasonable restriction on the right to carry on any trade or business and it was understood that the Supreme Court decision upheld the concept of reasonable restriction, which the amended Chapter V-B apparently satisfied. The law of the land therefore continues to contain Chapter V-B and employers are still obliged to comply with the requirement of application and permission before inflicting any of these forms of job losses.

The Indian state therefore, took a multi-pronged approach toward the question of Industrial relations and balanced measures against labour as contained in the earlier legislation with measures against capital as contained in later amendments.

The Post-Liberalisation Phase

The new era of Globalisation, which is also accompanied by the processes of liberalisation, began in June 1991. The expression 'liberalisation' is the more appropriate one since it more specifically refers to the process by which all obstacles that come in the way of globalisation are sought to be removed. The process of identifying, modifying or even repealing all laws that come in the way is particularly encouraged by the Bretton wood institutions. This exercise is often abundantly funded and encouraged by the said institutions and receives abundant patronage and more recently, very proactive support from the state machinery. In so far as the legal regime connected with the Labour Law is concerned, it is that part of the Law, which was incorporated in the post independence phase that is particularly targeted. The specific language that is

used is that we need an Exit Policy, if we are to attract foreign direct investment (FDI). It is argued elsewhere that we already have an Exit Policy as contained in the I. D. Act, the Companies Act and the Sick Industrial Companies Act, which responds to the Indian reality, but, of late this legal regime is fast being dismantled in order to meet the needs of liberalisation.

The demand for amending labour laws is above all advanced under the plea that the present framework introduces labour rigidities and that we need more and more flexibility in order to meet the new needs of the era of Globalisation. The major target for amendment under this pressure has been Chapter V-B of the I. D. Act. The law as it stands at present, applies to all industrial establishments employing more than one hundred workers. The proposed amendment seeks to 'liberalise' this ceiling to one thousand, thus covering lesser number of establishments. Incidentally, it may be noted that very few modern private companies employ above the new ceiling limit while the existing Public Sector undertakings (owned by Government) will continue to be covered by the old law[8]. It must be noted that the Finance Minister of India, in the 2000-2001 budget speech, gave an assurance that the above proposals would be converted into amendments without even waiting for the concurrence of the Labour Minister concerned[9]. Unexpectedly, however the Finance Minister's proposal has drawn opposition from the least expected quarters as well as from trade union centres which have always opposed these proposals as an attack against organised labour during the era of Globalisation.[10]

It must be noted that never before has Indian Labour policy been dictated from abroad, since Independence, as it has been now. True, during the Colonial era, the British directly legislated in this field in the interests of Colonial capital. But during the era of independence, there was some semblance of regulating capital also. Now, we are back into an era during which agencies and agents of the Bretton wood institutions have started legislating in the interest of neo-colonial capital.

Some Reflections:

1. It is interesting to observe that State intervention against labour power has always been welcomed by those very same forces who demand State abstention when it comes to the interests of capital.
2. Even while demanding for an exit policy which, in legislative terms, would mean repeal of Chapter V-B, there is no demand for amending those parts of the I. D. Act

which invoke State intervention against the power of labour.

3. In so far as the contemporary demand for flexible labour is concerned, Brettonwood institutions, including the coming Ministerial Conference at Doba, seek the implementation of Core Labour Standards through the ILO, recently recognising its vast experience and expert competence.

4. The dismantling of various provisions in the I. D. Act is justified in the name of introducing necessary labour flexibility. Over the past years, more than 4,50,000 manufacturing centres have been closed down, rendering millions of workers unemployed. In situations where Ch. V-B. applies, there has been a marked tendency to pay off workers through the golden handshake, thus giving many of them the semblance of a reasonable severance pay. Where this law does not apply, the legal dues are a mere pittance calculated at the rate of 15 days wages for every year of completed service.

5. We, therefore, witness a period during which there exists a certain level of contradictory pulls. Organised labour is under pressure to surrender its hard-earned rights, while efforts are on to achieve minimum rights for those working in the informal sector.

6. International agencies, solidarity concerns, pressures from foriegn capital and civil society processes do not necessarily share the same view on all these matters and there is certainly a need for wider and more in depth analysis and discussions to wade through, what appear to be conflicting interests and views.

Endnotes

[1] Mr. N.M.Joshi, the Labour representative in the Delhi assembly opposed the Bill when it came up the for Discussion on 4th February 1925. He said that when he moved the resolution asking for trade union legislation, he wanted a sound Bill, but not the Bill that the Government had drafted. The views of the employers on the Bill showed that they favoured compulsory registration, and asked for suppression of unregistered Union groups. He also objected to the restriction on union funds to trade union purposes only. He felt that a trade union would not be worth having if it was not permitted to use its funds running its candidates for election and for assisting another trade union in distress. He asked the Government not to hurry with the Bill, because trade unions were not ready and shouldy be given time to consider the Bill further. He urged the Government to grant to Indian Labour the real freedom granted to Labour in England.

[2] None would have imagined that this law would become the frame work for the Industrial Relations Law even for post Independence India. Indeed it has survived for well over seven decades and continues to hold the field even today.

[3] R.P Dutt, India Today, Manisha Calcutta, 1979, pp.410-11.

[4] Bhagat Singh went on to clarify that they had taken care to ensure that the bombs were designed and thrown into a safe corner of the legislature in order to ensure that on one was hurt and that the only purpose of the explosion was to make the deaf hear. For further details please see http:// www.parwhaz.com/shaheed-bhagatsingh/june6.htm

[5] An interim Government consisting initially of 12 members led by Pandit Jawaharlal Nehru took office on 2nd September 1946.

[6] Government of India, Labour Yearbook, 1949

[7] Excel Wear v. Union Of India, A.I.R (1979) SC 25

[8] Such is the modern practice of level playing field !

[9] Finance Minister Union Budget Speech 2000-2001, http//indiabudget.nic.in/speechtext/bs 1.htm

[10] Even George Fernandes, convener of National Democratic Alliance (NDA) voiced his opposition to the proposed Labour Reform. For further details, please see Naundhi Kaur, *The Divide on Labour*, Frontline, Vol.18(20) 2001. Also see, Unions Assail `anti labour exercises` The Hindu, Oct 4, 2001.