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JUDICIAL RESPONSE: NEW INDUSRIAL POLICY

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ABSTRACT

The Indian Judicial process is known for its sympathetic attitude towards the working class. The Supreme Court responded to the challenges of the employer, and it had taken a positive attitude towards the labour and upheld many of the social and welfare legislations as constitutional and felt necessary for the betterment of the workers. But since 1990's the Supreme Court appears to be a tilting in favour of the employer and it is more evident after N.I.P.

A. PRIOR TO NEW INDUSTRIAL POLICY.

As per J. Mukherjea in Bharat Bank Ltd., Vs. Employees of Bharat Bank Ltd.,[1] it was held that in settling the disputes between the employers and workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

In Kulkarni Vs. State of Bombay,[2] section 27 of the Industrial Disputes (Appellate Tribunal) Act, 1950 which provides that only those unions which would represent not less than 15 per cent of the workers in an industry would be recognized for the purpose of representing the workers of that industry in an industrial disputes was challenged. The court held it valid as not being violative of the freedom to form associations or unions. The court said that the provisions of the said section did not prevent the workers from forming an association representing larger percentage than that which was in existence and acquiring the right to represent the workers in an industrial dispute before Tribunal.

C.J. Chagla, has quoted the statement regarding labour legislation in Mahadeo Dhandu Jadhav Vs. Labour Appellate Tribunal[3] As; "we are always most reluctant to put an interpretation union labour legislation is likely to prejudice the rights of welfare of labour. We are fully conscious of the fact that our legislature has put labour legislation on the statute book primarily for the purpose of redressing the balance between employers and employees and that we should not, unless we are compelled to do so by the clear language used by legislature put any construction upon any provision of labour legislation which will in any way prejudicially affect their rights."

In regard to the interpretation of labour law and the basic premise on which the judgment should be based Justice Gajendragadkar had described in standard vacuum Refining Company case, as; "The theory of" hire and fire" as well as the theory of supply and demand which were allowed freed scope under the doctrine of laissez faire no longer hold the field. In constructing a wage structure in a given case industrial adjudication does take into account to some extent the considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of general community becomes more alive and active, as the welfare policy of the state takes a more dynamic form, as the national economy progresses from stage to state, and as under the growing strength of the trade union movement, collective bargaining enters the field, wage structure ceases to be purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilized and progressive society also come to be recognized. It is in this sense, and no doubt to a limited extent, that the social philosophy of the age supplies the back-ground for the decision of industrial disputes as to wage structure."[4]

The disharmony caused due to industrial disputes were harmonized by suitable or appropriate industrial legislation. This was observed in All India Bank Employees" Assocaition Vs. National Industrial Tribunal,[5] where it was established that the right to form associations or unions guaranteed by Article 19 (i) (c) does not includes the right to strike and the right to declare lock-out. The right to strike, thus, is not fundamental right and therefore, the legislation regulating strike and lock-out is not controlled by Article 19 (i) (c). The court held that the right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation.

J. Gagendragadkar also stated that the ultimate object of industrial adjudication is to help the growth and progress of national economy and it is with that ultimate object in view that industrial disputes are settled by industrial adjudication on principles of fair play and justice.[6]

J. Gangendragadkar had not only described about the industrial adjudication based on principles of fair play and justice but also emphasized the importance of social justice. The concept of social justice is not narrow, or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities, nevertheless in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour and good relationship.[7]

C.J. Beg in Bangalore water supply and sewage board Vs. A Rajappa,[8] described about the state's responsibility towards the workers in protecting their rights and their welfare measures. He stated that under the constitution the state is itself envisaged as having the right to carry on trade or business as mentioned in Article 19 (i) (g). In part IV, the state has been given the same meaning as in Article 12, and one of the Directive Principles laid down in Article 46 is that the state shall promote with special care the educational and economic interests of the weaker sections of the people. The state, as defined in Article 12 is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people as well as empowered under Article 298 to carry on any trade or business.

Industrial Dispute Act seeks to provide for in the interests of industrial peace and harmony between the employers and employees so that the welfare of the Nation is secured.

J.Krishna Iyer also stated that the relevant constitutional entry speaks of industrial and labour disputes (Entry 22, List III, Sch. VII). The preamble to the Act refers to the investigation and settlement of industrial disputes. The definition in industry has to be decoded in this background and the holding is reinforced by the fact that industrial peace, collective bargaining, strikes and lock-outs, industrial adjudication works committees of employers and employees and the like connote organized, systematic operations and collectivity of workmen co-operating with their employer in producing goods and services for the community. C.J. Beg, then, also subscribed to the view of other judges in the case and supported the view that it is the state's obligation under the constitution to provide welfare and security to the workers.

But the Supreme Court in excel Wear[9] case reversed back and supported the employer in regard to closure of an establishment held that the retrenchment of workers due to the closer of establishment does not by itself infringe the right guaranteed by Article 19 (i) (g). It was stated that a person who has not started a business cannot be compelled to start it, but a person who has started or has been carrying on the business may in the interest of general public, compelled not to close down his business.

Justice Krishna Iyer in this opinion stated that the employers and employees are equal partners, even if employees are not considered superior. But today it is reversed one. The reason is that the employers harness intelligence on the other side. They have the superior advantage which concentration of capital brings with it, and they know how to make use of it….whist capital in India is fairly organized, labour still a more or less disorganized condition inspite of unions and Federation. Hence employers would be that they should willingly regard workers as the real owners of the concerns which they fancy they have created. Turned to these values are the policy directives in Article 39, 41, 42, 43 and 43A. They speak the right to an adequate means of livelihood, the right to work humane conditions of work, living wage ensuring a decent of life and enjoyment of leisure and participation of workers in management of industries.[10]

In D.S. Nakara Vs. Union of India,[11] J. Desai held that while expanding the horizons of socio-economic justice, the socialist Republic and Welfare state which the country endeavour to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria being in service and retiring subsequent to the specified date for being eligible for the liberalized pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalized pension schemes of being in service on the specified date and retiring subsequent to that date in the memoranda, violates Article 14 and is unconstitutional and liable to be struck down. But as the arbitrary and discriminating portion in the memoranda can be easily severed, both the memoranda shall be enforced and implemented after severance of the unconstitutional part. However, arrears of pension prior to the specified date are not required to be paid to those who have retired before the specified date because to that extent the scheme is prospective. Accordingly, all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension schemes from

the specified date irrespective of their date of retirement. Thus, the Supreme Court has taken a sympathetic view of the retired or retiring employees and opposed the arbitrary policy of the Government in payment of quality.

Article 39 (c) required the state to secure that the health and strength of workers, men and women, and children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength Article 41 obligates the state within the limits of its economic capacity and development, to make effective provision for securing the right to work, to education and to provide assistance in cases of unemployment, old-age, sickness and disablement and in other cases of underserved want. Article 43 (3) requires the state to endeavour to secure amongst other things full enjoyment of leisure and social cultural opportunities. Furthermore, the principal aim of the socialist state as envisaged in the preamble is to eliminate inequality in income and status and standards of life. The basic frame work of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income.

It was held by justice P.N. Bhagwati in National Textile Mills Union Vs. P.R. Rama Krishanan and others,[12] had observed that the workers have right to be heard before the provisional liquidator, and it would be open to the workers to apply to the court for vacating that order and it would be for the court after considering the material produced before it and hearing parties to decide whether that order should be vacated or not, and the workers are entitled to appear and be heard in winding up petition.

The judiciary had its bend towards the workers than towards the employers.

The benefit of re-employment as well as the retrenchment compensation was also supported by the decision given by Justice Chinnapa Reddy in HIssar Textile Mills Vs. Workers[13] on April 3, 1984, the Management of the Hissar Textile Mills, Hissar gave notice to its intention to close down the mill of the Government of Haryana under section 25 F.F.F. of the Industrial Disputes Act. The mill was closed down with effect from June 3, 1984. Over 3000 workmen were affected as a result of the closure of the mill. The workmen filed a writ petition in the H.C. of Punjab and Haryana which was dismissed in limine. The petition for special leave to appear has been filed under section 136 of the Act the two points were raised by the learned counsel for the petitioners.

The first was that a direction should be issued to the central Government to take appropriate action under section 18 AA (b) of the Industries (Development and Regulation) Act. Second was that the management should be directed to pay retrenchment compensation under the main clause of Sec. 25 FFF (i) of the I.D. Act instead of under the provision as it had done.

Section 25 FFF (i) provides that where an undertaking is closed down for any reason whatsoever every workman who has been in continuous service for not less than one year is that undertaking immediately before such closure shall be entitled to notice and compensation in accordance with the provisions of S 25 F as if the workmen had been retrenched. It was held that where the undertaking is closed down on account of unavoidable circumstances beyond the control of employer, the compensation to be paid to the workmen under section 25 F (b) shall not exceed his average pay for 3 months.

A unique decision was given by A.P. Sen, M.P. Thakkar and S. Natarajan J.J. in Navnit R. Kamani and other Vs. R.R. Kamani[14] that for the first time the legislative intent reflected in the provisions of the sick Industrial companies (special provisions) Act (1 of 1986) to encourage the workers to run the sick-unit is being given a concrete shape. Another important feature of the decision is that the value of the share of the unit is reduced to Rs. 1/- per share while directing the transfer of shares to the employees. The scheme sets up a new trend in the industrial world. The workers have an opportunity to show to the world that the workers in New India are capable of managing their own affairs and can produce optimum quantity as also best quality. The Trade Union Movement stepped into a new creative phase in the struggle of the working class to assert its identity. Indeed, one can almost hear the footsteps of the New era in the corridors of future.

The scheme placed before the Supreme Court far further orders were presented by the workers for revival of sick unit and it was sanctioned by the Board for Industrial and Financial Reconstruction after giving notice to all the concerned parties and after hearing them and after examining all the written and oral submissions, made by the parties. The scheme was framed as per direction and mandate of Supreme Court in exercise of its inherent jurisdiction and also jurisdiction under Article 142[15] of the constitution.

An apprehension has been expressed that some attempts might be made by those who are not happy with the sanctioning of the worker's scheme to throw a spanner n the wheel and to impede the implementation of the scheme. The scheme has been devised as per the direction of the court and that it has been stamped with the imprimatur of the court pursuant to the order. The Act itself has been enacted in order to evolve a speedy and

efficient machinery so that a sick industry could be revived with utmost expedition, production could be started, locked-up funds could be utilized for furthering socio-economic development. And so that the unemployment of starving workers could be ended before they are starved to death and they are provided with employment to enable them to 'live' with dignity instead of 'existing' in humiliating conditions.

It was made clear that non-with standing any order that may be secured by any party from any other forum the scheme shall be implemented in obeisance to the judicial command embodied in this order that in case there is any problem, it may be brought to this court for seeking appropriate directions instead of resorting to other forums to impeded the implementation of this socially and economically wholesome scheme.

The act enacted in 1`985 and envisaged the revival of sick units by the workers who had been rendered unemployed it is for the first time that the legislative intent reflected in the relevant provisions of the Act to encourage workers' scheme is being given a concrete shape in this manner.

It is perhaps for the first time that such a scheme sponsored by the suffering employees themselves has come to be sanctioned. Under the circumstances a very heavy burden rests on the shoulders of K.E.U. (Kamani Employees Union) and the concerned employees. On the success or failure will depend the future hope and destiny of tens of thousands of similarly situated workers. Success of this venture will instill new confidence and enable the workers to try to build their own future with then own hands albeit at some initial sacrifice.

B. AFTER NEW INDUSTRIAL POLICY:

In U.P. Bijli Karamchari Singh and another Vs. U.P. State Electricity Board and others[16] J. Ranganath Misra held that the appeals by special leave which are directed against the dismissal of the writ petitions before the Allahabad High Court on the view that while alternate remedy under the Industrial disputes Act was available and therefore jurisdiction under Article 226 of the constitution was not invokable.

At the time the High Court of Allahabad refused to entertain the writ petitions under Art 226 of the Constitution, the provision has an amendment to the effect that where alternate remedy was available, the H.C. would not have jurisdiction to entertain an application under that Article. It is true that subsequent to the decision of the H.C. the restriction introduced by way of amendment has been withdrawn.

Mr. Manoj; Swarup raised two contentions

i) relief under the Industrial Dispute Act was not an alternate remedy and

ii) in view of the fact that about 800 workmen have been out of employment for more than 12 years, direction should be given to the U.P. State Electricity Board to provide employment to these workmen as and when opportunities for providing employment is available.

It is not in dispute that workmen had completed 240 days of continuous work and could be treated as retrenched workmen. The appeals were disposed and the court gave directions that the U.P. Electricity Board, respondent No. 1 shall maintain a list of the workmen who offer to accept the reemployment and proceed to give them the benefit of re-employment. The judiciary has supported the workers' in nit infringing their rights against to the employers.

In workers of M/S Rohitas Industries Ltd., Vs. M/S Rohtas Industries Ltd.,[17] it was held by Ranganath Misra, P.B. Sawant and K. Ramaswamy J.J. that the company had been closed down since more than five years and a lot of assets were fast becoming useless and would become junk. If the company is not revived and gets liquidated, the liabilities would turn out to be far in excess of the assets and not withstanding first or second change on the assets, the creditors may not appreciably benefit. The S.C. cannot lose sight to the fact that living to about 10,000 families has been denied for over 5 years and apart from national loss, the workmen has been put to serious jeopardy. In these circumstances, it has to be held that it is of paramount importance that the company in respect of the viable units should be revived and allowed to come into production. Unless there be a moratorium in regard to the liabilities of the company, for a reasonable time. The attempt to revive the company in respect of the three units is about to be frustrated.

Directions were given by the S.C. in favour of the workmen regarding the paying of the claimed relief of compensation dues.

Justice Ahmedi and Justice K. Jagannatha Misra, in B.R. Singh and others Vs. Union of India[18] stated that strike by workers of Trade Fair Authority of India (TFAI) was not an illegal strike.

It was held that the necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouth pieces of labour. The strength of a trade union depends of its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the

managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. Eg;_ go slow, sit-in, work-to-rule, absentism etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and therefore, the right to strike is an important weapon in the armoury of the workers. This right had been recognized by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognized as a m ode of redress for resolving the grievances of workers.

The workmen of Trade Fair Authority of India went on strike to press 3 demands, viz., (1) regularization of daily-rated workmen (2) increase in pay (3) and grant of housing facility. None of the demands were referred to any Forum at the time the workmen went on strike. At the time of strike neither conciliation proceedings, before Labour Court Tribunal or arbitration proceedings were pending. No award or settlement touching the workers was operational at the relevant time. Neither was the TFAI a public utility service.

Held, that under Sec. 24 a strike will be illegal only if it is commenced or declared in contravention of Sec. 22 of Sec. 23 or is continued in contravention of an order made under Sec. 10 (3) or 10 A (4A) of the Industrial Dispute Act. As none of the aforesaid provisions had application to the present case, the strike by workers for TFAI could not be said to be illegal but the strike is a legal strike.

The courts were also towards the bent of the workers during the long and arduous struggle of the workers of the U.P. Cement Corporation against attempts; at a takeover by the Dalmias has succeeded in pushing the Government into calling a halt to its privatization moves.

The workers' struggle against privatization of U.P. Cement Corporation[19] (Dalla, Chunk and Chunnar) has achieved a historic and heroic victory recently. At the height of UPCCL worker's 'do or die' struggle launched in the state capital Lucknow, the U.P. Government has withdrawn the decision to privatize the cement units owned by the corporation by an ordinance on October 11, 1991. The Government also appointed a new Chairman – cum – managing director of the Corporation, as well as heads of the cement units. The units will resume production soon when all the formalities have been completed.

However, the Government issued the U.P. State Cement Corporation Limited (share takeover) Ordinance, 1991 in a curious manner, refraining from saying that the privatization deal was not correct. According to the Government statement the decisions had been take in public interest because of the continued closure of one of

the three units and a fall in production to the extent of 10 percent at the other two causing a severs shortage of cement in the state, which affected the public works.

During this period the Dalmias intensified their efforts to re-open the factories and break the workers' movement. But the starving U.P. cement workers' inspite of numerous difficulties, were firm and united, moving step by step towards their goal. The struggle also successfully inspired central trade unions to come forward in solidarity actions, as well as challenge. The blind and corrupt practices going on to dismantle the public sector in the country.

The workers' struggle against privatization in the sphere in 'judiciary' proved quite successfully when the high court in its two judgments and Supreme Court in its observation clearly criticized the process of privatization and gave some new orders in this regard. These judgements for the first time exposed various irregularities in the privatization deal.

The right to strike includes right to not to strike or right to work, which is logically connected with right to life and also right to livelihood. This concept of right to work had been studied in Delhi Development Horticulture Employees' Union Vs. Delhi Administration Delhi and others.[20]

It was held by justice P.B. Sawant, that this country has so far not found it feasible to incorporate the right to livelihood as a fundamental right in the constitution. This is because the country has so far not attained the capacity to guarantee it, and not because it considers it any the less fundamental right to life. Advisedly, therefore, it has been placed in the chapter on Directive Principles of State Policy under Article 41 of which enjoins upon the state to make effective provision for securing the same "within the limits of its economic capacity and development." Thus, even while giving the direction to the state to ensure the right to work the constitution makers thought it prudent not to do so without qualifying it.

Held, that there is no doubt that broadly interpreted and as a necessary logical corollary, right to life, would include the right to livelihood and therefore, right to work. It is for this reason that this court in Olga Tellis[21] have decided that while considering the consequences of eviction of the pavement dwellers had pointed out that in that case the eviction not merely resulted in deprivation of shelter but also deprivation of livelihood in as much as the pavement dwellers were employed in the vicinity of their dwellings. This was however, in the

context of Article 21 which seeks to protect persons against the deprivation of their life except according to procedure established by law.

C. JUDICIAL RESPONSE TO NEW INDUSTRIAL POLICY:

Since 1950 onwards the judiciary was positive towards the workers and up held their fundamental rights, welfare measures and also security measures. The enactment of the legislation was successful till recently, but only at present even though the judiciary had its favour towards the working class, still there are lots of disputes, conflicts etc., in the industrial harmony as well as all the workers' rights had been infringed due to this government's new industrial policy which more than ¾ option of the Government is running fastly towards the privatization besides improving public sectors as well as closing down the sick units without reviving them.

The judiciary supported the workers of Dalla Cement Factory and stopped privatization. The workers will have an opportunity to show to the world that the workers in New India are capable of managing their own affairs, shaping, their own destiny, and building their own future. They will also have an opportunity to establish that when the workers are inspired by an ideal can produce optimum quantity as also the best quality. Trade union movement, in the event of the success of this exercise would be stepping into a new creative phase in the struggle of the working class to assert its identity.

If the concerned Nationalized Banks, IDBI (Industrial development Bank of India) and the concerned Government would continued to co-operative with the enthusiasm and zeal and with the same motivation in order to make the scheme a success it would be possible to usher a new era in the industrial history of New Delhi.

The protagonists of the New Economic policy are busy blaming the workers for the various ills of our economy, it would be worth noting that it is precisely. This working class and their movement which saved a public sector from being grabbed and looted by corrupt politicians, bureaucrats and the private sector.

It is submitted that although the Supreme Court was positive towards labour and upheld many welfare and security legislation, in the recent past in appears that the judiciary is convinced and the N.I.P. is a must for industrial development. Thus, it did not oppose the privatization of then Government Cement Companies in U.P. State. Also in number of decisions, it held that there will not be no pay for no work, and strike period workers are not entitled for wages. Even in regard to wages and after retrenchment measures, the judiciary came in favour of the employer.

If the judiciary does not balance the conflict between the management and the labour, there will be a strife in industrial relations and the workers may resort to all kinds of protests and cause disturbance in industry which would because of not conducive for production. Again, if the Supreme Court reiterates its commitment to the labour's cause the emphasize the decision in National textile Corporation and the Kamani Tubes Company and also the Nakara Case. All these case's gave confidence to the workers that the judiciary is the last resort to get justice when it is denied by all institutions. This kind of confidence and credibility of the institution is necessary in a civilized society otherwise there will be danger to the democratic process.

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Act. 42 (1):- The S.C. in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and nay decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the president may by order prescribed.

Act. 42 (2):- Subject to the provisions of any law made in this behalf by Parliament, the S.C. shall as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

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