Role of Judiciary in Bringing Out Changes in Labour Jurisprudence

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I. Introduction:

During the twentieth century a new branch of jurisprudence popularly known as Labour Jurisprudence has developed in our country. It existed in our country in a rudimentary stage before independence. It owes its origin to the labour and industrial legislations and also to the innovative judgments of the judiciary. The change in the definition of an "industry" as a result of the judgment of the Supreme Court in *Bangalore Water Supply and Sewerage Board* v. *A. Rajappa*[2] is noteworthy in this regard. This article tries to look into three major aspects of Industrial Jurisprudence namely Abolition of Bonded Labour System, Strikes and Bandh (Bundh) and Contract Labour.

The objective of this article is to focus upon the inadequacies of the statutes in the respective areas of Bonded Labour System, Strikes and Bandh (Bundh) and Contract Labour and also to see the impact of the judgment of the Supreme Court upon these statutes along with the extent of their implementation. Moreover, it is also proposed to study the impact from the sociological school of law.

II. Theoretical Framework:

Labour Jurisprudence by default can be located in the sociological school of thought and relates to the functional aspect of law. It goes without saying that within jurisprudence there exists conflict of interest among the factors of production and also between the haves and have nots. This aspect has been effectively addressed by Roscoe Pound and Karl Marx.

The Poundian thought states that function of law is to minimise the conflict of interest within the society. Pound admits that there is a visible and invisible compromise brought about for balancing the conflict of interest through the institution of law. In the modern legal system, judiciary is an integral appendage for settlement of disputes. It is fashionable for the judges

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[2] (1978) 2 SCC 213

to state and also jurisprudentially acceptable that judges do not make law but merely interprets and states them. At the ground level, judiciary now operates as a legal institution which operates to balance the conflict of interest in both visible and invisible manner.

Karl Marx has also addressed the issue of conflict of interest within the society as class struggle between the employer and employee; and State and the people. In the modern legal system the courts of law are the umpires for mitigating the struggle of interest between the classes again in direct and indirect modalities.

Labour Jurisprudence is a classic instance wherein such conflict of interest or class struggle is prominently visible and the courts have played a pioneering role in mitigating such social stress. In this article, confirming to this theoretical roots, three major aspects of Labour Jurisprudence is addressed namely, Bonded Labour System, Strikes and Bandh (Bundh) and Contract Labour, all of which are major social stress points.

III. Abolition of Bonded Labour System:

Inspite of the existence of the Bonded Labour System (Abolition) Act, 1976 the system of bonded labour continues to prevail in the society. The judiciary has taken commendable steps to eradicate bonded labour system in India.

In *People's Union for Democratic Rights* v. *Union of India,*[3] also known as the Asiad Labour case, a writ petition was filed on the ground that the workers were not getting the minimum wages. The Court successfully transformed the constitutional guarantee of equality and the Labour law provision from sloganeering to materialization by giving multi-dimensional meanings to the expression 'forced labour' as used in Article 23 of the Constitution which paved the way for the Court in future to interpret the Bonded Labour System (Abolition) Act, 1976 and the bonded labour system as a crude form of forced labour. The Court opined-

> Labour which is rendered not willingly but as a result of force or compulsion is 'forced labour'. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such force, it would be forced labour.[4]

[3] AIR 1982 SC 1473

[4] *Ibid* at 1490

In *Bandhua Mukti Morcha* v. *Union of India*,[5] the Supreme Court entertained a matter concerning release of bonded labourers of quarry workers raised by an organisation dedicated to the release of bonded labourers and challenged the provisions of Bonded Labour System (Abolition) Act, 1976 in Haryana. The State steadfastly contended that there was no bonded labourer. The Court however in this case went on to emphasize that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and the vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Court laid down a broader test to determine whether a workman is a bonded labourer or not. The Court rejected the pure legalistic approach to the Act and adopted a functional and practical approach for the effective implementation of the Act. The Court observed-

> Whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act.[6]

The Supreme Court gave twenty-one directions for the effective implementation of the social and labour welfare legislations applicable to stone quarries. It further appointed Sri Laxmi Dhar Mishra, Joint Secretary in the Ministry of Labour, Government of India as a monitoring agency and directed him to visit the stone quarries of Faridabad in order to ascertain the compliance of the directions of the Court by the Central and State Government and the contractors.

In *Neeraja Chaudhary* v. *State of M.P.*,[7] the Supreme Court entertained a letter petition in which a complaint about the non-implementation of the Bonded Labour System (Abolition) Act, 1976 was made. The court observed-

> It is the plainest requirement of Articles 21 and 23 that bonded labourers must be identified and released and on release, they must

[5] AIR 1984 SC 802
[6] *Ibid* at 827
[7] AIR 1984 SC 1099

be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implanting the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23.[8]

In *Bandhua Mukti Morcha* v. *Union of India*,[9] the Supreme Court constituted a Committee to identify bonded labourers and to collect all material in respect of them so as to assist the Court to make further directions in terms of the scheme to rehabilitate them. In pursuance to the direction of the Supreme Court, the Committee submitted a report and the Supreme Court laid down some directions for the State of Haryana to comply with.[10]

On 11th May 1997, the Supreme Court had ordered the Human Rights Commission (NHRC) to take over the monitoring of the implementations of the directions of the Supreme Court and that of the provisions of the Bonded Labour System (Abolition) Act, 1976. The NHRC submitted its report along with its proposal for identification, release and rehabilitation of bonded labourers. The Supreme Court in *Public Union for Civil Liberties* v. *State of Tamil Nadu*[11] laid down the following guidelines for the rehabilitation of the bonded labourers-

1. All States and Union Territories must submit their status report in the form prescribed by NHRC in every six months.
2. All the State Governments and Union Territories shall constitute Vigilance Committees at the District and sub-Divisional levels in accordance with Section 13 of the Act within a period of six months from today.
3. All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers.....

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[8] *Ibid* at 1106

[9] (1991) 4 SCC 174

[10] *Bandhua Mukti Morcha* v. *Union of India* (1991) 4 SCC 177. Further directions were given in *Bandhua Mukti Morcha* v. *Union of India* (2000) 9 SCC 322. See also *Public Union for Civil Liberties* v. *State of Tamil Nadu* (2013) 1 SCC 585

[11] (2004) 12 SCC 381 quoted in Justice Rajendra Babu, *A Landmark Judgment of the Supreme Court on the Measures to Solve the Problem of Bonded Labour*, Legal News & Views, October 2004, Page 38

4. The State Government and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organisations or NGOs within a period of six months.
5. The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organisations or NGOs.
6. The State Governments and Union Territories shall make arrangements to sensitize the District Magistrate and other statutory authorities/committees in respect of their duties under the Act.

The Supreme Court tried to infuse life into the Bonded Labour System (Abolition) Act, 1976 by way of giving it a liberal interpretation in tune with the present day. As a result, the suffering and hardship of the bonded labourers has been reduced to a considerable extent and suitable steps for their rehabilitation have been taken. However, the directions of the Supreme Court have not been fully given effect to, and it is upon the Government to work in cooperation with the Supreme Court and see that the bonded labour system is completely wiped out from India.

IV. Strike and Bandh (Bundh):

Strike means concerned stoppage of work by workers done with a view to improving their wages or conditions, or giving vent to a grievance or making a protest about something or the other, or supporting or sympathizing with other workers in such endeavour.[12]

'Bundh' is a Hindi word meaning closed or locked. The expression therefore conveys the idea that everything is to be blocked or closed.[13]

The judiciary has come down heavily upon the calling of strikes and bandhs by the employees, political parties, organized bodies or associations and has tried to rid the society of the menace of strikes and bandhs. In *Kameshwar Prasad* v. *State of Bihar*[14] the Supreme Court has settled that the right to strike is not a fundamental right. The Court in this case followed its

[12] Halsbury's Laws of England,4th Edition quoted in Mallikarjuna Sharma, *Right to Strike*, 46 JILI(2007) Page 522

[13] *Bharat Kumar K. Palicha* v. *State of Kerala*, AIR 1997 SC 291

[14] AIR 1962 SC 1166

earlier decision in *All India Bank Employees Association* v. *The National Industrial Tribunal (Bank Disputes), Bombay.*[15]

In *T.K.Rangarajan* v. *State of Tamil Nadu and others*[16] the Supreme Court was dealing with the action of the Tamil Nadu government terminating the services of all employees who had resorted to strike for their demands. Expressing its anguish and disapprobation of the action of the employees, the Supreme Court observed-

> Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provision for redressal of their grievance. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.[17]

Earlier the Supreme Court had expressed its dissatisfaction at the calling of bandh by political parties, organized bodies or associations in *Communist Party of India (M)* v. *Bharat Kumar.*[18] While accepting the reasoning given by the Full Bench of Kerala High Court in *Bharat Kumar K. Palicha* v. *State of Kerala*[19] the court pointed out that the calling of a bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation. The Kerala High Court had observed-

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[15] AIR 1962 SC 171

[16] (2003) 6 SCC 581

[17] *Ibid* at 591

[18] (1998) 1 SCC 201

[19] AIR 1997 Ker 291

> No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.[20]

The Supreme Court supported the view of the Kerala High Court that the political parties and the organisations which call for bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them, for destruction of public and private property during the enforcement of bundhs.[21]

In *Harish Uppal (Ex-Capt)* v. *Union of India*[22] the Supreme Court, while holding that the 'lawyers have no right to go on strike or give a call for boycott, not even on a token strike', observed-

> The law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. He cannot refuse to attend court because a boycott call is given by the Bar Association. It is unprofessional as well as unbecoming for him to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike.[23]

In *Dr. P.G. Najpande* v. *State of M.P.*[24] the Madhya Pradesh High Court held that 'chakkajam' should not paralyse life of the civilised society. It laid down certain directions and orders and observed-

> It should be borne in mind that in the name of demonstration or protestation, the life in a civilized society cannot be paralyzed, in the name of legitimate exercise of ones right to protest the fundamental right of the others cannot be scuttled. In a democratic policy the fundamental right of each citizen is sacrosanct. The collective cannot

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[20] *Ibid* at 300

[21] *Communist Party of India (M)* v. *Bharat Kumar,* (1998) 1 SCC 201

[22] (2003) 2 SCC 45

[23] *Ibid* at 64

[24] AIR 2008 MP 55

> destroy the same. No one, however big he may be should foster a misgiving that he can create a tremor in the fundamental rights of others and tremble the spine of the members of the society at large by forming a group or a political party. The splendor of right to move the glory to live with dignity by carrying out a lawful profession or calling cannot be abridged in the name of mass protest or mass demonstration. The collective protest cannot be allowed to take the shape of collective passion to project a fractured mind thereby creating a dent in the concept of 'Rule of Law' and bringing in a concavity in the constitutional philosophy which sings the song of highly cherished fundamental rights of millions of people. Be it noted the rights of others cannot be crucified at the fanciful pedestal of a group or a party and by no stretch of imagination it can be guillotined in a cavalier fashion from any pupil. The law of this country does not so countenance.[25]

In *Destruction of Public and Private Properties* v. *State of Andhra Pradesh*[26], the Supreme Court took a serious note of large scale destruction of public and private properties in the name of agitation, bandhs, hartals and the like and initiated suo-motu proceedings. It appointed two committees and accepted the recommendations in the report of the committees and said:

> Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.[27]

However, it is seen that the political parties, organized bodies or associations have not paid any heed to the judgment of the Supreme Court in *Communist Party of India (M)* v. *Bharat Kumar*.[28] The legislature has not

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[25] *Ibid* at 58-59

[26] AIR 2009 SC 2266; (2009) 5 SCC 212

[27] *Ibid*. The Supreme Court laid down certain guidelines to be followed.

[28] (1998) 1 SCC 201

taken any initiative to bring in any suitable legislation whereby the calling of strikes, bundhs or hartals by the political parties can be curtailed to a great extent. The calling of strikes, bundhs and hartals paralyses the economy as well as effects the 'bread and butter' of a common man, but such has not affected the political parties, organized bodies or associations.

V. Contract Labour:

The question of absorption of contract labourers has been a question of heated discussion and an area of conflict between the management and the workers. The judiciary has tried to eradicate this tussle and conflict by realizing the need of the hour and in tune with the changing needs of the society.

In *Air India Statutory Corporation* v. *Union of India*[29] the appellants engaged the respondent union's members as contract labour for sweeping, cleaning, dusting and watching of the building owned and occupied by the appellant. Since the appellant did not abolish the contract system and failed to enforce the notification of the Government of India, the respondents came to file writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the building owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or otherwise. While holding that the Contract Labour (Regulation and Abolition) Act, 1970 does not provide for total abolition of the contract labour system, the Court observed-

> The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the prohibition of the employer to commit breach of the provisions of the Act and to put an end to exploitation of the labour and to deter him from acting in violation of constitutional right of the workmen to his decent standard of life, living, wages, right to health etc.[30]

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[29] (1997) 9 SCC 377

[30] *Ibid* at 435

> In a separate concurring judgment, S.B.Majmudar, J. observed-
> If on abolition of contract labour system, contract labour itself is to be abolished, it would cause economic ruin and economic death to contract labourer and his dependents for amelioration of whose lot order under Section 10 is to be passed. If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of the establishment lock, stock, and barrel, it would amount to throwing the baby out with the bath water.[31]

In *Steel Authority of India Ltd.* v. *National Union Waterfronts Workers*[32] prospectively overruled *Air India Statutory Corporation* v. *Union of India*[33] and observed the following effects of a notification under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970-

(1) contract labour working in the concerned establishment at the time of issue of notification will cease to function;

(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(5) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification under Section 10 (1) has been issued; where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

(6) if a contractor intends to retrench his contract labour he can do so only in conformity with the provisions of the I.D. Act.[34]

The judgment of the Supreme Court in denying the right of contract labour to be absorbed on abolition of contract labour system has succeeded in satisfying the management's desire to give them a free hand to employ contract labour without imposing any liability to absorb them on abolition of the contract labour system in order to compete in the international market. Indeed, the decision is in conformity with the recommendations of the Fifth Pay Commission that in certain jobs the Government of India should also

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[31] *Ibid* at 443

[32] (2001) 7 SCC 1

[33] (1997) 9 SCC 377

[34] (2001) 7 SCC 1 at 43. The judgment was followed in *A.P. SRTC* v. *G. Srinivas Reddy*, (2006) 3 SCC 674

engage contract labour to facilitate outsourcing of activities to contract labour.[35]

VI. Winding Up:

The decision of the Supreme Court in *Bangalore Water Supply*[36] case has revamped the whole concept of the definition of 'industry' under the Industrial Disputes Act, 1947. The work which was to be done by the legislature in the changing circumstances has been done by the judiciary.

The existence of the Bonded Labour System (Abolition) Act, 1976 could not eradicate the system of bonded labour in India. The judicial dynamism gave an impetus to the Act by providing for abolition as well as rehabilitation of the bonded labourers[37] and reinforcing of the antagonists of judicial activism that judicial legislation is possible even within the parameters of the interpretative role theory. The judicial initiative provided a thrust for social action groups to work with more vigour and commitment to expose the areas susceptible to bonded labour system.

The attitude of the judiciary towards strikes and bandhs (bundh) has provided some relief to the general public. The holding of the society at ransom by the government employees has been severely criticised by the Supreme Court.[38] The calling of bandhs by the political parties, organised bodies or associations which restricts the free movement of the citizen and his right to carry on his avocation has been deterred by the judiciary. This has provided some relief to the general public and the daily wage workers who are the worst sufferers in the bandhs and has provided balance and tried to harmonise the competing and conflicting claims of individual vis-à-vis, the society. However, the duty of implementation of the directions rests upon the legislature comprising of the political parties who themselves call for such bandhs.

The judgment of the Supreme Court in *Steel Authority of India Ltd.*[39] has denied the right of contract labour to be absorbed, on abolition of contract labour system. This has removed the conflict between the

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[35] Suresh C. Srivastava, *Impact of the Supreme Court Decision on Contract Labour*, 43:4 JILI (2001) Page 531

[36] *Bangalore Water Supply and Sewarage Baard* v. *A. Rajappa,* (1978) 2 SCC 213

[37] *Bandhua Mukti Marcha* v. *Union of India,* AIR 1984 SC 802; *Neeraja Chaudhary* v. *State of M.P.* (1984) 3 SCC 243

[38] *T.K.Rangarajan* v. *State of Tamil and others,* (2003) 6 SCC 581

[39] *Steel Authority of India Ltd.* v. *National Union Waterfronts Workers* ,(2001) 7 SCC 1

management and workers which would have stalled the progress of the country. Furthermore, it has introduced flexibility in the appointment of contract labour without any future liability and is in tune with the current demand of industrialisation and globalisation.

The judiciary in India has lived up to its reputation of upholding and promoting democratic values assigned to it under the Indian Constitution by maintaining a balance between different interest groups, as well as between the government and the individual. The changes brought about in India by the judiciary are undoubtedly a milestone which was never thought about by the other wings of governance. The credit goes to the judiciary and the task done by it is salutary.