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"Industrial Jurisprudence and Judiciary"

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Abstract

"Jurisprudence" is derived from the Latin word Jurisprudentia" which is a combination of two words that is 'Juris' and 'Prudence' which derives the meaning as " knowledge of Law "it includes entire body of legal doctrine. Jurisprudence is a method of study and not of law of one particular nation. It is a study of nature of law, nature of legal institution and its relationship with its society. Similarly the concept of industrial jurisprudence denies the two separate terms industries and jurisprudence in layman term the knowledge of law basically acquired for the industries development post independence considering all the society benefits, the beneficiaries and economic benefit is considered as industrial jurisprudence .Industrial jurisprudence being not static and rigid allows the judiciary aside of laws to step in and provide social justice This particular paper shall discuss about the concept of industrial jurisprudence, trade union and its judicial responses, problem of strike in Indian industry and how is it resolved by constitution law.

Introduction

During the 20th century a new branch of jurisprudence known as industrial jurisprudence has developed in our country industrial jurisprudence is a development of mainly post independence period although its birth may be traced back to industrial revolution before independence it existed in rudimentary form in our country. The growth of industrial jurisprudence can significantly be noticed not only from increase in labor and industrial legislation but also from a large number of industrial laws matter decided by the supreme court and high courts it affects directly a considerable population of our country consisting of industrialist workmen and their families those who are affected indirectly constitute a large bulk of countries population this branch of law modified the traditional law relating to the master and servant and head cut down the old theory of laissez faire based upon the freedom of contract in the larger interest of the

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society because that theory was found wanting for the development of harmonious and amicable relations between the employer and employee. Individual contracts have been in many respect substituted by a standard form of statutory contract through legislation and judicial interpretation the traditional right of an employer to hire and fire his workman at his bill has been subjected to many restrain industrial tribunals can buy the award make a contract which is binding on both the parties creating new right and imposing new obligations arising out of the award there is no question of employer a green to the new contract it is binding even though it is an acceptable to him the creation of new obligation is not by the parties themselves either or both of them maybe opposite to it never the less it binds them does the idea of some authority making a contract for the workmen and the employer is a strange and a novel Idea and is foreign to the basic principle of law of contract Many problems like social problems like lawlessness in industries exploitation of relation between employee and employer such exploitation of labor rise to many serious social tension. [1]

The concept of industrial jurisprudence in our country developed only after independence until Independence the change in attitude of the Government and the benevolent labor legislation only amelioration of the conditions of labor and it could hardly be said to be deal in Social justice to the working class the birth of industrial jurisprudence in our country maybe ascribed to the constitution of India which made more articulate and clear the Industrial Relations philosophy of republic of India this philosophy has awarded the broad and clear guidelines for development of our industrial jurisprudence and has the second India one step forward in her Quest of industrial harmony the Parliament and the Supreme Court has helped in shaping industrial jurisprudence the former through legislation and the latter as interpreter of a Labor Law[2]

Industrial jurisprudence is of a great importance to all the developed or developing countries of the world because it is concerned with the study of problems relating to human relations arising out of large scale development of factory system which has emerged in consequences of industrial revolution proper regulation of employer employee relationship is condition precedent for planned progressive and purposeful development of any society as an instrument of social

[1]S.N Misra,Labor and Industrial laws ,pg. 1,2,3, 28th Edition.
[2]Judicial Response to Industrial Disputes, Shodhgana
http://shodhganga.inflibnet.ac.in/bitstream/10603/8113/14/14_chapter%205.pdf

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policy in the present day body politic the role of industrial jurisprudence has still gained important industrial worker and their families are directly concerned with it.

In spite of this widening scope it cannot be forgotten that its application is limited in certain respect for example there are still a vast majority of people who in the relationship are still governed by ordinary law of contract based on laissez faire doctrine. Industrial jurisprudence is developing concept it derives its main strength from Social Justice which is dynamic and changing the concept of Social Justice itself changes with social economic and political changes in the society therefore it has yet to take its final shape industrial jurisprudence cannot with all its high ideas display general jurisprudence just as no amount of Social Justice can abrogate altogether the concept of legal justice even while dispensing Social Justice the court tribunals and arbitrators who so ever it may be cannot ignore the law therefore it would be correct to say that industrial jurisprudence is species of the same genus jurisprudence and industrial jurisprudence in relation into the Industrial society stands in same waves justice general jurisprudence in relation to the total society[3]

Trade Union Freedom.

One of the basic features for successful labor law of any economy is the freedom of trade union. The freedom signifies how the particular economy is free, open and liberal with such freedom the path of trade union for self reliance*;* self control inner and outer democracy shall get accelerated. In such social and economical society like India where still 44% of population are under the poverty line it is not expected by them to know the laws and strive hard for them here comes the gap which has to be filled by judiciary . In India the trade union are philosophy used in social lieu and economic exploitation, political oppression in such economy may a times even the trade union could be considered as the suspicious hence it is necessary for both the regulating and judicial process are considered as the major instrument for defeating and denying and controlling trade union freedom. [4]

[3]S.N Misra,Labor and Industrial laws ,pg. 1,2,3, 28th Edition
[4]Judicial Response to Industrial Disputes, Shodhgana
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It tends to be said that in the before times in India the colonial Trade Union Act, 1926, and the different open public security laws. Fundamental Services Act, Criminal Law Amendment Act, The Indian Penal Code, The Police Act and the Criminal Procedure Code, are a couple of precedents, just such a state of mind hold on in the most recent many years of the twentieth century in the appearance of National Security Act, 1980 and the Essential Services Maintenance Act. In so far as Indian adjudicatory procedures as exemplified in the Industrial Dispute Act, 1947 and other work the board laws is concerned, it has been tilting towards social equity as opposed to exchange association freedoms. Considering above for economic development and improved industrial relations the productivity, evolution of Industrial jurisprudence is essential.

The Supreme Court and High court have played an important role in revolutionizing the methods, approaches and interpretations paving a way towards new industrial jurisprudence by plying the powers of judicial review. It is not merely the laws but there are even certain cases by introducing the new character and new action in course has strengthen the legal provision for labor law of India. Initially the demand of trade union on higher ages was dismissed by high round because of reason that court cannot alter the contractual obligation between the parties. But after the case of Western India Automobile Association Vs industrial Tribunal[5] social interest is considered prime for securing peace and harmony between employer and workmen.

Supporting the above judgment in the case of State of Bihar vs Kameshwar[6] the Supreme court of India very clearly advocated the new idea of social justice in form of general interest of the community.

In India in post independence the objective to reduce the loss because of the target set for producing and recurring industrial strife the government of India had adopted strike and lockout ban policy in order to maintain the peace and harmony between the employer and employee not only that the conciliation and adjudication machinery for achieving the same had being made compulsory. One of the reason was also to relax the legislative grip and to promote industrial democracy.

[5]Western India Automobile Association Vs industrial Tribunal, 1949, AIR,1949 FC 111
[6]State of Bihar vs Kameshwar,AIR,1952 SC 252

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But because of much of relaxation and in race of industrial democracy the problem that arise was the benefits became on sided that is the side of the workman hence in case of J.K Iron Steel Company Ltd Vs Iron and Steel Mazdoor Union [7]it was established that principals and not on any imported notions.

Later on it was observer that the main objective of industrial adjudication is to help the progress of the economy hence the strict laws and its adherence hence it was established that the need of new principles of industrial jurisprudence through judicial legislation to safe guard the emerging the trade union freedom, thus protecting the interest of socially and economically weaker section of the society [8]

Another main aspect that was the point of exploitation was the contractual terms that were imposed by employers on the workmen which is yet to be changed hence considering the same the attempt was made by Supreme court specially for protecting the interest of the poor working class and suggesting that because of the non interference of the government in the contractual terms it somehow creates the master servant relationship no doubt the relationship has its own positive points like the responsibility of the master on any mistake of the servant but because of this rule the workmen are not heard as they are supposed to be which creates an urge amongst the workman to get their need in howsoever way amongst the workmen ending in the strikes and strife the point then the strikes and strife start the game of ego clash and power superiority start ending up into the huge loss of the economy at large.

Certain judiciary bodies the judges have made tremendous efforts for delivering justice for working class. Justice V.R Krishna Iyer made a philosophy that "the principles of the scientific management tend to value technical efficiency about the human factors may not hold goods in managing human beings who have clearly demonstrated in recent years that they cannot be treated a cogs in the wheel of machinery. They would like to have responsibility and respectable place in society and also in industry where they work for about 100 years. [9]

[7]J.K Iron Steel Company Ltd Vs Iron and Steel Mazdoor Union, ILLJ 1956, 227 SC
[8]Judicial Response to Industrial Disputes, Shodhgana
http://shodhganga.inflibnet.ac.in/bitstream/10603/8113/14/14_chapter%205.pdf
[9]Aarsha Unnikrishan, Constitutional Protection on Labor Law, legal servicesindia

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The above discussion makes clear that in India instead of labor laws it is responses which has make notable changes. In researcher opinion in such a law like Labor law where the human relations and the human are the prime object of the law the legislations must be quite liberal giving encouragement to import notions.

Right to Strike: The constitution, Courts and Adjudication.

In India many a times the strikes are the answer to many problem like lack of proper trade union consciousness or lack of legal awareness about the consequences of strikes or for nonpayment of proper wages, stringent working conditions, failure of collective bargaining system and other methods of settlement of industrial dispute, involvement of political parties, dominating attitude of the management, failure in providing labor welfare and social security, the right to strike has also been recognized in all democratic societies reasonable restrain use of this proper is also identified. Further the employers also have the liberty to apply the weapon of lock – out in case people fail to comply with the regulations of agreement of employment. The diploma of freedom granted for its workout varies in line with the social, economic and political variations within the device for securing public interest, the hotel to strike or lock – out and in a few cases the duration of either problem to guidelines and policies or voluntarily agreed to via the parties or statutorily imposed this has been criterion underline the earlier legislation for regulating commercial relations within the country. [10]

The strike and lock-outs are considered as weapons for both the parties. The weapon of threat and the threat if often explicit much more often tacit but not for reason less effective. Both the parties will have to use their weapons in very useful and skillful way such use may help the party to force the other to either accept the demand or at least grant something to them. But hasty use can create a hindrance. A strike could be defined as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a

http://www.legalservicesindia.com/article/181/Constitutional-Protection-on-Labour-Laws.html

[10]Mihir Desai,Is there a right to Strike ,indiatogeher, http://www.indiatogether.org/combatlaw/vol2/issue6/strike.htm

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common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. [11]

In case of Romesh Thappar[12] there was an attempt made to include theory of connection within the ambit of constitution i.e to imply right to strike within the confines of Article 19(1)(c).Similarly in case of All India Bank Employee's Association Vs. NationalIndustrial Tribunal and others[13] The right guaranteed by Art 19(1)(c) of the Constitution of India does not carry with it concomitant right that unions formed for the protection of the interests of labor shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) of the Indian Constitution as being in the interest of public order or morality. The right under Article19(1)(c) extends only to the formation of an association or union concerned or as regards the steps which the union might take to achieve its object, they are subject to such laws and such laws cannot be tested under Article 19(4) of Indian Constitution

In some other case B.R. Singh Vs. Union of India[14], justice Ahmadi turned into of the view that the proper to strike cannot be equated to that of a essential one. "Strike in a given state of affairs is most effective a form of demonstration. There are one-of-a-kind modes of demonstrations, eg. Go-slow, take a seat in, paintings to rule, absenteeism, and many others and work. Strike is one such mode of demonstration by way of the employees for their rights. The proper to demonstrate and therefore the proper to strike is an vital weapon in the armory of the people. The proper has been recognized via almost all democratic international locations. Although now not raised to the excessive pedestal of a essential right, it's miles identified as a method of redress for resolving the grievances of the workers. however the proper strike isn't absolute underneath our industrial jurisprudence restrictions were positione d beneath it".

[11]Judicial Response to Industrial Disputes, Shodhgana http://shodhganga.inflibnet.ac.in/bitstream/10603/8113/14/14_chapter%205.pdf
[12]Romesh Thappar, 1950, SCR,404
[13]All India Bank Employee's Association Vs. NationalIndustrial Tribunal and others,1962,3,SCR,269
[14]B.R. Singh Vs. Union of India,1989(4),SCC,710.

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In case of Communist party of India Vs Bharat Kumar and Others[15], the Supreme court on adjudicating legal strikes held "Fundamental rights of the people as a whole cannot be subservient to claim of an individual or only a section of the people". Also the Supreme court held in one of its judgment that Lawyers and government employees do not have right to go on strike or call for boycott or even for token strike

T.K Rangarjan Vs State of Tamil Nadu[16]

This case deals with the action of Tamil Nadu Government, whereby it had terminated the services of all employees who had resorted to strike for the fulfillment of their demands. The said decision was challenged before the High Court of Madras by filing writ. Learned single judge by interim order, inter alia, directed the State Government that suspension and dismissal of employees without conducting enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government of Tamil Nadu by filing writ appeals. On behalf of the Government Employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002. The Division Bench of the High Court set aside the interim order and arrived at the conclusion without exhausting alternative remedy of approaching Administrative Tribunal, writ petitions were not maintainable. The petitioners came up on appeal against the said order and for the same reliefs, writ petitions under Article 32 of the Indian Constitution the petitioner approached the Supreme Court.[17]

The sets out and answer two question answers

a) Is it a fundamental right to go on strike?
b) In instant case does the employee have the statutory right to go on strike?

a) Is it a fundamental right to go on strike?

[15]Communist party of India Vs Bharat Kumar and Others, 1998(1)SCC 201
[16] T.K Rangarjan Vs State of Tamil Nadu, 2003
[17]Judicial Response to Industrial Disputes, Shodhgana
http://shodhganga.inflibnet.ac.in/bitstream/10603/8113/14/14_chapter%205.pdf

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The Apex Court in the process of answering the same referred the judgments of previous cases of Kameswar Prasad and others Vs. State ofBihar and another[18]wherein the Supreme Court held that there exists nofundamental right to strike. The Supreme Court quoted another judgment in the case of RadheySham Sharma Vs. The Post Master General, Central Circle, Nagpur[19].Thefact of the case that the employees of the Telegraph Department of the Government went on strike from the midnight of July 11, 1960, throughout India and the petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed on him. The same was challenged before the Hon'ble Court. In that context it was contended that Sec.3,4 and 5 of Essential Service Maintenance Ordinance No.1 of 1960 were violative of Fundamental Rights guaranteed by clauses (a) and (b) of 19 (1) of the Indian Constitution. The court considered the said ordinance and held that Sections 3, 4 and 5 of the ordinance did not violate Fundamental Rights enshrined in Art 19(1)(a) and (b) of the Constitution of India

The Supreme Court concludes that there exists no fundamental right of Strike. [20]

b) In the instant case, do the employees have a statutory right to go on strike?

The Supreme Court of India observes that there is no statutory provision empowering the employees to go on strike. Further it observes that there is prohibition to go on strikes under the Tamil Nadu Government Servants Conduct Rules, 1973. Rule 22 provides that "no government servant shall engage himself in strike on incitements there to or in similar activities"The Hon'ble Supreme Court of India did not impose a blanket ban on all strikes. The court further declares that the said strike to be illegal in view of Rule 22 which prohibits government servants from going on strike. Several decisions of the various High Courts in India as well as the Supreme Court itself have adverted to and positively affirmed the right to strike in so far as workmen are concerned.[21]

Conclusion

[18]Kameswar Prasad and others Vs. State ofBihar 1962 Supp.3,SCR,369.
[19]RadheySham Sharma Vs. The Post Master General, Central Circle, Nagpur, 1964(7) SCR.403
[20]Mintukant, Social Justice and labor jurisprudence, encyclopediaofworld , May 16 2016 https://encyclopediaofworld.wordpress.com/tag/labour-jurisprudence-in-india/
[21]Mihir Desai,Is there a right to Strike ,indiatogeher, http://www.indiatogether.org/combatlaw/vol2/issue6/strike.htm

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In light of the paper discussed the researcher has come to the conclusion that in India in spite of so much advancement in all the sector the laws need to be changed with upcoming Era industry has been clamoring for center labor law reforms. the call for is for flexibility in terms of freedom to lease agreement labor, the freedom to retrench employees and close down undertakings without prior authorities endorsement, and the liberty to introduce technological adjustments that contain loss of employment. in addition, they need a liberal labor inspection gadget and a rational and cutting-edge machine of data compliance the employers may also have a case, at least with a number of the demands. However there are other compelling problems which hurt business members of the family governance at the plant stage, the resolution of which could also beautify the competitiveness of the companies. The employers appear to have forgotten this of their quest for labor flexibility. One core trouble is the absence of a relevant regulation offering for a mechanism to decide the collective bargaining agent. If there are multiple trade unions preventing for his or her respective rights it could cause the worsening of business members of the family governance, even though the agency enjoys labor flexibility. This has been tested by recent commercial conflicts. It far widely recognized that exchange unions, under positive conditions, should in truth make a contribution to the enhancement of productive performance and reduces transaction and tracking prices. The world financial institution has encouraged this lately. To the ILO, exchange unions are essential to a respectable and simply place of business. To be sure, there is "union" as there are "inefficient and fraudulent companies".[22]

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