REASONS WHY TRADE UNIONS OPPOSE THE ~~PROPOSED~~ CHANGES IN LABOUR LAW CONTAINED IN THE THE INDUSTRIAL RELATIONS BILL

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PROPOSED CHANGES IN LABOUR LAW

THE INDUSTRIAL RELATIONS BILL

(A) INTRODUCTION

Two deplorable tendencies in labour legislation

Changes in the law relating to workers and supposedly for their benefit are characterised by two deplorable tendencies. The first is the tendency to take classes of workers out of the purview of general labour law. And the second is the tendency to take human rights cases (including labour cases) out of the purview of the most powerful court in the State, namely the High Court.

Excluding workers from general law.

(1) Exclusion of certain workers

Over the last decade we have seen the following classes of workers taken out of the purview of central labour laws :

(1) Construction labour

(2) Contract labour

(3) Child labour

(4) Mathadi workers

(5) Dock workers

(6) Security guards

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Curiously enough legislation was enacted or proposed to be enacted for all these classes in order to ameliorate the conditions of labour and generally to do good for these workers. But in all cases the special legislations created have harmed the interests of these section immensurably.

In all the cases above mentioned it was the easiest thing in the world to bring these special classes of workers into the fold of generallabour law by suitable amendments in existing labour legislation. Construction labour needed only minor amendment in the law relating to industrial disputes, bonus, gratuity, payment of wages and so on in order to make these Acts applicable to construction labour. Likevise contract labour needed only a three line amendment in the Industrial Disputes Act definition of workmen to include all contract labour. This was the situation in the State of Uttar Pradesh. But such an amendment was deliberately not carried out anywhere because of the far reaching consequences. Instead the Contract Labour (Regulation and Abolition) act, 1976 was passed which basically had the effect of permitting contract labour to proliferate throughout the country despite the fact that

contract workers were openly doing work of a perennial nature in the establishments of the principal employer. Similarly child labour came to be permitted through the Child Labour Prohibition Act, 1986.

Quasi-Judicial Boards

One of the most depressing features of these speciallegislations was the tendency to establish quasi-judicial Boards to deal with the grievances of workmen. Setting up of these Boards had the effect of excluding the courts. The experience of workers with these Boards have been uniformly dismisal. They have functioned in the most atrocious manner when they function at all and unlike courts they are not easily subjected to judicial scrutiny. Under the Contract Labour Act, for example, applications for the abolishing of the contract labour system and for making the contract workers permanent and regular must be made to the Contract Labour Board which is like a bear in perpetual hybernation.

By taking special classes of workers out of the

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Special legislation generally worse.

purview of general law, the immediate effect has been that the benefits of existing legislation have been denied to them on the illusory promise that the new legislation would more than adequately compensate. Security Guards for example know this to be a lie. Double wages for overtime universally applicable in all factories is never paid to the security guards. And security of employment which is taken for granted generally is not available to the security guards who suffer the indignity of being recalled by the Board and then rendered unemployed for many years should the security guards dare to form or join a union.

A more detailed study into this aspect of labour legislation needs to be gone into. In particular the thinking that specialised boards are in the interests of the working class must be exploded once and for all; but this is not the proper place to do that.

(ii) Exclusion from the High Courts

The second deplorable tendency in labour

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High Court divested of Human Rights Jurisdiction

legislation is the attempt by the State to divest the High Courts of its Human Rights Jurisdiction. High Courts under the Constitution are the most powerful bodies in the State and they are empowered to issue not only writs under article 226 but also other appropriate orders.

First Civil Servants

Over the years the State has systematically and deviously taken five major human rights areas that traditionally fell within the ambit of the High Court outside into specialised Commissions or Tribunals. First to go were the civil servants whose cases were traditionally handled by the High Court. They were sent to Administrative Tribunals. On paper these Tribunals appeared to have the power and status of the High Courts. But soon it became very obvious that they were instruments designed to serve the interest of the State in a very crude manner. The Tribunals situated in far away places so that employees who earlier could go to the High Courts quickly had to gravel long distances and often across State borders to get to their Tribunals. The benches of the Tribunal had non-judicial members

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who played a very active role and ultimately the level of the Administrative Tribunal fell to that of an intra-departmental appeal. Facilities were not available for the setting up of the courts. The judges were not given residential facilities. They functioned at odd times and in odd ways making their own procedure. The State cleverly appointed certain progressive judges who had retired from the High Court as Chairmen of the Tribunals in the first few years, to give the employees the impression that the Tribunal would act in their favour but soon the usual politics of appointing judges took hold and the Tribunal began to show it's true colour. All in all it may be said that both in terms of law as well as in terms of procedure and convenience the civil servants have been put to a tremendous disadvantage by the formation of the Administrative Tribunals.

Then SC/ST.

After this the Scheduled Caste/Scheduled Tribes had their cases relating to fundamental rights and constitutional violations virtually taken out of the purview of the High Courts and sent to a Scheduled Caste/Scheduled Tribe Commission which was

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supposed to deal with these issues. In the first instance it was not openly stated that the High Courts would be divested of their jurisdiction but that is broadly speaking the direction and the motive. This Commission as usual was riddled with group politics and protests where head all over the country by Scheduled Castes and Scheduled Tribes in respect of the appointment of persons on the Commission and the functioning of the Commission itself.

Then women

Similarly women's issues were sent packing to a Women's Commission again with the implication that this Commission would in some manner replace grievances resolution by the High Courts and the Supreme Court. And once again women's organisation throughout the country protested in respect of the appointment of persons on the commission and the functioning of the Commission generally.

Then environment

Then came the move to take environment cases out of the purview of the High Courts into an Environmental Commission.

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Now Labour.

Finally now the State has decided to take the last remaining bulk of the cases relating to human rights namely labour cases and to dump them into what are called the Industrial Relations Commissions.

High Courts will become Property Panchayats

Marxists have always said that the courts are basically the instruments of capitalist class meant to do their dirty work and Namboodripad was sentenced to one day imprisonment by the Supreme Court when he dared to say so. But he was right and now that the policy of the divesting of the High Court of their jurisdiction to determine human rights cases has become very obvious, the High Courts will perhaps now appear in their true form and do the work that they were originally and essentially designed for namely: <u>property</u>.

Appeals only for property cases.

By contrast whereas Tribunals have also been set up in areas relating to property such as the Excise Tribunal and the Income-tax Tribunal; in these cases an appeal is provided from a decision of the Tribunal to the High Court. In the case of all the other Human Rights Tribunals and Commissions, the appeal to the High Court is specifically excluded. In the

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case of the Industrial Relations Commission the State has gone one step further to deny the right of appeal even to the Supreme Court thus making the decision of the Commission final.

(B) OUR STRATEGY

Highway not by-lanes

While analysing a bill or a proposal to change existing law it is necessary that one concentrate on the main trust of the proposal so that one is not lost in discussing minor details. To put this figuratively one must travel by the highway and not get lost in the by-lanes. The proposed changes in labour law have a few attractive proposals here and there and it is important not to let these distract us from what is an awesome attack on labour.

All or nothing.

Secondly, while negotiating with Government on the proposals to change the law; if the proposals made by the Goverrment are basically bad with a few bright spots here and there it is good strategy to reject the whole an not to double with minor

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points. This is because should we try to separate the good from the bad we invariably land up with the entire rotten proposal becoming law.

The proposals to change labour law are so miserable and frightening that I have no hesitation whatsoever to recommend that the proposal should be junked in toto that no trade union should have the slightest hesitation to burning this bill and oppose it with all ferocity.

(C) BACKGROUND

(1) Better than nothing at all

The basic thinking behind the proposals to change the existing law appear to go back to the 70's and seems deeprooted in the proposition that Indian labour are too well protected and need to have some of their protection removed. In the context of Narsimha Rao's New Economic Policy and other facile

expressions of capitulation to the rapacious transnationals this proposal is now rapidly intended to be translated into practice. The Janata Goverrment did a lot of damage by attempting to tinkle with the existing structure of the courts. Those who do not much about labour should not interfere and this what the Janata Govermentlearnt when its proposal was vociferously opposed so that ultimately nothing came of a series of amendments and bills. Then the Janata Goverrment set up after April 1990 the Ramanujan Committee.

Facile reasons given for wanting change.

Ramanujan while explaining why it was necessary to make proposals for a new Industrial Relations Bill relies on Narasimharao's speeches. Relying on his ideal Narasimharao, he quotes him as saying that the Industrial Relations Act is necessary because of these reasons. Firstly because there did not exist any central legislation on collective bargaining. Secondly because there existed multiplicity of trade unions. Thirdly because the laws are not implemented. These apparently profound

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observations of Narasimha Rao were found in clause 1.3 of the Ramnujan Report.

These are hardly reasons for scrapping the Industrial Disputes Act and for the introduction of the Industrial Relations Act. It is partly true that central legislation does not exist on collectively bargaining but the answer to this is that the government ought to have listened to the demands of the unions for the introduction of the secret ballot and the recommendations of the urdon and once a union is recognised by secret ballot the employers should be compelled to negotiate with that Union.

Collective bargaining refers to negotiations not settlements.

It must be noted that there is absolutely no way in which the State can compel an employer to settle with his employees. All that can be done is that the employer is compelled to negotiate. What are the implications of compulsory negotiations ? If an employer is forced to negotiate what he generally does is to call the workers for tea and

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then have a superficial discussions and finally conclude that a settlement is not possible. Nothing therefore can compel an employer to settle. The only alternative thereafter is adjudication. Thus when Narasimha Rao speaks of legislation on collective bargaining what he is in fact speaking of is a law to compel the employer to negotiate; never mind that the negotiations are futile. It is in this context that the unions have, decades ago, suggested that the procedure should be by secret ballot. This very simple and democratic suggestions has been turned down by Government after Government. No government has ever been able to explain why it has done so.

Nothing wrong with multiplicity of unions per se.

The second reason given by Narasimha Rao is multiplicity of trade unions. It would perhaps be better for him to look at the other side of the coin namely multiplicity of production centres. Here we are speaking of sub-contracting. The current trend these days is for production to be farmed out to small "sweat shops" where the safety situation is very grim and the workers live in

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poverty. Rather than doing anything to control this situation, the Government is in fact supporting the system of sub-contracting.

Just as the employers have a right to set up any industry big or small the unions also have a right to set up as many unions as they wish. Multiplicity of trade unions is not necessarily a bad thing. It is part of the democratic process and prevents autocratic unions from being established. No one has ever been able to point out any adverse effect of multiple trade unions per se.

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The only point that needs to be discussed is: how should the employer deal with a number of trade unions enter into a settlement ? How can these settlements be made binding ? Finally how can there be stability once the settlement has been arrived at ?

The answer is again very simple, but our dear Narasimha Rao and the pundits of the Ramanujan Committee pretended that they could not understand.

The answer is again n the secret ballot. A system may easily be established whereby the workers vote by secret ballot for a particular union or collective of workers to negotiate on their behalf. Once the negotiating group/union has been decided and a settlement is entered into, it is made by law binding on all the workers. Thereafter that settlement will run for a fixed period of time and cannot be disturbed until the settlement period is over. Thus one has democracy and stability; whereas we have no puppet unions sponsored by the management and deep-rooted workers resentment.

Secret ballot brings both democracy and stability.

Thirdly Narasimharao's observation that the I.R.A. is necessary because laws are not implemented is very funny indeed. First of all it is the government which treats the judges with contempt. They do not give them houses. There is nepotism and corruption in the appointment of judges. Judges are not appointed in keeping with the required strength. In the Labour and Industrial Courts for example hardly one third of the positions are filled in. Thus if a situation is created deliberately by the government where the

Narasimha is a funny man.

Treat the judiciary with contempt and then expect it to work !

judiciary is both neglected as well as treated with contempt how can the government expect there to be the implementation of laws.

Under the various acts it is the Government Officers who are required to implement the law. Under the Factories Act and ESI Act for example the Government inspectors are supposed to visit the factories and prosecute the offenders. But these officers only visit the factories to collect their envelopes and to have their cup of tea. Uner the Industrial Disputes Act the government has a right to prosecute under criminal law those who violate the provisions of the act. This is never done. Can Narasimha Rao say why ?

Why is the L.D. Act not good enough ?

The Ramanujan Committee takes it for granted that the Industrial Disputes Act is not good enough. But they did not give even a single reason for arriving at this this conclusion.

The approach of the unions is very clear. The existing system of law and the existing laws

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have been won after heroic struggles of the trade unions and we will not surrender this system no matter how bad it may be for something illusory and something which will definitely be a hundred times worse. We are not going to surrender the existing protection for the mere promise of better protection. We do not trust Narasimha Rao and people of his kind and though the existing legal system is very anti-labour it is far far better than having no system at all.

(ii) Try Try again

Government has been trying to prune the legal rights of the trade unions for a long time now. First came the attempt to introduce the Industrial Relations Bill 1978. Then came the Hospitals and Educations Institutions Bill 1978. In the same year attempts were made to bring into law the Employment Security and Miscellaneous Provisions Bill 1978. Two years later saw the introductions of the Participation of Workers in Management Bill, 1990.

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Prior to that the Directive Principles were amended to introduce the workers participation in management. Only the heroic opposition of the trade unions prevented the passing of the Industrial Relations Bill and the Hospital and Educational Institutions Bill.

Once again it is necessary to emphasise that while studying the provisions of the Industrial Relations Bill it is necessary to decide whether it is in an overall sense in favour of workers or anti-workers. Once it is decided that it is overall against workers then it must be <u>rejected in toto</u>. <u>Petty bargaining should never be engaged in</u>. Once the bill is found to be anti-worker then despite a few good things here and there, it must be opposed and smashed. If this approach is not taken then confusion arises in the minds of the workers and trade unions begin to confuse small benefits with major anti-worker policies resulting ultimately in a trade union position that remains unfocussed and blurred. Once this happens the State takes an

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ideological offensive and using the media ultimately thrush the legislation on workers leaving the opposition enfeebled and unsure.

(D) THE INDUSTRIAL RELATIONS BILL(STRUCTURE)

The structural aspect of the Industrial Relations bill is divided basically into four parts. The provisions relating to law and the trade unions are dealt with later. The structure has four parts :

(1) A grievance procedure
(2) Negotiating councels
(3) Voluntary arbitration
(4) Industrial Relations Commission(IRC).

(1) Grievance procedure :

Instead of direct access to courts the employees having a grievance will have to appeal internally and if she looses in that appeal she

will have a second internal appeal. If she loses here too she will be compelled to accept arbitration by an arbitrator (clause 6.12) and if for some reason this arbitration cannot be done then she can either go to a negotiating council or to a court.

Direct access to the Court cut off.

The whole procedure and the whole system is very vague and very amaturish. It is really frightening that the Government should try and substitute a system of courts that are time-tested, with something as obviously not thought about this. Obviously the Government has not even thought of an equally efficacious alternative and though the present system of courts function badly it is obvious that what is being suggested is something utterly rotten.

(ii) Negotiating Councils :

The second rung of the new proposed structure are the negotiating councils. These councils are supposed to be bodies that are to negotiate on the

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grievances of the workmen. The Council are to have an equal number of employees and employers rppresentatives. The question arises as to how the employees are to be chosen. If there is no union then the workers are elected to the council directly. If there is only one union then that union nominates the persons onto the Council. If there are a number of unions then according to a mathematical formula employees are nominated by the various unions. Attractive though this may sound we have no hesitation in rejecting the negotiating councils, in toto. As we have said earlier negotiating councils can only require the employer to negotiate but it can never compel the employer to settle. Then the only purpose is to compel negotiations. This can be best done by having a secret ballot of all the workers to elect their representatives to negotiate and thereafter the employer should be compelled to negotiate. The requirement that the number of employees will be the same as the number of employers representative on the negotiating council is a superficial symbol of equality. The mere fact that there are an equal

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number of negotiators does not in any way assist in the making of a settlement. The employees do not care if they have to negotiate with one person from the management or 100 persons. It makes no difference. If the employer is ready to settle he will settle. If not he will not. And if he is compelled against his wishes to negotiate he will do so formally across a cup of tea but he will not do anything meaningful.

The stipulation that unions can participate only one year after registration would exclude new unions. Experience has shown that from time to time militant unions emerge to captivate the imagination of the workers overnight and also attract their loyalty and support and it is precisely these unions born in struggle that are sought to be excluded from the negotiating councils.

(iii) 'VOLUNTARY' ARBITRATION:

Compulsory not voluntary.

When the Negotiating councils fails the parties are required to go for voluntary arbitration.

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Voluntary arbitration is actually compulsory. From the scheme of the bill it appears that parties will be compelled to go for arbitration and cannot approach the courts directly. It is very dangerous to call such a system voluntary.

Secondly a sea change is proposed in the legal nature of arbitration. Labour law arbitration under Section 10(A) of the Industrial Disputes Act is very different from civil arbitration conducted under the provisions of the Indian Arbitration Act. In Rohta's case the Supreme Court characterised arbitration under Section 10(A) of the Industrial Disputes Act as 'statutory arbitration' meaning thereby that the arbitrator was akin to a judge of a Tribunal and the Award of such an arbitrator was akin to the award of a Tribunal. When challenged in the High Court the grounds of challenge were the same as the grounds available in the challenge of a decision of the Tribunal.

Arbitration Award to be made final.

This is a very different from civil arbitration

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whereby and large, the decision of the arbitrator is final and binding even though the arbitrator may not have taken into consideration the material facts and even though the arbitrator may have moved on an erroneous presumption of law. The grounds for the setting aside of a civil arbitrator's award are few whereas in the case of industrial adjudication and statutory arbitration the grounds are much wider. Statutory arbitration in labour cases is very important because to do justice to labour the arbitrator carefully go by the evidence on record and go strictly by thelaw. In property arbitration the focuss is on putting an end to the matter while in labour arbitration the focuss is on establishing a funtioning system, settled norms and doing justice. The whole trust of the Industrial Relations Bill is first to force the parties into arbitration and secondly to restrict drastically the challenge that the trade unions could make from an award of an arbitrator to a court of appeal. In view of this trade unions should have absolutely no hesitation in rejecting outright this so called voluntary arbitration.

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