The Industrial Disputes (Amendment) Bill

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THE Industrial Disputes Amendment Bill will come before the Lok Sabha at its next session. It is of outstanding importance both for employers and employees and requires therefore most careful consideration. At the outset I must point out that the Bill coming, as it does, after the declaration of policy of the Government that it aims at a socialist pattern of society, reflects none of the characteristics of that pattern. It assumes, on the contrary, that the relation between capital and labour must continue as it is. The Bill gives no scope to workers to participate in the management of the concern. In my opinion that Bill should be redrafted so as to reflect the socialist pattern of society. I shall, however, confine remarks to the Bill as it is.

Should be Renamed

I propose that the Bill should be renamed Labour Disputes Bill. Already bank workers and insurance workers have been Included within the scope of the Bill by certain amendments. Even now the definition of "Industry" is so wide that various other classes of workers have been included as coming within the scope of the Act, such as employees in hospitals and dispensaries, and employees of the Universities.

The main feature of the Bill is the setting up of three types of Courts, namely, Labour Courts, Industrial Tribunals and National Tribunals. The Labour Appellate Court is abolished. The courts proposed to be set up have jurisdiction over subjects specifically mentioned in the schedules given in the annexure of the Bill.

Another important feature of the Bill Is the introduction of a provision for a certifying officer whose duty would be to go into the question of justness or otherwise of the standing orders provided for in the Industrial Employment (Standing Orders) Act, 1944.

Features—Good and Bad

It is proposed to empower both the certifying officer and the Labour Court to take into account the fairness or reasonableness of the Standing Orders before they are certified. Under the present law only the employer has the authority to frame Standing orders and modify them from time to time according to his discretion, The existing Act provides that if any employer wishes to make any change in the conditions of service applicable to workmen such as wages, contribution paid or payable to the Provident or Pension Fund, hours of work, rest and Interval, compensatory and other allowances, leave with wages and holidays, starting or alteration or discontinuation of classification of grade, withdrawal of any customary concession and privilege, Introduction of new rules of discipline, rationalisation, standardisation or improvement of plant or technic which is likely to lead to retrenchment of the employees and increase the reduction in the number of persons employed or to be employed, he has simply to notify the changes proposed by him. Under the new amendment he will not be able to do so.

A workman may, within 21 days after the notice of standing orders, apply to the certifying officer to have the standing orders modified. The final decision will rest with the Labour Court concerned. There are several other improvements made in the Act, It must be said at the same time that there are reactionary proposals as well. There are again provisions, new in their nature, but which are of doubtful value. There are several defects in the existing Act which have not been remedied.

Taking a view of the whole picture, however, one would think that the employers rather than the workers will gain more if the Amending Bill is passed into law as it is.

Executive Over-shadows Judiciary

I shall give certain illustrations. One serious defect in the existing Act is the discretion that has been given to the Government to refer or not to refer a dispute to a Tribunal for adjudication. Another defect, even more serious, is the discretion left to the Government to modify or reject an award given by the Tribunal even when Government is a party to the dispute. There have bene many cases where these discretions have been improperly exercised In the interest of the party, generally the employer. These defects have been left in the Amending Bill as they are, without any modification. The abolition of the Labour Appellate authority only makes the executive Government even more unrestricted in the exercise of Its arbitrary power. The new Bill should have left to the parties concerned the freedom to move either the Labour Court or Tribunal or National Court. It should have been left to the Court concerned to decide on preliminary objection if it was proper for the Court to entertain the dispute. As matters stand now, it is the executive that overshadows the judiciary so far as the Labour Judicial machinery is concerned. The number of Labour Courts and Tribunals should be sufficiently large to deal with the number of disputes. The executive Government should not have the power to reduce the number of cases by its free will.

Section 33

Here is an instance of how privileges to the workers given by one hand have been taken away by the other. I refer to Section 33 of the Industrial Disputes Act. That Section provides against the victimisation of workers who have moved the Tribunal for redress of their grievances against the employers. The original section (Section 33) was a bar against the employers for altering, to the prejudice of the workman concerned in the dispute, the conditions of service applicable to him immediately before the commencement of the proceedings and punish him, whether by discharge or other. wise, "save with express permission in writing of the conciliation Board or Tribunal as the case may be". If the employer contravened this provision, the aggrieved employee could move the tribunal with a complaint in writing and the Tribunal on receipt of such complaint was to adjudicate upon it

This has been changed in the new amendment. The employer would now be in a position to change the conditions of service of the employees, punish them whether by discharge or otherwise. All that he has to do is to apply to the presiding Court for "approval" of the action taken by him. In the statement of Objects and Reasons given in the amending Bill, it has been stated in justification of this change that "employers have complained that they are prevented from taking action even in obvious cases of misconduct and indiscipline unconnected with the dispute till long after the offence has been committed."

All that the employer has now to do in such cases is to pay to the discharged or dismissed workman one month's wage pending the proceedings of the case for "approval" of action taken by him. If the delay in the disposal of such cases is the excuse, who knows that the proceedings in connection with the cases of the approval will not take as long a time as that in connection with the complaint made by the workman?

This change has obviously been made under the pressure of the employing class and in their interest.

"Protected" Workmen

Another change has been made in Section 33 of the Act. It refers to workmen who have been described as being "protected". It is explained that a "protected workman" in relation to an establishment means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf. It is forgotten that every establishment may not have one union and a number of similar establishments may have only one duly registered union. Then again the condition is "recognition". Recognition by whom? Employers at present have no obligation to recognise even registered unions. It is further provided that in an establishment, the number of workmen to be recognised as protected workmen shall be only one person of the total number of workmen employed therein, subject to a minimum number of five protcted workmen and maximum number of 100 protected workmen. This number is grossly inadequate. As if this is not enough to adversely affect the interests of workmen, it is provided that the appropriate Government may make rules for the distribution of the number of protected workers among various Trade Unions, if any, connected with the establishment, and the manner in which the workmen would be chosen and recognised as protected workmen. My suggestion is that the choice should be left to the Trade Unions concerned. They should also decide as to the number of protected workmen in every establishment.

Section 29 (Punishment)

There has been an improvement in the amending Bill in regard to the penalty for breach of settlement or award. Section 29 of the Act provides for only fine for breach of any term of any settlement or award. This has been changed in the amending Bill into one of imprisonment for a term which may extend to six months or fine or both. It is well known that employers, generally speaking, are very reluctant to give effect to awards which they do not like. Almost equally unwilling are the Government to enforce the award in such cases. In the Act there is no provision for imprisonment. In the amending Bill, the Court trying the offence may take steps for the realisation of fine but there is no provision as to the power for the enforcement of imprisonment. Why is the provision silent on this point? Obviously Section 34 of the Act relating to cognizance of offences will continue to apply. This section provides that no Court shall take cognizance of offences punishable under this Act, save on complaint made by or under the authority of the appropriate Government. Here is an amazing fact. So far as punishment by fine is concerned the Court will have authority but for imprisonment it is the Government that must move. Is it for sympathy to the workers or the employers?

As for Courts and other authorities that have been set up under the amending Bill, certain observations are called for. There may be an arbitrator or a conciliation officer or a board of conciliation, a Labour Court, a Tribunal and a National Tribunal.

There is no provision for arbitration in a dispute in the present Act. The amending Bill is an improvement in this respect. The conciliation officer and the Board of Conciliation will be continued, only their recommendations will not be binding on the parties.

The jurisdictions of the Labour Court, the Industrial Tribunal and National Court have been defined. The reference to the National Tribunal will be made by the Central Government and it will cover disputes which involve questions of national importance or which are of such a nature that establishments situated in more than one state are likely to be interested in, or affected by, the dispute. The jurisdiction of the Labour Court and Industrial Tribunals have been defined in the second and the third schedules. It is difficult to understand the principle that has been followed in defining the jurisdictions. Both include matters of major and minor importance. For instance, discharge or dismissal of employees, illegality or otherwise of a strike or lock-out come within the jurisdiction of a Labour Court while such questions as hours of work or rest and interval, leave with wages on holidays come within the jurisdiction of the Industrial Tribunal. Would it not have been simpler to have one designation of Courts, either Industrial Tribunal or Labour Court, to dispose of the cases specified? The qualifications of the Judges of such a court might have been those of the Industrial Tribunal. The importance does not lie so much in the nomenclature of the Court as in their number and in the qualifications of the Judges and assessors. It is proposed that there will be one National Tribunal. I doubt if this will suffice.

As for public utility services, their number is six including Postal and Telephone service and any industry which supplies power, light or water to the public. The number in the amending Bill has been increased, excluding some and including others. Coal, cotton textile, food-stuff, iron and steel, Defence Establishments, service In hospital and dispensaries and Fire Brigade service have been mentioned as public utility services. Transport is the common factor. But it is difficult to see why the other items are included. Disputes in these concerns may also be

referred to the relevant authority but it is at the discretion of the Government. Inclusion of cotton textile in the Public Utility Service has obviously been made in the interest of the textile magnates.

The definition of "workman" has undergone some change in the amending bill. "Workman" In the Bill includes any person whose functions are " supervisory or technical". That is no doubt an improvement but a limitation has sought to be imposed by the provision for the exclusion of any person "who is employed mainly in a managerial or administrative capacity or who being employed in a supervisory capacity draws wages exceeding Rs. 500 per mensem". It will often be difficult to draw a line of demarcation between a person working in a supervisory capacity and another discharging mainly managerial or administrative function. Besides, the "basic" salary should be Rs. 500 as many persons who may be willing to come within the definition of workman draw Rs 500 or more inclusive of allowances. As regards others whose basic wages are more than Rs 500, the discretion should be left to them whether they would be willing to come within the definition of "workman".

From the modified definition of workman persons employed in the police service or officers or other employees of prisons have been excluded. Is not a policeman a worker? Why should he be deprived of the privilege of fighting for his rights as any other employee?