

Corporate & the Theory of Labour Welfare in India

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Abstract:

He who gain more, will pay more

A corporate being a juristic person, run and managed by its members with a sole motive of earning profits but being a part of social structure and created and developed under the Constitutional and statutory frame work of a State, is also under an obligation to serve the workforce behind it, the society and the State which provides it with consumer market and all sort of general atmosphere to grow, either on voluntary and statutory basis.

Key Words: Corporate, Employer, Labour, Social Security, Social Responsibility, Companies Act, 2013

I. INTRODUCTION

Enlightened self-interest and mutual benefit are two different approaches. The first is provoked with profit motive of becoming a global tycoon and the second one is based on the concept of interdependence. Though both the concepts are too remote to each other but a responsible business trait is all about adopting a positive attitude in a relationship in such a manner that creates value not only for the profit maker but also for the contributors involve in one way or the other. A Corporation is in law, quite distinct and separate from its members who compose it. Its right and liabilities are different from those of the members. But a company itself cannot conduct business or enter in to a contract. There are number of persons who are behind its success or failure and are responsible for the business and contracts carried by the company, through them. Therefore for an Individual who have spent all his active life in the service of his or her Employer a Retirement Benefit or a Retirement Plan in form of Pension or otherwise is not only a reward for loyal service rendered by him in the past, but it also has a broader significance Thus in any organization whether private or public the employer is primarily made responsible for raising social standard of working classes through "payment of contribution" for his employees, employed directly by him or through immediate employer.¹ The Apex Court of the country has also stated that in underdeveloped countries the standards of labour wages are not satisfying and are not within the minimum standard of human life. The rate of employment seekers are very high which made it easy for the employer to cut down the wages

of employment seeker upon his own terms and conditions even below a bare subsistence. But the same cannot be motivated in modern democratic welfare state.²

II. THE EMPLOYER AND EMPLOYEE RELATIONSHIP

The roots or the essence of relationship between Worker and an Employer lies in human relationship and interdependence. To conduct its affairs the State heirs or recruit individuals and these individual are known as "Workmen", "Labour", and "Employees" of the State. It is this segment, which contributes most significantly to the Country's GDP. A happy man power is the base for industrial stability and states development, which in turn results in higher production and greater economic activity. Under the constitutional scheme "The Government of India" (the State) can sue or be sued by the name of union of India and "the Government of State" can sue or be sued by its name. Thus under its theory of welfare state the position of "State" is not different as that of an employer in some cases.³ Today's developed concept of employment is the result of "contractual theory". As the theory of employment evolved, a "contract" of service was said to arise whenever one person agreed to serve another.⁴ Therefore a person is an employee if his employer has the right to control not only what work he does but the way in

¹ Royal Talkies Hyderabad & Ors v. Employees State Insurance Corporation, AIR 1978 SC 1478

² Crown Aluminium Works v. Their workmen, 1958 SCR 651

³ Article 300, The Constitution of India, 1950

⁴ Douglas Stanley, "Prerogative in Private and Public Employment", 395 (McGill Law Journal, Vol - 20, 1974)

which that work is done.⁵ According to Supreme Court of India an employer is a person who:-⁶

1. Pays the salary to the workmen
2. Controls and supervises the work of the employees
3. Has role in selection and appointment of the employees,
4. acts as a disciplinary authority over the conduct and discipline of the employees.

III. THE CORPORATE AND THE SOCIAL SECURITY PROGRAM

The social security schemes in India cover only a small segment of those organized workforce those who are having direct relationship as employer and employee within an organization on regular basis.⁷ Therefore it is quite clear that the large section of unorganized workforce has been ignored and is left out upon their own means to survive. In the name of Social Security the retirement benefits are paid to the employees of the Central Government, as per the provisions of Central Civil Services (Pension) Rules, 1972; to the employees of the State Government, as per the Rules adopted by the concerned State government⁸ and to the employees of Private Sector solely at the cost of the employers or on the basis of joint contribution of the employers and the employees.⁹ There are mainly two major benefits which are provided to an employee after his or her retirement the Pension benefit and the Medical Benefit. There are other three categories of Pension plans to which an individual can subscribe, the National Pension Scheme, Pension plans and product that are offered and provided by insurance companies and by companies dealing in mutual funds. National pension Scheme is the central government imitative and other two are regulated by IRDA and SEBI respectively. various other measures have also been adopted by the government to tackle the basic needs of this sector like, minimum wages, Maternity Benefit, protection from prohibition and abolition. The government has also enacted legislations for formulating schemes which are applicable to them directly or indirectly. Social security board at national and state level has been also constituted. Also Court has observed that favorable human conditions for the employees, In - service allowances, in - service and post service educational and medical facilities for employees and their dependents, Retrial benefits, Protection of environment and other charitable programs

initiated and provided by the corporations is a part of its Corporate social responsibility and denial and non fulfillment of the same is same is the violation of Individuals fundamental right under Article 21 of the Indian Constitution.¹⁰ It was for the first time that corporate Social responsibility for companies has been mandate through legislation. Section 135 of the Companies Act, 2013 Contains Corporate Social Responsibility provisions, Schedule 7th attached to the Act enumerates the activities that can be under taken under Corporate Social Responsibility. The Companies Corporate Social Responsibility Rules 2014 prescribe the manner in which companies can comply with the Corporate Social Responsibility provision of the Act. Under a Constitutional scheme the State is under an obligation to ensure "Social Security" to its citizens. the Schedule 7th attached to the constitution of India read with Article 246 provides that the State shall initiates social security and Social insurance; employment and unemployment by the way of welfare legislation.¹¹ The legislature in 2013 has amended the Indian Companies Act, 1956 with its "soft mandate" through which the corporations in India have to contribute 2% of their net profits for every fiscal year towards the Society, fulfilling Corporate Social Responsibility. The mandate is however not made it obligatory for every single business enterprise running in the country, its compliance is only mandatory only for corporate whose net profit will be Rs 5 Crores or more or the corporations whose turnover is of Rs 1000 Crore per annum or who is having a net worth of Rs 500 Crore. Therefore, a business practice and a social moral obligation which was earlier a voluntary practice is now became statutory obligation. All the social acts are now been regulated through a piece of paper having sanction behind it in case of non compliance of the same. Therefore every single decision of corporate from extraction of raw material to employment of labour, from sale of product to policy decision of starting business in an area has the potential to tremendous impact on lives of thousands of people directly and indirectly.

IV. THE DRAWBACKS OF EXISTING LABOUR LEGISLATION

Today Social Security laws and reforms are the critical building block among the 44 subsisting labour laws in the country. Without any doubt all subsisting labour laws are legislated for the welfare of the working class. There are

⁵ (1880) 6 QBD 530

⁶ Balwant Rai Saluja & Anr Etc v. Air India Ltd. & Ors, (2014) 9 SCC 407

⁷ Ministry of Labour and Employment, *Social Security*, 56 (Annual Report 2018 – 2019, Government of India)

⁸NHRC, Retrial Benefits as a Human Right, (New Delhi, 2014)

⁹ Annual Report 2016 – 2017 , 84 (Ministry of Labour and Employment, Govt of India)

¹⁰ Samal Chand Tiwari Son of Late Prem v. State Of U.P., Through Secretary, Allahabad High Court , 6, Dec 2005

¹¹ Article 246, 7th Schedule, Concurrent List, item No.23; The Constitution of India

two main interest behind the formulation of labour laws in the country, firstly to raise the condition of labour classes, its right should be protected and welfare should be look after, secondly the corporate should grow because when firm grew then only the wages will grow, but what actually happened, corporate have grownup instead of wages. Also that the labour laws in the country has ended up benefiting only workers in the organized sector and it creates barriers to the growth of small sector, to grow as large sector which would then can create more and more jobs. Thus the labour laws in the country have created regulatory barriers in excess to the startups and this prevented India from creating job and income and from taking full advantage of its demographic assets. The challenge before us today is of extending social welfare to each and every class of workers. The general feeling is that laws in existence are 50 to 70 years old laws and so many of them had made life difficult and are based on life long relationship as they seek contribution from the worker and the contribution from the employer, this is the way in which these laws are involved in public life. Today the nature of global economy is changing globally and thus that old Indian economy policy associated with the existing labour laws is changing in digital age thus existing laws are not efficient and are not balanced. Under the existing labour laws there is different variation in the category or worker there is no single universal definition attached to the worker it keep changing from Act to Act. The today business policy is – those who gain more will pay more. Till now there is no universal uniform labour code in India. There is interdependency between the existing labour legislation. None of the other Acts except the Act of 2008 regulates the unorganized workforce. Also the labour ministry itself has claimed the other social security laws only cover the organized sector. Also the existing system of pension payments among the States is not uniform with respect to coverage of pension, features of pension payments, etc, as every state has their own Acts. There persist a lot of paper work and compliance. In such a scenario how compliance of the labour laws and other welfare schemes in the country can be made slightly more easier is a big challenge. Moreover, labour legislation in India has been extremely complicated in terms of wages. There subsist approximately 2000 different minimum wages in the country. Under the federal structure states are also at liberty to decide their minimum wage. There seem to be a conflict between the legislation at central level and at state level under the existing schemes as states some time legislate over the central enactment for example factories Act has been amended in multiple states to change the definition of factory as per their ease. Also the contract labour Act has been amended in same manner. The process of law making needs consultation and is to be consulted specifically on the issue. Earlier when the labour reforms are to be initiated to raise the employment, the step was misinterpreted as “hire and fire” as a result of which that complete movement went in to threshold. The existing

labour legislation does not provide for a well - defined and adequate procedure for redressal of day - today grievances in industrial units and corporate. As a matter of fact with these kind of old legal tools one can do nothing and this is big issue all over the world that the Indian labour laws are not good and this result in poor investment by outsiders. In fact these old dated laws preventing the corporate to invest.

V. CONCLUSION

India is known for the rapid economic growth in the world and it recorded a moderate economic growth during 2018 – 2019 at the rate of 6.8%. Agriculture is the main source of income and livelihood for the population living in rural areas around 43% of workforce is employed in this sector which alone contributes about 47 % of India's total GDP. Whereas the service sector workforce contributes about 31%, industrial workforce contribution is about 22%. According to the World Bank in recent years the government India has initiated some ambitious programs to improve the living standards of the general public as 93 % of now have access to the electricity and about 99.45% of population now have been covered under basic sanitation. The financial & Industrial policy of a State prepares a road map for its growth and development. But policies along cannot achieve the goal; it requires certain population from different sectors which contributes through their skills and work towards the same. Today we are living in a digital age and the nature of global economy is changing with the advent of and progress in technology. Therefore some changes needed to be brought across the board especially for safety, health, working condition, wages and welfare. Since from long it always remains a win – win situation for employer in both sides in terms of employing and in terms of taking services of employee. Hence the prevailing outdated labour legislation need be reviewed in its totality in the light of emerging trends and socialization and thereafter be amended accordingly or be coded in to one single uniform enactment. The advocates of Corporate Social Responsibility recognized that Corporate Social Responsibility can make a great contribution to the community if they work to increase value for society as they go about their core activities and if they make good use of their assets, skill and others resources when they are consciously working on their corporate community involvement but at the same time a corporation engaged in economic activities can face risk through its involvement in Human Rights Violations and such as they sometime do not provide just human condition, working conditions and engage themselves in ultra – virus acts and in growing demand for global needs they put more pressure on the earth eco system which resulted in disaster and degradation. However the induction of the CSR provision under the Companies Act, 2013; in India was an attempt to provide an alternative to the government's efforts to ensure equal distribution of benefits and growth and the engagement of Corporate World in country's development agenda.

Moreover in a digital age, where flow of information and technology lies on finger tips it is suggested that the labour force in the country should be digitized.

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