CHAPTER XII

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12.1. CONCLUSIONS:

The functional focus of the industrial legislations and the social perspectives of Part IV of Constitution meant to hold that the purposes of industrial laws are for the contentment of workers and peace in the industry. The judicial interpretation should be geared to their fulfillment and not for their frustration. A worker oriented statute must receive a construction where, conceptually, the key note thought must be the worker and the community as the Constitution has shown concern for them, *inter alia* in Article 38, 39 and 43. It is legitimate to project always the value set of the Constitution, especially Part IV in reading the labour legislations.

Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them the staying power to withstand the multi-ducked litigate process, defacto denies social justice if legal drafting is vagarious.
A plurist society with a capitalist backbone, not withstanding innocuous objective ‘Socialist’ added to the Republic by the Constitution (42nd Amendment Act, 1976) regards profit-making as a sacrosanct value.

The primary concern of industrial jurisprudence is peace among the parties, contentment of the workers, the end product being increased production informed by distributive justice. Law, especially Labour Law, is the art of economic order sustained by social justice. It aims at pragmatic success, but is guided by value-realities. It believes in relativity and rejects absolutes. Article 43—which emphasizes the workers role in production as partners in the process, read in the light of the earlier accent on workers rights and social justice gives a new status and sensitivity to industrial jurisprudence in our ‘socialist republic’. This social philosophy must inform interpretation and adjudication. Industrial law in India has not fully lived up to the current challenge of industrial life both in the substantive norms or regulations binding the three parties— the State, Management and Labour.

Law is a form of order and good law must necessarily mean good order. The roots of jurisprudence lies in the soil of society’s urges, and it blooms in the nourishment from the humanity it serves. To petrify statutory construction by pedantic impediments and to forget the law of all laws, viz, the welfare of the people is to bid farewell to the grammar of our constitutional order.
The constitutional bias towards social justice to the weaker sections, including the working class in the Directive Principles of State Policy — a factor which must enliven judicial consciousness while decoding the meaning of legislation. Victorian-vintage rules of construction cannot override this value-laden guidebook.

In the decision of major industrial disputes, three factors are thus involved. The interests of the employees which have received Constitutional Guarantees under the Directive Principles, the interests of the Employers which have received a guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State. It is on these lines that industrial jurisprudence has developed during the last four decades in India.

Our Constitution guarantees the right to form associations, not for gregarious pleasure, but to fight effectively for the redressal of grievances. Our Constitution is sensitive to workers' rights. Our story of freedom and social emancipation led by the Father of the Nation has employed, from the highest of motives, combined action to resist evil and to right wrong even if it meant loss of business profits for the liquor vendor, the brothel-keeper and the foreign-cloth dealer.
When this is the situation, the apex Court in Rajappa case by clearly following the prevailing ratio thereunder interpreted effectively the definition of industry under the Industrial Disputes Act, 1947 by putting an end to the interpretative conflict. And at the same time, the apex Court cautioned the legislature to come out with a legislative amendment to the definition to suit the workers interests. The Parliament with all the commitment initiated the amendment process to the definition and only the final notification is impending, the reasons for this laxity is the Parliament's incompetency in bringing a separate legislation for the excluded category protecting their service conditions. The reasons felt in expressing a disgust over Rajappa's ratio by the Supreme Court in Jai Bir Sing is not connected at all with the excluded category of workmen as attempted by the Parliament in 1982.

The collective strength of the workers is a weapon in their armoury to bargain effectively with the employer. The norms have recognised in India that the workers can resort for collective action to pursue effectively their demands for better working conditions. The 2001 Amendment to the Trade Union's Act 1926 with regard to minimum membership requirement for registration of trade union itself has created a deep infringement on the workers right to organise themselves in an industry effectively. Added to this onslaught, the Supreme Court effectively maintains that the workers in India have no legal, moral or ethical right to go on strike. This ratio
sounds absurd in the context of prevailing recognised norms relating to worker's right to go on strike. As such the Industrial Disputes Act, 1947 contains appropriate legal disabilities on workers right to go on strike. A better invocation of these provisions in preventing a strike legally is a suitable situation than totally curtailing this valuable customary right.

Closing down of a place of employment would follow wider economic consequences. India is a country wherein the State provides exclusive facilities for an individual to carry on with a trade or business. The industry provides employment to hundreds of workers and makes a deep impact on social and economic conditions of the workers' families. Any abrupt closure by the employer may certainly lead to the miseries of worker and his family. One can imagine in this present era of political economy the extent of unemployment in case of the semi-literate and illiterate. Under these situations any freedom for the employer in closing down an industry illegally would not be permissible. The purpose of Industrial Disputes Act is to uphold an economic security for the workers in the event of abrupt closure of industries. This cannot be denied under any circumstances.

The growing incidence of employment on contract or casual basis is the order of the day in the present context of global economy. Certainly the Contract Labour (Regulation and Abolition) Act, 1970 was enacted to
meet the situations. It is painful to note that some States like Andhra Pradesh and Gujarat have amended this law, which in fact negate the very preamble of the legislation. Millions of labours are exploited under the guise of contract system with unduly low wages and without any effective social security. At this juncture the Supreme Court sets the ball into motion to the effect that the labour that are employed on contract basis should remain forever as contract or casual labour.

Undoubtedly the Labour Court and the Industrial Tribunal are given vast discretionary powers basing on the factual situations to provide an appropriate relief to the displaced workmen within the scope of Section 11-A of Industrial Disputes Act, 1947. The Labour Court or Industrial Tribunal being a trial court is an appropriate forum to exercise wider powers under Section 11A. The Supreme Court while exercising the appellate jurisdiction over the awards made by the Industrial Tribunal under section 11A cannot lightly and twistingly interfere with the findings of Labour Court as concurred by two stages of appeals in the High Court. The labour with poverty pricing them out of the justice market and denying them the staying power to withstand the multi decked litigating process, defacto denies social justice if the litigations process are dragged.

The law relating to Industrial Injuries is based on the concept of social justice in contrast to the principles of common law liability of the
employer. In series of decisions, the High Courts and Supreme Court consistently maintained that these social security legislations require a liberal and beneficial construction. The recent trend executed by the apex Court is highly concerning in view of the fact that even in respect of claims under Employee's State Insurance Act, 1948 the strict rules of law are applied. At one stage the apex Court makes a lighter remark by saying that the 'notional extension of time and place theory' cannot be made applicable to a workman who falls in front of his door step while starting for duty.

The personality of the whole labour statutes have a welfare basis, they being a beneficial legislations that protect labour, promote their contentment and regulates situations of crisis and tension where production may be imperiled by untenable industrial unrest. The mechanism of labour legislations is geared to conferment of regulated benefits to workmen, according to a sympathetic rule of law, of the conflicts, actual or potential, between employer and workmen. Their goal is amelioration of the conditions of worker, tempered a practical sense of peaceful co-existence, to the benefit of both-not a neutral position but restrains on *laissez faire* and concern for the welfare of the weaker lot. To hit below the belt by trading legal phrases is not Industrial Law. Empathy with the statutes is necessary to understand not merely the spirit but also the sense.
10.2. SUGGESTIONS:

1. The enactment of labour legislations is certainly with a particular broad purpose. This must be the central objective for the judiciary in dealing with labour matters.

2. The judiciary must play a key role in deciding the labour matters keeping in view the spirit of Directive Principles of State Policy as enshrined in Part-IV of the Constitution.

3. The political economy of the State at any given point of time would certainly make an impact on the decisions of the judiciary. At the same time the plight of the labour must not be lost sight.

4. Restricting the application of prime labour legislations namely, the Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946 etc., would deprive the millions of labour class, the benefit of redressing their grievances speedily and effectively. These legislations must require a broad application and interpretation.

5. The jurisprudential norm of respecting and applying the decisions of larger bench of the Supreme Court must be afforded a due regard in
labour matters. The instances of per incuriam must not be lightly repeated in this context.

6. The highest Court of the land when entertaining the appeals, that have crossed the three stages (the trial court, Single Judge Bench and Division Bench of the High Court), must take care of the practice of appointing ‘Amicus Curiae’ which forms the basis for free legal aid concept. This must be given a due regard particularly in the context of prevailing political economy.

7. Certain of the basic rights of the labour are regarded as customary in practice. This must not be lost sight by the judiciary at any given point of time.

8. The small and tiny employers are burdened with the hardships of shedding huge financial commitments in the event of retrenchment or closure. The need of the hour is to go for creation of a special fund with certain mechanism with the aid of the State to meet the situations.

9. The instances of casualization and contractualization of labour is rampant in the present political economy, wherein the labour is exploited with the denial of minimum wages and fringe benefits. It is high time that the Judiciary while dealing with the claims of contract
and casual labour must keep in mind the spirit of Directive Principles of State Policy.

10. Undoubtedly the labour court and the industrial tribunals are given wide powers under Industrial Disputes Act, 1947 to provide appropriate relief to the dismissed or discharged labour. The apex Court sitting as an appellate Court on these matters must not interfere lightly with the findings of the labour court except on most substantial grounds.

11. In India, the social security for industrial workers is viewed as a mechanism to maintain the purchasing power of the workers in the event of unemployment situations. The beneficial interpretation is the need of the hour in matters pertaining to the claims of social security benefits.

12. The Employee's State Insurance Act, 1948 is projected as a reformatory to the Workmen's Compensation Act, 1923. Strict technicalities of rule of law are highly unwarranted in providing the benefits for the insured workers under this Act.