

## Defend the Right to Strike

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"*Staff Stir Puts TN Reforms Commitment To Test*" was the caption with which the *Financial Express* (on July 7, 2003) captured the story of the indefinite strike of over 12.5 lakh government employees and teachers. The correspondent, noted: "all eyes are on the way the state government is handling the situation". He was at pains to drive home the point that "If the Jayalalitha government, which spends nearly 70 paise of every rupee it earns on its employees as salary and pensions, buckles under pressure from the striking staff, it would be interpreted as weakness of the political leadership and a setback to fiscal reforms." He, however, derived comfort by noting: "if initial signals from the chief minister's chamber are anything to go by, the state administration is in no mood to be brow-beaten by the striking employees". For the reforms savvy *Financial Express*, the highhandedness of the police, which manifested as the government started cracking the whip on the striking staff, was something to be dismissed as mere 'allegations'.

This and similar reportage in the media conveyed a significant message. For them, Jayalalitha government arming itself with a draconian ESMA, supplemented by yet another ordinance providing for more stringent actions, indiscriminate mass arrests, midnight knocks at the doors of striking staff, harassment heaped on the family members, instantaneous eviction from residential quarters, police atrocities, driving away even those reporting for work, *en-masse* dismissals etc. deserved only a passing comment. For the learned men and women, of the *media-India*, who take pride in virtually carrying the reforms on their shoulders, more important is the unflinching commitment of the political class to reforms!

Jayalalitha did not disappoint the employee-bashing media!! She let loose state terrorism on the striking employees. Under her authoritarian rule, the state administration continued to trample under foot every democratic norm and the civility expected of an establishment in dealing with its own staff vanished forever. It staged an ugly display of unprecedented repression and till date continues its monstrous stride. The arrogance and highhandedness of the Jayalalitha Govt of Tamilnadu as reflected in its vindictive designs against the striking employees and teachers bear an ominous portent not only for trade union and labour rights but also for democratic rights and institutions as well.

### JUDICIAL ACCLAIM!

But, the judiciary in the country gave Jayalalitha a pat on the back, as it were, in acclaim.

First, it was the Division bench of the Madras High Court, which upheld the plea of the State Government on jurisdictional issue and relegated the employees to the statutory remedy under the Administrative Tribunal Act.

'*The Hindu*' editorially commented that the 'substance of the ruling in this landmark case amounts to denial of justice'. It described the AIADMK Government actions as "an extraordinary case of deployment of State power against its own employees" and "summary dismissal and the overnight arrest of hundreds of thousands of employees ... are in profound conflict with fundamental rights, the basic norms of democracy, and enlightened self-interest".

Then it was the Supreme Court of India, which fully agreed with the submissions of Mr. K K Venugopal, counsel for the State of Tamil Nadu, without even checking out its veracity, that out of the total income from direct tax, approximately 90% of the amount is spent on the salary of about 12 lakh government employees in the state.

It ruled: "Now coming to the question of right to strike – whether fundamental, statutory or equitable/moral right – in our view, no such right exists with the government employees." The court's dicta went beyond Government servants and condemned strikes as unjustified "on any equitable ground".

This judgement delivered on August 6, 2003 by the two learned judges of a Division Bench, consisting of Justice M.B. Shah and Justice A.R. Lakshmanan, of the Supreme Court, the apex judiciary in democratic India, in *T.K. Rangarajan vs. Government of Tamil Nadu and Others* has become a subject matter of a much heated debate ever since.

The trade union movement termed the judgement as retrograde, undemocratic, anti-worker and totally unacceptable to the working class of the country. Similar reactions has surfaced from across the whole spectrum of democratic polity in the country, barring a few exceptions of rabid pro-globalisation loyalists.

### **CONTEMPT?**

There are quite a few people who raise their eyebrows over such responses to the Supreme Court verdict. Even some well informed media persons ask: "Does this not amount to contempt of court?"

We beg to differ - not on the question of holding the judiciary in high esteem, but on whether citizens of the country do have the right to express views divergent from those of the learned judges.

The Supreme Court is an appellate judiciary and normally deals with appeals against the orders of the other tiers of the judiciary. In the instant case dealing with the strike in Tamil Nadu also, the Supreme Court considered a special leave petition against the orders of the division bench of the Madras High Court. It is not uncommon for the appellate courts to express displeasure over the orders of the lower courts, sometimes even setting aside their orders. In the same way, the people of the country have an inalienable right to express their displeasure over the orders of the judiciary, no matter if that be of the Supreme Court even. India is, as yet, a democratic welfare state, even according to the two judges in the case and therefore, it is the people who have the supreme authority. That is why the legislatures and parliament, comprising elected representatives of the people, are vested with powers to legislate amendments undoing the verdicts of the courts.

Moreover, in the present context, it is not the responses to the judgement that constitute anything contemptuous; it is the very judgement that is replete with contempt towards the democratic rights of not only the government employees but also the whole community of workers and mass of the people. The tone, tenor, substance *et al* of this judgement is nothing but a manifestation of 'Their Lordship's contempt!'

### **UNTENABLE EQUATION**

Fortuitously, this time the trade unions and political parties have been joined by not less than a person of the stature of the Attorney General for India, Soli Sorabjee. He spoke up against the apex court's pronouncements, characterising them as "uncalled for" and "beyond comprehension. Several leading luminaries from the judicial class itself have come out with unequivocal critique of the Supreme Court verdict. *The Hindu* in its editorial comment faulted the court as having 'got hold of the wrong end of the stick', following in the footsteps of a string of illiberal verdicts on Government servants beginning in 1962.

Yet another malicious twist is sought to be given to the debate on this contentious judgement by those who felt gleefully elated by the whiplash handed in to those who resort to strike, as a method of protest. These quarters, which are cynically scornful of any expression of dissent by people, equate the opposition to this judicial verdict with those of the saffron brigade who proclaim that they would never be bound by any judicial verdict on the Ayodhya issue, as it was to them 'a matter of faith'. What is the difference between the two stances, they ask.

The Ayodhya issue relates to conflicting claims over the site of a religious structure, which is essentially a civil dispute. It also relates to a criminal case over the offense committed by those who pulled down the structure that existed there for centuries. Defying the judicial process by refusing to abide by any verdict on this, based on a dubious argument of 'faith', is communal highhandedness. Strike is a democratic right to demonstrate against injustice. Equating the two is a deliberate attempt to dilute and denigrate the sharp denouncements that have surfaced over this untenable verdict of the Supreme Court. The democratic opinion in the country must steer clear of this diversionary tactic of those interested elements, inimical to people's assertions!

### **GLARING INFIRMITIES**

The judgement, in the first place, falls very much short of even what is normally expected of the judicial process.

The judgement opens up with the words "*Leave granted*". That obviously means the apex court consented to the petitions seeking special leave filed by the appellants, who challenged the orders of the Division Bench of the Madras High Court.

What was the challenge? The Supreme Court judgement itself noted it as under:

"Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by interim order *inter alia* directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. ... The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. ... That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed."

What were the matters before the High Court of Madras, over which the two judgements – one by the single judge and another by the larger bench – were pronounced?

Rajeev Dhavan, who argued the case before the Supreme Court bench, representing the main petitioner T.K. Rangarajan, summed up (later) the issues precisely in the following words: "The strike was prompted by the peremptory action of the Tamil Nadu Government to alter pension payments — among other grievances. The Government decided to tackle the workers instead of their grievances. By April 2003, 27 entities were brought under the Tamil Nadu Essential Services Maintenance Act (TESMA). The 'protest' strike was intended for July. From around June 30, the arrests and harassment of workers began. On July 3, various Government circulars declared that the strikers could not return to work.

On July 4, a draconian ordinance 'mass-dismissed' all workers who did not return to work 'at once' — even though the July 3 circulars forbade it. But could the employees return to work and also not return to work? The law required the impossible while mass dismissing 1,70,000 Government employees. The workers estimated the total number of 'mass-dismissed' employees at around 3,00,000. A large part of the Chennai Secretariat disappeared in the dismissal. If the Government's lockout of July 3 was illegal, the 'mass dismissal' was possibly the worst known to Indian labour history. A Government refusing to negotiate to resolve a situation made peremptory arrests, declared an illegal 'lockout,' commanded the employees to return to work which it had itself made impossible and indulged in a 'mass dismissal' unprecedented in labour-management relations."

Nor did the learned judges Shah and Lakshmanan differ on these developments. The judgement pronounced by them on the maintainability of the petitions before them concludes that: "Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."

From here, one would have normally expected the judges to proceed to grant the relief, which the High Court ought to have done but failed to do. But that was not to be. The two judges of the apex court instead proceeded to record an elaborate treatise on their perceived notions on strike. They also went about working out a 'relief package' in stages.

Surely, the relief that was granted resulted in the total number of government servants dismissed as per Section 7 of TESMA and teachers of Aided Colleges suspended from 1,70,241 to 14,135 and further to 6,072. The relief came through the Court's success in pressuring and persuading the Tamil Nadu Government "gracefully" to agree to reinstate the overwhelming majority of the dismissed employees. This was something that helped to reduce the gravity of an otherwise grim situation. But, that relief came as a substitute to a judicial scrutiny and verdict on the constitutionality or otherwise of a lawless law that the state government had in its possession and misused it in a barbaric manner.

The division bench of the Madras High Court struck down the single judge order entertaining the writ petition on mass dismissals under TESMA and the Ordinance, terming it as 'a service related dispute'. It cited Section 28 of the Administrative Tribunals Act 'which excluded the jurisdiction of the High Court, but not of the Supreme Court'. This should have prompted the two judges on the apex court bench to take up for adjudication the issue of constitutional validity of TESMA and the ordinance. The least they could have done was to remit the issue to the High Court itself for adjudication. They did neither. The High Court bench had at least ruled that the State Administrative Tribunal was entitled to adjudicate the 'constitutionality of Statute or Ordinance or Rules'. The two judges of the Supreme Court by substituting a panel of three retired judges to decide the representations of the 6072 employees, who, in the state government view, 'can not claim a right to be reinstated', ditched that avenue also. The issue of constitutional validity or otherwise of TESMA and the Ordinance was left dangling in the air! The only 'grace' shown by the apex court order was the ruling that section 7 of the Ordinance need not be taken into consideration while disposing the representations of those dismissed/suspended.

The judgement, at the end, owns up this default in a sterile manner: "Lastly, we make it clear that we have not at all dealt with and considered the constitutional validity of Tamil Nadu Essential Services Maintenance Act, 2002 and the Tamil

Nadu Ordinance No.3 of 2003 or interpretation of any of the provisions thereof, as the State Government has gracefully agreed to reinstate most of the employees who had gone on strike."

It also defaulted when it remitted the grievances of the staff, which formed the bedrock of the strike issue, to the mercy of the self-same government which arbitrarily divested the staff of their subsisting privileges and let loose state terrorism against them. Instead of rendering justice, the apex court judges ended in expressing a pious wish stating: "Further, we have not dealt with the grievances of the employees against various orders issued by the State Government affecting their service benefits. We hope that Government would try to consider the same appropriately".

These are certain glaring infirmities that the judgement suffered even from the judicial angle, besides its devastating pronouncements on the right to strike.

On this, Justice Krishna Iyer opined: "The Court disposed of the matter without discharging its adjudicatory function of examining the central issue under challenge — the vires of the Ordinance dismissing over one lakh staff sans enquiry under Article 311, sans chance to make representations."

'The Hindu' editorial also pointedly summed up the flawed direction that the judgement took as:

"There were two core issues before the two-member bench. The first was the constitutionality, legality and rightness of the summary dismissal of about 170,000 State Government employees in Tamil Nadu under the State's Essential Services Maintenance Act (ESMA), as amended *post facto* by an ordinance conferring on the Government the divine right of dismissal, without any application of mind and without giving the employees an opportunity to be heard. The second issue was the status of the right of workers and employees to freedom of association and collective bargaining, including the right to agitate and strike.

"In response, the apex court resorted to the technique of providing practical relief in place of a determination of the issues of justice."

### **OBITER DICTUM**

While the learned judges 'disposed of' the appeal and writ petitions in a manner that smacks of abdicating their judicial responsibility, they strangely embarked upon an impermissible course of expressing their views on the wide canvas of right to strike, which was not a matter before them. Normally a court only deals with the issue brought before them for adjudication; whatever expressions are made extraneous to that issue can only be termed as *obiter dictum* and have no binding force. But, the personal views expressed by the judges during such occasions as part of a judgement can have the undesirable effect (or was that desired in the instant case?) of not only influencing public opinion in the society but also liable to cast a long shadow on decisions that may be taken by other tiers of judiciary. This is the pernicious fall out of the apex court pronouncements on the right to strike.

The personal views of the two judges incorporated in the Supreme Court judgement are worded in such a manner overturning several of the well reasoned rulings of the judiciary in the country including those of the apex court itself.

Another aspect of the subjective opinion recorded in this judgement is that it more or less prescribes that in the absence of a statutory provision workers can not go on strike. It is necessary to assert that it is not mandatory for workers to have

some statutory 'sanction' to go on strike. Courts in India have long back held that the rights of employees to strike was a common law right.

## **RIGHT, INALIENABLE**

Strikes and demonstrations are a democracy's hard-fought weapons against oppression. They cannot be wished away by a Supreme Court.

Admittedly the word 'strike' does not figure anywhere in the Indian Constitution. It is also a fact that the Supreme Court in its earlier rulings had held that the right to strike would not be a fundamental right under Article 19(1) of the Constitution. But, it does not mean that a strike or threat to strike *per se* is coercive action.

It is not necessary to go in for a long list of previous decisions of the Supreme Court, where the right to strike had been upheld. Still, a brief passage from the judgement delivered by Justice Ahmadi in B.R. Singh's is worth recalling. He observed: "The right to form associations or unions is a fundamental right under Article 19 (1) (c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively; reduced if it is not permitted to demonstrate.

"Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it." (1989 Supreme Court Cases 710)

This is what had been echoed by the Solicitor General, Soli Sorabjee, when he pointed out that the right of collective bargaining, including the right to strike, was an invaluable entitlement of workers and employees won through years of toil and struggle. Further, there could be "horrendous situations in which the employees have no effective mechanism for redressal of their grievances and are left with no option but to resort to strike."

Justice V.R. Krishna Iyer amplified how the concepts of freedom of speech and association interrelate to the right to strike: "Freedom of speech and freedom of association are not mere abstractions or purposeless inanities. Collective action is implicit in these basic freedoms. In express terms, there is no freedom to strike writ into the Constitution. But collective bargaining for legitimate causes is best served by a creative combination of speech and association, of course, without breach of law and order or transgression of other people's human rights. Once this perspective, sanctioned by constitutional initiative, is correctly and curatively interpreted, industrial jurisprudence becomes a process where both managements and workers have rights. When claims are justly made based on the contribution of labour to the progressive profit-making capacity of industry, an arbitrary refusal even to discuss may lead to tension which may mount to the point of peaceful, though militant expression by a collective withdrawal from work, otherwise called strike."

Governments of the day, at the centre or in the states, barring the left ruled states, have been resorting to creating various instruments to declare strikes as illegal and the working class has faced them all along. But even when a concept of illegal strike is created by a statute, apart from the illegality ascribed to that strike by the statutory provision, a strike can not be regarded as obnoxious, perverse or coercive.

The Supreme Court in this judgement graphically described the disruptive, illegal, iniquitous, anti-social and unconstitutional dimensions of strikes. Not stopping with the case of Government employees, it refers to several categories of employees in the following words: "In case of strike by a teacher entire educational system suffers... In case of strike by doctors innocent patients suffer; in case of employees of transport services entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or from one city to another. On occasion public properties are destroyed..."

But, as Justice V.R. Krishna Iyer posed, "are all strikes illegal, immoral, unjust or liable to be suppressed by state authoritarianism, employer reprisal or judicial allergy by angry negation of writ relief?" Is the Court justified in holding all strikes as productive of havoc in a democratic society and a menace to public interest? Trade unions are a legitimate, lawful instrument of the working class and strikes, under necessitous circumstances, are a strategic weapon, which has legal sanction under just conditions.

Justice Krishna Iyer has himself succinctly placed on record the distinction between 'legal' 'illegal' and 'justified' strikes in his 1978 judgement in *Crompton Greaves Ltd v. The Workmen*, where he noted: "It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable."

### **SERMONS WITH A CLASS BIAS**

When the Supreme Court goes further and says "Government employees cannot claim that they can take the society at ransom by going on strike", it thereby refers to the moral right of Government employees. Courts are only courts of law and not of morality.

If the judgement talks of 'moral' grounds, one is tempted to point out that the morality of a person and views on it are shaped by the class to which he belongs and the social, religious, cultural milieu of his upbringing.

The apex court order had taken umbrage under the 'moral' aspect, because it perceives the strikers to be a minority placing the society or the public at large to ransom. This is a very narrow interpretation of civil liberties, ruling out the avenue even for a minority to protest against majoritarian and state authoritarianism. Shutting out this open space for protest can well be the deathknell of democracy itself!

It is also useful to note Justice V.R. Krishna Iyer quoting Professor J.A.G Griffith, in his book "The Politics of the Judiciary" to contend that "unwittingly, class bias may creep into their (judges) overt impartiality." He gave reasons to hold that judges, being but human, may not be immune to class bias, never intentional but subconscious in their surrender to partiality.

The Supreme Court judgment goes on to suggest that "even if there is injustice to some extent" employees must seek redress outside strikes. It chose to deliver a sermon: "In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for

discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently ...”

No such sermons are ever addressed to the employers and the government which is the biggest employer in the country. Why? Again, why not the same sermons to the judiciary to drastically cut down the mounting backlog of cases and to make justice available, cheaper, expeditious and corruption free? It is not surprising that in this class society such sermons are bound to be addressed to the weaker sections only.

The judgement approvingly quoted the ruling in *Ex-Capt. Harish Uppal v. Union of India and Another* [(2003) 2 SCC 45], where the apex court observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society – public at large.

What is the situation on the ground?

### EMPLOYERS’ MILITANCY!

The report of the Second National Commission on Labour, which had received an aggressive flak from the trade union movement had noted: “A review of industrial relations reveals that as against 402.1 million man-days lost during the decade 1981-90 i.e, during the pre-reform period, the number of man-days lost declined to 210 million during 1991-2000, i.e., the post-reform period. **But more man-days have been lost in lock-outs than in strikes**” (*Emphasis added*).

Critiques have noted that the Labour Commission did not make a deeper analysis of the individual impact and the social intensity of lock outs, but for this bland statement. Neither has an effort been made to identify the causes of this growing phenomenon. As against about 92 million man-days lost in strikes during the year 1991 and 2000, lockouts accounted for 138.5 million man-days lost during the same period. In relative terms, lock-outs accounted for over 60 per cent and strikes only 40 per cent of the total man-days lost during the 1990s. While the average number of man-days lost per worker in strikes during the period 1991-2000 was 11.7, the corresponding figure was 39.4 man-days for lock outs (See *Table*).

#### Workers involved and Man-days lost in strikes and lock-outs in India during 1991-2000.

Year	Workers involved In (000's)		Man-days lost (in million)		Man-days lost per worker		
	Strikes	Lock-outs	Strikes	Lock-out	Strikes	Lockouts	
1991	872	470	12.43	14.00	14.3	29.8	
1992	767	485	15.13	16.13	19.7	33.3	
1993	672	282	5.61	14.69	8.3	52.1	
1994	626	220	6.65	14.33	10.6	65.1	
1995	683	307	5.72	10.57	8.4	34.4	
1996	609	331	7.82	12.47	12.8	37.8	
1997	637	344	6.31	10.68	9.9	31.0	
1998	801	488	9.35	12.71	11.7	26.0	
1999(P)	1,099	212	10.62	16.16	9.7	76.2	
2000(P)	1,044	374	11.96	16.80	11.5	44.9	
1991 to (2000)	7,810	3,513	91.60	138.54	11.7	39.4	
2001(P)(Jan-Sept)	138	148	2.49	10.76	18.0	72.7	

Notes: 1. Figures in brackets give the percentage share of strikes and lockouts in man-days lost 2. P-Provisional

*Source: Government of India, Ministry of Labour, Annual Report (2001-2002), New Delhi*

In other words, the individual intensity of lock outs was nearly 3.4 times as compared to strikes. The situation was alarming during 1999 when lock-outs accounted for 76.2 man-days lost per worker as against only 9.7 man-days in strikes, i.e the former was nearly eight times the latter.

According to the analysis made in the 'Indian Journal of Labour Economics', "the shares of lockouts in the totals of the number of work stoppages, workers involved and workdays lost had been on the increase ever since the beginning of the 1980s. Employers' militancy as measured by lockout incidence is not a new phenomenon. But there are some distinct features in the figures relating to the 1990s. The peak figures for the three measures were reached in this decade – nearly half the decisions to stop work were taken by the employers, more than one-third of the workers affected were by lockouts, and about two-thirds of the workdays lost were due to lockouts in one or the other sub-periods in the 1990s. As noted before, strikes still involved more workers than lockouts did, primarily because strikes could embrace many establishments, even could be national in scope, while lockouts at best are establishment or even firm specific. Lockouts caused consistently more workdays lost than strikes did throughout the 1990s."

It concludes this analysis thus: "Now, it becomes difficult for anybody to accept hook, line and sinker the government's claim of "harmonious industrial relations" in the 1990s. Disruptions in the labour market were prominent and in part were caused by reform efforts."

In this backdrop, it is very odd for the apex court to have indulged in faulting the workers alone as the sole cause of making the society and public at large suffer. Again, one cannot escape questioning the singular focus of the Supreme Court judgement only to proscribe strikes, without a word to utter on the havoc played by the disruptions to the economic activity by the employers, which class includes the governments as well!

### **INEQUITOUS WEDGE**

The apex court also endorsed the averments of the counsel for the Jayalalitha government and noted: "Therefore, he rightly submits that in a society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings strikes cannot be justified on any equitable ground."

What do the learned judges seek to convey by this? Do they say that for those employed in the government, or for that matter the organised sector, their very job is an extraordinary privilege and they should not raise any questions as to the quality of their employment or the rights they ought to have? Do they also accuse them to be the reason for the large number of those waiting eagerly for employment?

The Supreme Court has no concern for the miserable lot of the unemployed in the country when it goes about liberally affixing the seal of approval for privatisation of the public sector undertakings, as in the BALCO case, which destroys the very potential to create avenues for employment and rather leads to loss of existing jobs. It is strange that the government policies of jobless growth get affirmed by the judiciary and those who resist such policies are held responsible for the alarming unemployment situation.

In a way, the apex court had endorsed the game plan of the vested interests in the country that had been pitting the concerns of the unemployed against those of employed. It faults the workers for pursuing demands for improvements in their employment conditions as the prime perpetrators of the crime of keeping vast multitudes as 'unemployed'. Thus, in the name of equity, the apex court drives an iniquitous wedge between the 'employed' and 'unemployed' and as an extension between the 'organised' and 'unorganised'!

In a baffling move, the apex court approved the Tamil Nadu Government stance that the employees had to give individual letters of unconditional apology and a further undertaking not to strike hereafter, just to get themselves back into the jobs from which they were cruelly ejected. The court heaped this humiliation on the employees, which again has set a wrong precedent, bound to be resorted to by errant employers ever after!

We have heard the advocates of liberalisation policies *ad nauseum* repeating that labour market rigidities and the organised sector trade unions are the biggest impediments to 'economic reforms'. The apex court judgement is bound to be utilised by these quarters to step up pressures for ushering in a 'hire and fire' regime, which is presented as 'labour market reforms'.

An editorial comment in the '*Businessworld*' (13 Oct 2003) described the situation created by the judgement as follows:

*"The right to strike and the right to demonstrate are the most cherished of workers' rights. Both rights are dear to the Left; their denial is sure to convince Leftist parties that the courts are a tool of rampaging capitalism. But even those who are not diehard communists must wonder whether the courts have sufficiently applied their minds when ruling on what are regarded as the most fundamental rights in all democracies of the world. If the Supreme Court's ban on strikes is unusual, the justification it gave was unreasoned. Many who would be cheered by the ban would still be uncomfortable about the constraint on workers' collective rights it imposes. There are strikes every few years in General Motors, the world's largest manufacturing company located in the world's largest democracy; it is unthinkable that the US Supreme Court would declare them illegal. ... But evidently, in its present incarnation it (the Supreme Court) believes they are unjustified in all circumstances.*

*How did it come to such a drastic conclusion? Its taciturn judgement does not give much of a clue; but it seems to be of the opinion that the machinery available for collective bargaining, consultation, conciliation and arbitration is sufficient to avoid the need for strikes. In the particular case in which it came down against strikes, such an assertion would need to be defended. For in the case of governments, the entire dispute resolution machinery is manned and run by civil servants, who turn out to be employers or their flunkys. Thus the prospects for neutral, objective dispute settlement in a dispute between the government and its employees are not bright.*

*The impasse created by the Supreme Court might in other times have been dealt with---not necessarily satisfactorily---by Parliament. But the rightist government at the Centre is unlikely to be seized with the problem. So we will have to wait for another form of resolution----which we can only hope will not be too conflictual"*

## **INSENSITIVE NDA REGIME**

In the immediate aftermath of the apex court pronouncements on the right to strike, Somnath Chatterjee, speaking for the CPI (M) in the Lok Sabha articulated the resentment of the democratic opinion in the country towards the perilous impact of the judgement. He demanded that the parliament legislate a Constitutional amendment to make the right to strike a fundamental right of the citizens. The NDA government chose not to respond to the plea.

But, when the same Supreme Court in a subsequent judgement came with a ruling against the NDA government move for disinvestment in respect of the two public sector oil companies viz. BPCL and HPCL, there was a vociferous hue and cry from the NDA quarters. The Supreme Court only stated the obvious that these two entities being a creation of statutes legislated by parliament, their ownership status cannot be tampered with without seeking parliamentary nod. But, Arun Shorie the minister for disinvestment fretted and fumed that the apex court verdict has come as a biggest impediment in the way of reforms. In post haste the Vajpayee regime sought review of the verdict which the Supreme Court readily entertained.

The Prime Minister Vajpayee hesitatingly responded, when he was pressed to clarify the government stand on the Apex court ruling in the Indian Labour Conference which he inaugurated. He agreed to 'sit together to find a way out of the situation'. But the P M chose to brazenly renege on this commitment. This was clear from the denial put out by the Prime Minister's Office to a claim made by the Bharatiya Mazdoor Sangh that P M assured their delegation that he did not favour a ban on the right to strike. The PMO went to the extent of faulting the BMS of 'wrongly attributing to the PM having said that the government was not in favour of banning the right to strike and had sought the opinion of legal experts on this issue.

Furthermore, the NDA government, had in reply to the ILO query on complaints filed by the Centre of Indian Trade Unions and the Trade Union International (TUI) Public Services, defended the stand of the Jayalaita regime in the instant case of Tamil Nadu strike!

### **'FUNDAMENTAL': ILO**

The despotic measures unleashed by the Tamil Nadu government in the instant case involved gross violation of ILO Conventions concerning freedom of association and right of collective bargaining.

India is a founder member of the International Labour Organisation (ILO). The Government of India is a party to adoption of the core ILO Conventions relating to the rights of workers. It is another matter that successive governments at the centre have not ratified those Conventions.

Relevant to this context are the ILO Conventions 87 and 98. These two are included in the 'core' ILO Conventions and also form part of the ILO Declaration of Fundamental Principles of Rights at Work, 1998. (A few other Conventions relating to 'forced labour' and 'child labour' also come under this Declaration.) The member countries of ILO are under obligation to implement the Conventions covered under this Declaration, even if they have not ratified them.

Without traversing the details of these Conventions, suffice for us to note here what the Ministry of Labour, while circulating a status paper dated the 5<sup>th</sup> August, 2002, elaborated as the Government of India stand on the ILO Conventions 87 and 98 as under:

“Convention No. 87 provides for the right of workers and employers, without any distinction to establish and join organisations of their own choosing without previous authorization. Their organisations have the right to form or join federations and confederations, including on the international level. These organisations or federations may not be liable to arbitrary dissolution or suspension by an administrative authority. The only exception provided in the Convention to the right to organise “without distinction whatsoever” is the armed forces and the police, to whom special rules and regulations may apply. Convention No. 98 aims to protect the exercise of right to organise and to promote voluntary collective bargaining. The guarantees provided for under these two Conventions are by and large available to workers in India by means of constitutional provisions, laws and regulation and practices. The main reason for our not ratifying these two Conventions is the inability of the Government to promote unionisation of the Government servants in a highly politicised trade union system of the country. Freedom of expression, Freedom of association and functional democracy are guaranteed by our constitution. The Government has promoted and implemented the principles and rights envisaged under these two Conventions in India and the workers are exercising these rights in a free and democratic society. Our Constitution guarantees job security, social security and fair working conditions and fair wages to the Government servants. They have also been provided with alternative grievance redressal mechanisms like Joint Consultative Machinery, Central Administrative Tribunal etc. Hence, our stand has been that this section of the workforce can not be said to have been deprived of the right of association.”

The ILO Conventions 151 and 154 specifically relate to the rights of those employed in public services, which are also not ratified by India.

The Eighty-eighth Session of the International Labour Conference was held in Geneva during June 2002. Answering a question related to the position taken by the representatives of the Government of India thereat, the Minister of State Shri Muni Lall gave the following written reply in the Rajya Sabha on the 21<sup>st</sup> December, 2000:

“While taking part in the discussions on the first Global Report ‘Your Voice at Work’ under the ILO Declaration on Fundamental Principles and Rights at Work’, the Government of India representative said in the International Labour Conference in June 2000 that the universal guarantee of Workers’ fundamental rights is an absolute prerequisite for workers to be able to share the benefits of globalisation. He also said that a vigorous follow-up to the Declaration should not discourage member countries from pursuing the ultimate goal of ratification of ILO’s core conventions. The Indian Constitution and its laws and practices are by and large in conformity with the ILO Conventions 87 and 98. However, India could not ratify these two Conventions because of a technical problem involving trade union rights of Government servants.”

Apart from such high sounding assertions in the international fora, the Government of India had not taken any concrete action to guarantee such fundamental rights of the workers.

## **UNDEMOCRATIC INTERVENTIONS**

The history of prohibitive legislation and authoritarian actions in relation to strike by workers in India dates back to the colonial rule. To ensure social and industrial peace so important for war (Second World War) preparations, the colonial rulers in

India enacted the Defence of India Act, 1939 and the Rules framed thereunder prohibited strikes or any work stoppages.

In independent India also, governments (both central and state) followed the colonial example in administration and enacted ESMA, whenever employees went on or threatened to strike. ESMA was enacted in 1957, 1960 and 1968. The post-emergency spurt in work stoppages especially in 1979 prompted yet another resort to enact ESMA in 1981 (for four years), which after one extension expired in September 1990. Various state governments at different times (e.g. Tamil Nadu in 1979, 1981, Maharashtra in 1981) enacted ESMA. The President enacted ESMA in several states in 1980, where the state legislatures stood dissolved. As the protests against the 'new economic policies' grew, the government re-enacted Essential Services Maintenance Act (ESMA) in 1992. ESMA became a handy instrument to suppress strikes and protests by workers and particularly by public employees. The governments held out threats to impose and actually imposed ESMA in several cases. Excepting the Left-ruled states, many other states, whether ruled by the BJP or Congress, were not averse to impose ESMA. The regional governments were only too keen to use ESMA to quell strike activity by their employees. The UP Government used ESMA and the National Security Act (NSA) in the UP Electricity Board Workers' strike in January 2000.

The 1990s also witnessed a number of interventions by the judiciary in strikes and protest actions by workers, either *suo motto* or in response to those initiating legal proceedings against the strikers. In the case of postal strike (in December 2000), the Delhi High Court instructed the government to "Take whatever stern action you (the government) deem fit, we want that the postal services are normalised", the stern action included imposition of ESMA. In fact, the High Court enquired whether the government was planning to impose ESMA.

The pro-active judiciary encouraged Public Interest Litigations (PILs) filed in several instances of public employees' strike - e.g. postal employees' all-India strike in December 2000, Bonus dispute of Bombay Municipal Corporation (BMC) employees in October 2000, bus transporters' strike in Tamil Nadu in 2001. The judiciary, intervening in such disputes, had often given directions to the strikers to return to work.

### **JUDICIAL HOSTILITY TO WORKING CLASS & MASS ACTIONS**

The Judiciary in India has manifested an increasingly negative and hostile attitude towards the rights of the workers. This only reflects the growing bias in favour of the employer class. The judiciary has handed down several judgements negating its own earlier judgements – not helpful to the interests of labour. In the Steel Authority of India (SAIL) case the apex court judgement on contract labour negated the judgement given in the earlier Air-India case. In yet another case, the Supreme Court struck down the High Courts decision awarding back wages to a worker dismissed by an errant employer. It held that the award of full back wages while setting aside the dismissal of a worker was not a natural consequence. The Supreme Court also reversed a Mumbai High court decision allowing Air India hostesses to serve till the age of 58 and affirmed their being grounded at the age of 50.

Evidently, the judiciary had started acting in tandem with the philosophy of the liberalisation era. The judiciary first started, as noted above, intervening in strike situations, especially strikes by government and public employees, citing social concerns. Eventually such intervention had enlarged its canvas to all areas of democratic rights.

The Kerala High Court pronounced that calling for bandhs by any organisation is illegal and unconstitutional, as it ran counter to the fundamental right of the citizen. The Court declared "no political party has the right to call for a bundh on the plea that it is part of its fundamental right of freedom of speech and expression". The Supreme Court promptly upheld the Kerala ruling.

In a district town in Tamil Nadu, the local business community sought the judicial intervention to keep the main road free from interruption by processions, public meetings etc. When the matter ultimately reached the Supreme Court, the apex judiciary not only upheld the court ruling but also extended the ban on processions etc. to the whole of the state, except certain isolated places to be designated by the police.

Following the Supreme Court denying the workers the right to strike, a single judge of the Calcutta High Court took the extreme recourse to pass a *suo moto* order banning processions on weekdays.

More recently, the Supreme Court delivered a judgement in respect of a 1998 strike in Kerala, acquitting two employers, who on the strike day shot dead a worker on the picket line, describing the murderous act as done in self defence. Thus, for the workers there is ban on right to strike and for the employers there is right to kill even! This is the bonanza conferred by the judiciary on the employer class.

#### **LET US ASSERT!**

#### **MAKE 24 FEBRUARY STRIKE A SUCCESS**

It is increasingly becoming evident that the globalisation driven development model has less and less space for democratic rights, particularly expressions of dissent and protest. For the advocates of 'reforms', development and democracy seem to be incompatible.

It is worthwhile to recall here what Boutros Boutros-Ghali, who was Secretary General of the United Nations from 1992-1996, asserted: *"At the heart of the international debate is the relation between development and democracy — two concepts which are inherently intertwined but have all too often been treated as separate. The achievement of both is fundamental to the future of world peace."*

But in India, the task before the democratic movement is not only to bring about a reversal of the development model dictated by the international financial and trade institutions but also to resist and defeat the menacing attacks on the democratic rights of the masses.

The trade union movement of the country has decided for a country wide general strike on February 24, 2004 to assert that the people's right to protest and strike is supreme and cannot be interfered with at will by the executive or the judiciary. The mass organisations and democratic forces should rise to the occasions in support and join the action making it a stupendous success.