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Labour Relations; an Asian Point of View

„The law of labour relations is in the news. Everyone talks about legal curbs on strikes, about trade unions and the law, about what should happen to dispute procedures and their enforcement by courts of law. It is a continuing discussion and by no means only in this country."

These words were written in 1972 by the late Sir Otto Kahn-Freund appropriately enough, in a publication by the Fabian Society — a Society which takes its name from an early Roman General who, it is said, sought to wear out the enemy by using harassing techniques without risking a decisive battle. It is a sobering thought that a decade later, in the 1980s, the law of labour relations continues to be in the news and that there is an ongoing search for effectual institutional frames for the settlement of employment disputes.

In a way, it is not surprising that this should be so. The employment relation is directly concerned with economic activity and therefore with that which many perceive as individual growth and national development. It is also concerned with the way in which the national product is shared by the people of a nation. Conflicts in the area of the employment relation are therefore seen as affecting the mode of such sharing. They are also seen as being concerned with the distribution of power between the employer and the employee. The employment relation is linked with the balance of economic power and with the exercise of political power.

But conflicts and disputes are not something peculiar to the employment relation alone. Given the dichotomy of self and not self, conflicts and disputes will remain a part of all human activity. Behind the rhetoric that men are born equal lies the reality that they are born different and acquire different and differing interests. In the nature of things these differences manifest themselves in conflicts and disputes.

However, it is equally true that as more and more persons have begun to draw from and have become dependent on the same natural resources, co-operative endeavour has become an imperative to survival. The survival of each has become increasingly dependent on the growth of all. No man lives alone and no nation is an island. It is one aspect of the process of

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living together that acceptable institutional frames are set up for the settlement of disputes amongst persons who so live together. All procedure for the settlement of disputes, whether in the area of the employment relation or elsewhere, is but organized society's substitute for self-help and personal vengeance.

But organized society does not act anyhow and institutional frames for the settlement of disputes do not just happen. Organization implies a hierarchical distribution of power and organized society acts through those who wield State power. Those concerned with exercising power need also to secure the acceptance of those whom they seek to direct and influence. It is this need of the State to secure the acceptance of those who are governed that has shaped, from early times, the content of procedural rules for the settlement of disputes.

In 11th century England, disputes were settled by a process known as trial by battle where the party who won the battle obtained judgement in his favour. These were the primitive beginnings of the English common law. Champions were employed to do battle where one of the parties was incapacitated by reason of age or physical infirmity, and in the course of time, the employment of champions became routine and they became professional fighters available for hire regardless of the physical capacity of the litigant. But trial by battle became too dangerous not only to life and limb but also to the security of the State. The stability of the social fabric and the interests of those who wielded State power were threatened and the State could no longer play the silent role of a spectator or, for that matter, the role of a referee whilst the disputants engaged in battle. The State moved away from merely providing a forum for physical confrontation and moved towards procedure which was perceived to be less arbitrary and more reasonable and therefore more acceptable, and it is this movement towards reason which has led over the years to the enunciation and refinement of the simple and fundamental rules of natural justice.

The central rule of all procedure for the settlement of disputes is that he who seeks to settle, whether by way of conciliation or by way of judgement, must be independent and impartial. No procedure for the settlement of disputes will secure the acceptance of a people if those who seek to settle are seen to be partisan. Again, the maintenance of an orderly social fabric renders it necessary that the dispensation of justice is self-evident. Justice must not only be done but must be seen to be done. The doing of justice is not only a matter of concern to the parties to a dispute but it is also the concern of society at large. Also it is not enough that he who seeks to settle is non-partisan. It is equally important that he is not arbitrary and that he does not decide the matter by, say, the toss of a coin or capriciously. He should hear before he determines and it is this which finds expression in the principle of justice, that no man shall be condemned without being heard. All procedural rules for the settlement of disputes may be derived from these simple principles of natural justice: principles which are an appeal to reason and which are equally relevant to the settlement of any dispute, whether in the area of the employment relation or elsewhere.

The employment relation as it is known today evolved out of the industrial revolution in the 18th and 19th centuries — a revolution which also saw the breakdown of the multiplex relationships of a feudal society. The serf deprived of land sold his labour for remuneration and this was the so-

called employment contract. It was said that the employment relation was a matter of free contract and that which was agreed should be done. But the reality was that the servant sold his labour for his livelihood. The master bought that labour for his profit. The master directed and the servant obeyed. The product of labour was a social product concerned with satisfying social needs and the employment relation was not a matter of concern to the employer and his employee alone. It was a relation in which the society at large had an important and significant stake. However, the 19th century private entrepreneur was in no mood to surrender any part of the so-called prerogatives of the employer. Again universal franchise was not yet known and political power in the 19th century State was closely identified with the interests of the landowner and the employer. It was in this context that disputes between the private entrepreneur and his workforce came to be settled painfully on the anvil of conflict — conflict which found expression in the establishment of trade unions and in strikes and work stoppages. Strikes and work stoppages very often led to physical violence, to shooting and killing and the struggle was seen for what it was — a naked attempt at self-help. It was a trial of strength; it was recourse to the primitive procedure of trial by battle.

The rationalization was, and sometimes continues to be, that there is nothing more effective than a settlement that is voluntarily reached by the parties to a dispute. It is said that disputes should be settled by collective bargaining and that there can be no effective collective bargaining without threats of strikes and industrial action on the one hand and lock-outs on the other. It was then asserted that such threats would not be effective unless they were in fact carried out, at least in some instances. Ergo, the right to strike is a fundamental right. It is this which may be regarded as the mythology of self-help. It seeks to sanctify the past and rule the present.

The reality, however, is not in the rationalization. In the same way as trial by battle no longer survives as a way of settling disputes between man and man in other areas of activity, there is a need to recognise that employment disputes cannot be settled by trial by battle without continuing damage to the stability of the social fabric. Disputes in the area of the employment relation are not different in essence from disputes in other areas of human activity and it is the function of the State to secure an effective frame for the settlement of such disputes.

But this cannot be done if those who seek to settle are seen to be partisans. It cannot be done if the interests of the State are perceived to be identified with the interests of the employer. It cannot be done if those who wield State power are perceived to be dependent for their own survival upon the economic power of employers. This is the nub of the matter, and it is the decisive issue in respect of the viability of any institutional frame for the settlement of employment disputes. Trade unions and workers have often asked Fabian advocates of change, "Where are your independent arbitrators, where are your independent judges, where is your system of cheap and expeditious justice? Do not your arbitrators and judges come from the same class of people as our employers, do they not serve the same interests as our employers in a direct or indirect way?" These are questions that any open society must openly face. Any State which seeks to secure the acceptance of a people which it governs must identify itself with the interests of all its people and it must be perceived to do so. There is no other way by which

those who govern can continue to govern without repression — and repression, if nothing else, is self-evident. A modern State concerned with the effective management of the natural and human resources of a nation must meet the challenge of setting up acceptable tripartite institutional frames for the settlement of employment disputes. It cannot run away from the issue and seek refuge in the mythology of self-help and trial by battle.

This compelling need to set up appropriate institutional frames for the settlement of employment disputes assumes an immediate significance in the Asian region.

The countries of the Asian region share a common heritage of colonization. The same industrial revolution which led to the organic growth of trade unions and collective bargaining in the West led to mercantile expansion and to the establishment of colonies. The economies of the Asian nations were made subservient to the economy of the ruler. The colonies provided raw materials to feed and accelerate the thrust of the industrial revolution in the West, and one consequence was the annihilation of industrial growth in the East.

In the result, many nations of the Asian region are today faced with the need to compress, in a generation or so, a process of development which covered a time span of a couple of centuries in the West. Developing economies everywhere speak of accelerated economic development. Such accelerated development involves a degree of organization and direction that was unknown to the 19th century West and it is this which has impelled many governments in the Asian region to play an increasingly dominant role in respect of the management of the economic resources of their countries. In Sri Lanka, for instance, the State is the largest single employer. In the Asian region, even more so than in the developed West, the State cannot stand outside the arena of economic activity.

Again universal franchise has made the worker a voter as well. Political parties which contest elections cannot ignore the interests of the worker who constitutes a significant segment of the electorate. The worker himself perceives the vote as a way in which he can secure better terms of employment and reduce his cost of living, and looks upon the elected government to ensure that this is done. The lines of separation between that which is political and that which is the concern of a trade union is often blurred. The social contract and incomes-prices policies are but manifestations of this togetherness. In Asian nations this togetherness is reinforced by another consequence of colonization. To a colony national liberation was a first priority and politicization and political parties preceded the growth of trade unions. Trade unions were often established as useful adjuncts to political parties in their efforts to capture political power. Political and trade union activity at the national level is the continuing reality of the Asian political scene.

The clock cannot be set back. It is neither politically nor socially possible, not for that matter desirable, that the countries of the Asian region should go through the same evolutionary process of capital accretion in the same way and trod the same path of conflict and confrontation and trial by battle as was trod today's idustrialized nations in the 19th centrury. The nations of the Asian region together with other nations of the developing Third World face the challenge of securing accelerated economic development in the 20th century without having recourse to the methodology of the 19th century.. It

is this which is reflected in the concerns of many governments in the Asian region to set up broad institutional frames within which the seemingly different interests of the employer, the employee and the community which both of them serve may be synthetized and welded into a common base for development.

Development is a function of co-operation and participation: not of confrontation and conflict. It is this which finds some resonance in the indigenous culture of the people of Asia. The same colonization process which prevented industrialization from taking root, also had the effect of leaving intact the way of life of large sections of the people of Asia. The predominant majority of the people of Asian countries continue to live in rural areas. The breakdown of the multiplex relationhips of a rural society has been slow. Even in urban areas, apart from the hours that are spent at the workplace, the employee goes back to a home and a background which retains the outlook and the traditions of the past. In 500 BC, long before the primitive beginnings of the common law in England, Prince Siddharta in India renounced everything and walked out of his palace to become The Enlightened One, and the Buddha is revered and seen by many today in Asia as an example to follow. The sages and thinkers of ancient India recognised that inward contentment would not come from possessing more and ever more of outward things. The inward culture of Asia is a consequence of the outward thrust of the early civilizations. It is out of the flowering of the early civilizations that the inward search began and the thinkers of Asia sought to push the frontiers of the mind and transcend it in their quest to understand. Their thoughts and writings are part of the Asian tradition. Today many people in Asia are in existential need to weld these traditions with the present into a living whole. There is the of ten repeated statement from the Bhawad Gita: "To action you have the right but not to the fruits thereof." Action is its own reward and man furthers his understanding of himself in action. And it is in this way that employment is regarded not merely as a matter of rice and bread but as something more intimately connected with human dignity and existence.

It is possible to read too much into matters of culture and tradition, but clearly the attitude of workers in many nations of the Asian region cannot be understood on the same basis as that of their counterparts in the West. The Asian worker does not leave his tradition and his culture at the doorstep when he enters the workplace, and it will not be wrong to state that this tradition and culture emphasise co-operation and participation as a way of doing things, and it is this that any effective Asian model for the settlement of employment disputes must recognise. In Western terms it would seem that worker participation and conciliation must constitute the major thrust of any effort to set up acceptable institutional frames for the settlement of employment disputes in Asia and not so much collective bargaining and open conflict and controntation. The nations of the Asian region with their own special inheritance and their own special experience have a contribution to make to furthering an understanding of the ways in which disputes in the area of the employment relation may be settled and it may well be that that which is relevant to Asia today may be a pointer to that which is yet to come in the developed West.