A comment on the recent Supreme Court Judgment banning workers strikes

Supreme Court Decision Denying Right of Strike To Workers Is Flawed Both In Terms of Law As Well As Fact

A Just Solution To The Problem Of Workers Right To strike Lies In Giving 1/3rd Representation To Workers Representatives In Management In All Spheres

I

"Government employees have no fundamental, legal, moral or equitable right to go on strike and a strike by them cannot be justified in the present-day situation, whether their (i.e., the employees) cause is just or unjust." This observation (amounting to a judgment) has recently been made by a division bench of the Supreme Court of India. The judgment has caused an alarming stir among all sections of workers (mental or physical and organised or unorganised), because it (i.e., the judgment) is going to have very harmful effects on the workers rights, secured after great sacrifices during the past over two centuries' long history of the industrial working class. While all types of workers living in India will be hit by its harmful effects, those residing all over the world (comprising more than half of human race) will get affected by its dangerous ramifications. Naturally, the judgment had evoked adverse reactions from the international working class as a whole, including India. The International Labour Organisation (ILO) has asked the Indian government to take all urgent steps to reaffirm all trade union rights in the country and restore industrial relations in Tamilnadu.

The Supreme Court judgment is essentially based on two broad arguments—legal and factual.

As regards the legal position, the Supreme Court's basic legal point is that the workers right to strike in India is neither granted by the Indian Constitution, nor enacted by the Indian law and nor approved by its Apex Court.

Taking up the Indian Constitution, the Supreme Court avers that the fundamental right to the freedom or speech, expression and assembly and to form associations or unions under article 19 (1) of the Indian Constitution does not guarantee a right to strike.

We are of the opinion, that the above observation is seriously mistaken.

The right to the freedom of speech, expression, assembly and to form associations or unions need the carrying out of certain activities without which the various dimensions of this right could not be put into practice.

For instance, the exercise of the right to form an association or union needs, first of all, the sorting out of a common goal acceptable to all members of the association or the union and then, the strategy or the action plan to achieve the goal. Without a goal and its methodology, the right to form an association or union cannot be exercised. Obviously, the right to form an association or union also includes the right of determining its aim and action plan. Thus, the aim and the action plan (which includes the right to strike as the last resort to achieve the aim) of a trade union are the concomitant rights of the fundamental right to form unions.

A right has no meaning if its exercise through its related actions is banned. What is the use of the basic right of belief and expression if its exercise by a specific group having its particular idea of truth and practice (e.g., a religious community's particular way of prayer) is denied? Can the

Supreme Court put into practice its constitutional powers if the executive hinders the implementation of its due procedure?

Taking up the other legal point raised by the judgment that the Indian law has no provision of the right to strike by the workers, it is sufficient to say that the Indian Industrial Disputes Act (1947), IDA, recognises the right to strike—declaring strike during negotiations and adjudication illegal. In fact, section 22 of the IDA permits legal strikes even in public utility services provided notice is given. Only sudden "wild-cat" strikes are illegal.

Coming to the Supreme Court's own jurisprudence on the question of workers right to strike, Justice V.R. Krishna Iyer pointed out in the Gujarat Steel Tube Case (1980), that even illegal strikes may be justified—so as not to attract dismissal. In B.R. Singh's case, Justice Ahmadi on behalf of three judges held that the right to strike is an important weapon in the armoury of workers...recognised by almost all democratic countries.

Obviously, the judgment's conclusion that strikes cannot be justified on any legal, moral and equitable ground for everyone everywhere contradicts the existing reality of the Indian Constitution, Law, Morality and Equity.

The judgment has taken an extreme view of strikes, contrary to the letter and spirit of the law, including past Supreme Court judgments.

Besides, the above-stated lapses, the court adopted a highly unsatisfactory way of declaring the law on an issue of international as well as national importance. While references were made, no cases on strikes were actually cited. A full review of the law after hearing both sides (a natural justice requirement) was most desirable in such an important issue. But the court as usual repeated its obiter dicta (that the workers have no fundamental, legal, moral or equitable right to go on strike under any circumstances) as in respect of its ruling that the Indian government enforce the uniform Civil Code.

II

Looking at the factual position of the judgment, the first fact, cited by the Supreme Court, is that "strike as a weapon is mostly misused which results in chaos and total maladministration." This citation has turned the actual fact upside down. The real question is who suffers from the strikes. The corporate lobby (top politicians. big business, media and lobby's other associates and followers) propagates that it is the people and they alone. But this is a mere fraction of the fact. The bulk of the truth is that the strikes impose great hardships on the workers themselves who lose their wages, sometimes other benefits and at some other time, dismissals, apart from police repression and other incarcerations. The workers only resort to a strike when they are pushed to the wall. The accusation that the workers often go to strike on flimsy grounds is only a propaganda weaved and spread by the vested interests.

Next, the argument that strikes create chaos and maladministration is again a plain concoction. This is, because chaos and maladministration is a permanent feature of our social life. The feature is visible from the daily growing lawlessness, violence, crime, moral degradation, corruption, nepotism, red tape, inequality, poverty and unemployment which are a constant source of distress to our people.

If the scandals in the Securities Scam, the UTI, the SEBI, the IFCI, and the Directorate of Enforcement, etc., apart from thousands of minor ones, are counted together, they must have troubled and ruined millions of depositors. Recently, the embezzlement of four hundred crore rupees in the central Provident Fund Commissioner's office has been reported. The reports of the Comptroller and Auditor General, the Public Accounts Committee and the Central Vigilance Commission tell their respective tales about our rulers maladministration and utter waste of national finances by them. Even Indian judiciary is not exempt from judicial chaos and maladministration. The over 3 crore pending cases for years together before the courts, the lack of accountability and transparency and in some cases, that of integrity, and the dictatorial law of the contempt of court are constant irritants to the people. How can the workers strikes which are hardly few and far between in an year give continuous trouble to the people.

Another worth-mentioning fact stated in the judgement is that "a strike by the employees cannot be justified in the present-day situation, whether workers cause is just or unjust. The observation indicates that the Supreme Court itself lacks belief in the righteousness of its decision, i.e., the employees have, as the judgement ordains, no fundamental, legal, moral or equitable right to go on

strike under any circumstances. If the employees have no right to strike, then where from the question of the justification of a strike in the present-day situation, whether workers cause is just or unjust, arise? It shows the court's lack of belief in the justness of its decision.

Still, another observation says that "even if there is injustice to some extent, employees must seek redress outside strikes." The worth-noting words are "injustice to some extent". This means that there may be some occasions when strikes are justified—again a lack of court's conviction in its own verdict. However, rational laws are not made by basing them on casual and random happenings.

Lastly, the judgment emphasises that the aggrieved workers had other options available to them to get their grievances redressed, such as Labour Tribunals, Joint Consultative Machinery, Negotiating Councils, Arbitration Tribunals, etc. The problem with the Labour Tribunals is that their recommendatory reports go on lying with the government for years without an end. And when the government's final decision comes, the concerned workers had either left their jobs or are on the verge of retirement. The other conciliatory machinery, infact, often handles day to day or ordinary problems and is seldom able to deal with any ticklish issue, such as, increase in wages, bonus and other matters involving finance. The Arbitration Tribunal awards implementation is deliberately delayed by government for years together to diminish their effectiveness.

III

A particularly noteworthy fact about the judgment is that, while it castigates and rebukes workers' strikes for causing social chaos and mismanagement, it remains totally silent on corporate capital-directed closures and lockouts in which more man-days are lost and more loss is suffered by the economy, giving further push to administrative anarchy and social disruption. Only the past decade's (1991-2000) record shows that a total of 129 million man-days were wasted in closures and lockouts in contrast to 80.2 million working days lost in strikes (Report of the Second National Commission on Labour). Further, a survey conducted by the Reserve Bank of India indicates that the inefficiency in Indian industry mainly rests with the employers' mismanagement which accounted for 63 percent loss; 34 percent was due to factors, such as power failures, lack of needed technology, etc. The workers fault was only 3 percent.

No national person has any special liking for strikes. So has been the state of workers. Strikes have emerged as a workers weapon of struggle against the oppressive corporate system. So far, workers have used it as the last resort to secure their due rights from the capital-owners. As long as the unjust corporate system lasts, strikes cannot be totally stopped by any government nor, they can be wished away by any judgment. This is, because the strikes have become an anti-sceptic for workers defence against the corporate virus. Only a restructuring of the corporate system into a Nature-Human Centric system can enable us to stop the use of this age-old technique of struggle.

The empowerment of workers by giving them one-third representation in the management in all spheres where wage labour works, with necessary exemptions, establishes a mechanism where workers representatives are able to get their agenda through and resolve all labour issues. Empowerment of labour in certain big corporations can also be possible even under the ongoing corporate system. The empowerment of labour is sure to result in more productivity and also more growth rate.

Taking its cue from the existing corporate governance, the judgment has interpreted the prevalent social and legal facts in the light of corporate economics which considers capital as the supreme phenomenon in human society, holds capital owners as the engines of social development, characterises labour as a commodity which can be purchased anywhere any time, looks upon people and environment as economic sources which can and must be used to serve and augment the capital.

Contrary to the above anti-people and anti-environment corporate agenda, the Nature-Human Centric economics offers an alternative agenda which maintains that the capital comprises a two-sided phenomenon, i.e., the environmental resources, on the one hand, and the human resources, on the other. It maintains that man is a bio-social phenomenon who combines in himself two integrated qualities—individual and social—with each having its own utility.

It regards that the prosperity and progress in human society can only be measured in terms of environmental conservation and promotion and the continuously rising level of human mental and material welfare. This aim can be achieved by adopting a development model that strictly follows

five main principles in its practice, i.e., environmental sustainability, equity (fair equality), productivity (growth or higher profit), transparency and democracy in all types of social activities, thus ending the existence of any privilege or special right in every process. It ends the misappropriation and wastage of about 40 percent of world financial resources through political and business corruption, violations of the rule of law and human rights, criminalisation, etc. It estimates that the financial savings made by eradicating privilege, monopoly, corruption, violence and crime can yield enough funds as can guarantee necessary and reasonable social security as a fundamental right to nearly 50 percent deprived (including the poor below the poverty line, poor and marginal peasants, middle class unemployed and similar other sections) of the world. To establish an equitable order, it maintains that the income difference in human society should be in the ratio of 1:5. It stands for enacting a just and equalitarian law all over the world which holds humankind and environment as its two top priorities. 25-08-2003