THE DECLINING WORKING CONDITIONS OF THE INDIAN WORKING CLASS

BAIJU THITTALA
Criminal Defence Solicitor, England
Deputy Mayor of Cambridge, England

Why is India still maintaining the old classification of a 'workman' and 'non-workman', a law that has been discussed, debated and enacted in 1947, the old Victorian notion of a 'master' and 'servant'. The British working class, through the trade unions, took the lead in modernising employee and employer relations in accordance with the societal changes. The British employee and employer relationships have been very complex. Britain was the first country in which the Industrial Revolution was put to the test; of course, the employee and employer relationship was meant to be complex and problematic in that context. This is because the employers' sole aim was to concentrate on surplus values. Exploitation was the prime agenda of the employers or the class that owned the means of production.

Nonetheless, what you can see in the British employer-and-employee relationship is that it has been significantly changed towards protecting the employee's interests, certainly not by a heavenly messenger to the Parliamentarians, but as a result of thousands of strikes, picketing, collective bargaining and lobbying led by the trade union movements to protect the interests of the employees. Thus, the employee and employer relationship in Britain, in which the Industrial Revolution exploited the working class, has revolutionised and shifted heavily towards protecting the employees.

In Britain, an employee was defined by the 'controlled tests': whether the employer had control, not just over what the person had to do, but also the manner in which they do it *[Performing Rights Society Ltd Mitchell and Booker (Palais de Danse) Ltd [1924]*. The British employee's legal rights and entitlements evolved significantly as the work culture developed, and of course, the 'sophisticated industrial process paved the way for the number of professionals' and skilled and semi-skilled employees to have had increased. So, it ought to be evolved further to accommodate the change that was taking place. Thus, the previous test of the 'control test had become insufficient to protect the interests of the employee', and in 1951, the Court of Appeals held that 'the control test was insufficient and the requirement of modernising it was necessary'. So, the control test itself was no longer the sole test to define an employee. Thus, it further substituted the test by putting forward an 'integration test', 'whether a person is fully integrated into the employers' concern or remained apart from independence from it.' [*Stevenson, Jordan Harrison Ltd v MacDonald & Evans [1952] 1 TLR 101].* It further derived and developed a test of a 'pragmatic *approach' [Ready Mixed Concrete Ltd v Minister of Pensions [1968] 2 QB 497]* by weighing up all factors in determining whether a person is employed or an independent contractor. It also

puts the control and mutuality of obligation and substitution along with many other elements in defining whether a person is an employee or a contractor.

What you can see in employment law in Britain is that it has been subjected to a rapid transformation to protect the interests of the working class. It was rather the political commitment and will of the politicians and the commitment of trade union leaders with an unassailable determination to protect the employee whose labour is the only capital by which he can sell in exchange for his survival. The pertinent legal factor is that, in Britain, 'employee' is defined, then a minimum wage is fixed, and all employees are entitled to have it throughout Britain, which resonates with the living costs.

What surprises me as a political student and as a learned and trained British lawyer is why we still have a system in India that splits an employee into two classes, 'workman and non-workman' (the Industrial Disputes Act 1947). Why do we define an employee as a 'workman' and another category as a 'non-workman' when both would be giving their labour to the employer in return for wages, but not an independent contractor? It further developed to 'control and supervision' and then further to 'integration tests'. My legal question would be, why do we define a person as to whether he is a workman or a non-workman when both of these categories have satisfied the control and supervision test along with the integration test, and then to decide his rights and entitlements?

The 'workman' is defined under the Industrial Disputes Act as 'any person (including an apprentice) employed in an industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward.' A non-workman is defined as a person who does not fall into the above category. The interesting fact is that their rights and their entitlement are different. Why are parliament reluctant to define who is an employee who provides labour to this employer and then decide what is his or her rights? In reality, the current definition, the 'workman' and the 'non-workman', no matter whether he is skilled or unskilled, is a person who provides his or her labour to the employer in return for wages (certainly not falling into the category of an independent contractor who is neither a workman nor a non-workman) and then decides as to what the rights and entitlements are. In other words, this classification of labour would have a significant impact on a person's entitlement, which includes minimum wages.

'The labour investigation committee appointed in 1943 to investigate the question of wages and other matters like housing, social conditions, and employment' and 'the Minimum Wages Act 1948 suggested to provide for a fixation of minimum wages in 'certain employments'.' I am perplexed to see this as a political student: why we had to fix minimum wages only for 'certain employment' and what about the rest? I am confident that in 1943, the Labour Investigation Committee must have considered the living cost as they were considering 'matters like housing, social conditions', so the predominant consideration would have been the standard of living of the employee; why did they only consider employees of the 'certain employment', but not all working class of the country? Why do we still follow the provision of the Minimum Wages Act 1948 'to revise the minimum wages of the workers employed in the scheduled employment.' What about the workers employed in the sector that are not in the scheduled employment? Should they starve to death? Should their families suffer and malnourish? What about their fundamental rights of equality? What about their rights under Article 39 of the Constitution of India (DPSP) 'that the citizens, men and women equally, have the right to adequate means of livelihood,' and 'that the health and strength of workers, men and women, and

the tender age of children are not abused, and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.' What about their 'Right to Healthy Life' (Mobachangkai v. State of Nagaland WP (c) number 179 of 2016) under Article 21 of the Constitution of India, which is a fundamental right? What about the quality of their children's education?

Super interestingly, the Minimum Wages Act states, 'the minimum wages act does not provide for any discrimination between male or female wages or any different minimum wages for them.' What a tragic law for Indians to follow in 2023, where the law itself identified only certain scheduled employment, which excludes all those employees who are not on this list in itself is an act of discrimination, yet the statute says it should not discriminate those who are in the scheduled lists. Is it not creating two classes of workers: one class, a protected group of employees who you are not allowed to discriminate, and on the contrary, the second class who are not even identified as employees for the purposes of the Indian employment law, yet the statute advocates no discrimination to the identified class. What about their basic minimum wage entitlements? Are they not working? It is almost 80 years after the first Labour Investigation Committee met, Dr B.R. Ambedkar said at the Constituent Assembly: "in politics, we will have equality and in social and economic life, we will have inequality...how long shall we continue to live this life?" Who will provide protection for these people when it comes to the basic minimum wage? Let us put an end to the concept of dividing the working class, who provide their labour for their survival. They, too, have the absolute right of equality.

The Indian concept of minimum wage is not only draconian but goes beyond the basic concept of humanity and breach of natural justice. An assessment of Arunachal Pradesh would be a depressing experience. The minimum wage of a skilled worker is 7200 rupees, whereas a gas cylinder (14kg) would cost 968 rupees, and the monthly per capita expenditure for food is an average of 1583 rupees, average rent, even if you put it as 5000 rupees a month, how could a worker survive with this money? Suppose he had a child? What quality of education would the child be getting? Is the system not breaching the fundamental right of the child by not providing quality education? Is the system not forcing that poor child to go for child labour? What kind of system are we following?

Jawaharlal Nehru said at the Constituent Assembly: "The first [task] of this assembly is to make India Independent by a new constitution through which starving people will get complete meals and clothes, and each Indian will get the best option that he can progress himself", is this not applicable to all workers in the country? The Supreme Court held that: "the health and strength of a worker is an integral facet of the right to life. The right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal", not applicable to all Indian working class. When we claim that India is progressing and developing, did we ever consider these workers and their families?

Until the nation finds politicians who are committed to "listen to the silent voices of the poor", our duty to the nation is, as Mr Nani Palkhivala said in his famous budget speech: "the price you pay to be a citizen of a democracy is eternal vigilance, if you are not prepared to have eternal vigilance, you are not fit for a citizen of a democracy, you have to fight for it". Therefore, we demand the Minimum Wage Act of 1948 and the Industrial Dispute Act of 1947 be repealed immediately. New legal reforms must be brought in, and it must define 'employee' and 'employer' and then a minimum wage, no matter whether a

person is skilled or unskilled, but his/her minimum wage must be according to living costs. It is long overdue, and the politicians must have the courage and the political will to protect the working people of the country.

The author, Baiju Thittala, is a dual jurisdiction qualified lawyer both in England and Wales and in India. Mr Thittala admitted to the Roll as Solicitor of the Senior Courts of England and Wales. He is also admitted to the Roll of the Advocates of the State Bar Council of Kerala, India. Practising in England and Wales as a Criminal Defence Solicitor and currently serving as the Deputy Mayor of Cambridge, England.

****

WORKERS ARE THE MAKERS OF REVOLUTION HISTORY AND VICTORY

Published By V.J. Joseph, General Secretary
for INTUC Kerala State Committee