

Book Review

# Industrial Law: Theory and Practice

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Industrial Jurisprudence by S R Samant, N M Tripathi Private Ltd, 1961; pp 175, Rs 12.50.

Growth of Labour Legislation In India since 1939 and Its Impact on Economic Development by R D Vidyarthi, Star Printing Works, Calcutta, 1961; pp 335, Rs 12.50.

Law of Industrial Disputes in India by R F Rustomji, Law Publishing House, Allahabad, 1962; pp clix i 623, Rs 25,

THE phrases 'labour laws' and 'industrial laws' are used in this country, as elsewhere, synonymously and denote those laws and legal rules which regulate the employer-employee relations. Some of these laws, though not directly dealing with such relations, nevertheless impose certain obligations or confer certain rights upon the employers or the employees so that in the ultimate analysis they can be deemed to impinge upon employer-employee relations. The literature on industrial laws, however, must confine itself to those laws which directly and substantially, and not remotely and incidentally, deal with the relationship between employees and employers. "A code of civil procedure may prohibit the attachment of the wages of a servant in execution of a decree. An educational act may indirectly eliminate children's entry into industry by providing for their compulsory education. Yet, surely, these cannot be called industrial laws". (Samant, p 25). By law, of course, is not meant merely the acts of legislature. Customs and agreements having the force of law or giving rise to laws should legitimately be included in the term industrial laws. So also case law or judge-made law which, at any rate in this country, has been enormous especially in matters like bonus, scales of pay, discipline in industry etc.

The three books under review deal with industrial law in its different aspects and from different angles. Though they overlap to some extent, they are in fact complementary to each other. Samant, a judge of the Labour Court in Bombay, is concerned with the examination of the basic principles that go to make industrial jurisprudence; Vidyarthi, an economist and official of a Chamber of Commerce, provides a neat historical sketch of the growth of legis-

lation; Rustomji, a Senior Advocate, has made a thorough analysis of one Act, namely, the Industrial Disputes Act, in the light of decisions of the Courts to-date. Rustomji has, in addition, written an introduction dealing with the background to the subject of industrial disputes.

### Why Industrial Courts ?

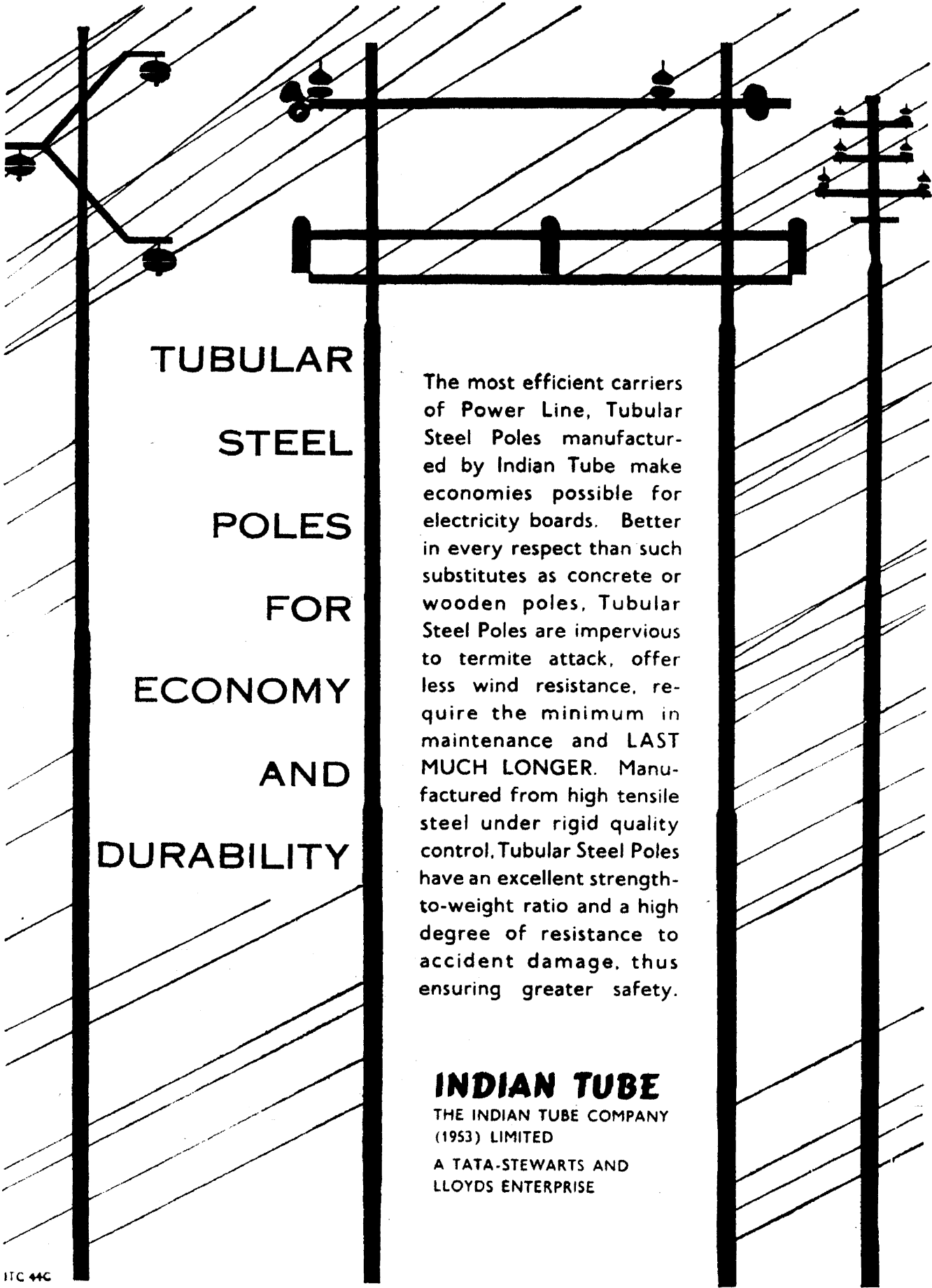
Samant begins at the beginning, namely, why industrial jurisprudence? Does the set of industrial laws provide any rules or system meriting the name of industrial jurisprudence? Though the growth of legislation, as Vidyarthi's study shows, has been haphazard and often to meet the needs of the day, there has been a steady growth and enlargement of certain principles which can collectively be embraced by the title of Samant's book. The origin and the predominant purpose of industrial laws have not been maintenance of law and order or the raising of money by the State. Industrial laws are essentially beneficial laws and these benefits they seek to provide along certain rules which are not a part of 'normal' law. For instance, the dismissal of an employee is no longer to be governed by the common law of master and servant; the hours of work, wages and conditions of service shall no longer be dependent upon contract alone; the recovery of delayed or illegally deducted wages shall be made expeditiously; and, above all, several questions of industrial life shall be decided not by express provisions of law but by the dictates of social justice.

Corresponding to the growth of industrial law has been the growth in the number of industrial courts and the volume of their business. Why should there be separate courts for dispensing industrial justice? This question comes too late in the day and can be shortly answered by

citing the fact that there are income-tax tribunals for income-tax law, co-operative tribunals for co-operative laws and tenancy courts for tenancy laws. Samant's laborious arguments supporting a separate judiciary are not all convincing. It is universally agreed that "the industrial disputes have become so numerous that common or ordinary courts of law, already burdened with overwork, are not in a position to cope up (sic) with them." (p 35) It is also true that the complicated and protracted procedure of the common courts of law presents a problem to litigants in labour matters. But this argument would be appealing if it could be shown that industrial courts are following a markedly simplified procedure. Unfortunately it is not so, partly because justice cannot be doled out without legal trappings. That the common courts of law are costly is another argument endorsed by Samant. However, courts of law are not inherently so. The exorbitant court fees and the delay in the disposal of cases are the two main factors responsible for the high cost of litigation.

### Bar on Lawyers Unjustified

Samant treads on still more controversial ground when he says that common courts of law are biased and reactionary and that industrial matters are complicated and therefore need both technical and legal expertise. In the first place, judges for both the categories of courts are recruited from the same society and inherit the same outlook — unless of course, judges of industrial courts are picked and chosen for their "progressive outlook". Secondly judges have to dispense justice on the basis of the evidence placed before them and according to law and for this they need not have 'technical' know-



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ledge. In any case, the present judges of industrial courts are not technically qualified persons.

Closely connected with the judiciary is the question of the role of lawyers in industrial courts. In some courts like those established under the Payment of Wages Act, lawyers can appear by right. However, before tribunals established under the Industrial Disputes Act, a lawyer can appear on behalf of one party only with the consent of the other party and the permission of the tribunal. This invidious bar against lawyers has been completely ignored by Samant and appropriately discussed at length by Rustomji. This bar is based upon a suspicion, old but unjustified, "that lawyers might foment litigation and their approach would be technical and legal" (p cxxv). The exclusion of lawyers from tribunals has far reaching consequences which are too patent to be ignored. It deprives parties before tribunals of the valuable assistance to which they are entitled. As a result, very often, some cases go by default because of the failure to put forth effectively the necessary points of view and of law. Secondly, without the assistance of lawyers the development of law win be handicapped. Thirdly, without an active and vigorous bar it would be impossible to find judges of tomorrow.

**Historical Perspective**

Samant is eminently fitted to realise this situation and to make valuable recommendations. But he makes none. His criticisms and recommendations even in other matters, are halting and hesitating—in keeping with the outlook of a judge. Vidyarthi, on the other hand, is eager to analyse the theory and practice of industrial law critically, and provides a better historical analysis. He is also concerned with the practical difficulties of administering industrial laws—difficulties faced by the management. Incidentally, Vidyarthi throws up certain interesting facts. For instance, how many people know that the first Indian Factories Act was put on the Statute book as a result of agitation by Lancashire Manufacturers who were aggrieved by cheap Indian Labour and therefore wanted a ban on the employment of child labour in India?

Vidyarthi has his quota of complaints. He says that "for small factories . . . it is impossible to comply with provisions relating to cleanliness, health, welfare etc" (p 71). If that is so, these small factories have no business to exist. The Factories Act prescribes only certain minimum standards and if even these cannot be complied with, industrial establishments would become a menace to the safety and health of the workers, Vidyarthi's complaint that "a factory inspector carries out his duties as a policeman", (p 72) is misplaced because he is expected to do so. The violation of the provisions of the Factories Act invites penalties and the Factories Act, after all, finds its appropriate place in a manual of criminal laws.

Regarding the settlement of industrial disputes, Vidyarthi complains, that the present machinery does not ensure joint consultation and makes arbitration compulsory (p 92). But the present machinery does not bar joint consultation. On the contrary it is only when negotiations and conciliation have failed that resort is made to the machinery under the law. Without this machinery every small industrial dispute would have had a multiplier effect a result no one desires. If the machinery has not worked well in practice, it is not the fault of the law-makers. Trade unionists who are ready to agitate at, or even without, the slightest provocation and Indian employers who would give only the legally minimum and that too after legal action — they are responsible for the disrepute in which the working of industrial laws has fallen.

**Indiscipline in Industry**

Vidyarthi has completely failed to take note of the problem of indiscipline in industry. Law in this respect is predominantly judge-made and appropriately dealt with by Rustomji. No law can adequately cover the variety of acts of misconduct which range from mere insubordination to open violence. Under law, today, an employer cannot take any disciplinary action against an employee without following rules of natural justice. He must hold a proper bonafide inquiry into the misconduct of the employee

and if the charge is proved, the employer can punish the worker. Several decisions of the Supreme Court have by now laid down that the inquiry must be fair and need not be strictly according to rules followed by courts of law and that the quantum of punishment is a decision of the management and the courts would not substitute this judgement for that of the management. Unfortunately on several points the law is not yet settled. The problem of indiscipline in industry is not likely to be solved by courts; it is a problem which has to be tackled by trade unions and employers together and to be solved in the interest of the industry as a whole,

Rustomji's survey of case law is extremely helpful to a lawyer in industrial tribunals. He has examined the various decisions carefully and pointed out the principles involved in them. He has traced the trend of decisions, though he is careful enough to show that in certain matters there has not been a consistent development. Rustomji's book is meant essentially for lawyers though the introduction of nearly 150 pages might be read by others with interest.

As said earlier, these three books written by three persons in different positions present different aspects of the same subject, though the level of treatment varies. Rustomji's is a study of a specific Act and hence intensive; Samant writes of the basic principles underlying industrial laws; and Vidyarthi is occupied with the historical development of labour legislation.

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