

CHAPTER-I

INTRODUCTION

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CHAPTER-I

INTRODUCTION

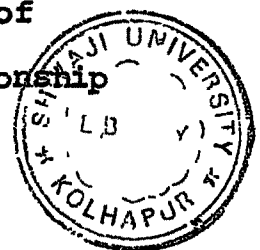
I.1 APPROACH TO THE PROBLEM :

Pandit Jawaharlal Nehru in his convocation address to the University of Allahabad had summed up the basic objectives of the University and its role in national life, in the following words : "A University stands for humanism for tolerance, for reason, for the adventure of ideas and for the search for truth. It stands for the onward march of human race towards even higher objectives."¹

These words highlight the basic truth that Universities have a crucial part to play in the life, welfare and strength of a nation. Hence there is a specific significance attached to higher education. There is basic difference between primary, secondary and higher education. The difference is in its aims and objectives. Primary education introduces a child to the two arts of knowledge namely reading and writing. The object of secondary education is to prepare the students for higher education and achievements, to create different interests in their minds, to make them aware of and to expose them to different arts, sciences and techniques. But the aim of higher education is two-fold, namely specialization in the chosen field and to prepare a future cultured generation.

In the olden times relation between students and teachers was of a different type. At a particular age students would go to the Ashram and learn all the 'Vidya' from the 'Guru' for whom there was a deep sense of respect and gratitude. There was no custom of paying fees. The 'Guru' imparted immense knowledge to the 'Shishya' and at the end of the student life, the student gave his 'Gurudakshina'. This system gradually changed, with the advancement of science and technology. The concept of education has changed manifold. New systems of education have been introduced. After industrial revolution the approach towards education became impersonal. The number of students in the institutions increased to a great extent and, therefore, personal relationship between the teachers and students which was basic concept of education lost sight of. When the number of students was small, teachers themselves were managers of the institutions but when the number increased it became impossible for the teachers to manage educational institutions and management had to be entrusted to different and specialised hands.

At the primary stage relationship between the students and teachers is smooth and easy for there is no interference of outside elements. Except minor interference of teachers there is no obstruction in the course of education. At the secondary level also the relationship



between teachers and students is smooth. During the course of higher education the students develop their own ideas and views, special angularities develop and then the problem arises.

The relationship between students and teachers has to be studied alongwith some other relationships as the process of education consists of manifold relationships. Out of these three important relationships are -

- 1) Relationship between Government and Management;
- 2) Relationship between management and teachers;
- and
- 3) Relationship between teachers and students.

The relationship between Government and management has to be considered because institutions of higher education are now managed by bodies created by the Statute. They gain power from the Statute. They are not autonomous bodies but are under the direct control of the Government specially regarding finances.

The relationship between management and teachers is no longer smooth and easy. The study of different legislations with respect to educational institutions, news paper records and general observations reveal that during the second decade of this century managements became powerful and teachers are

at the mercy of the management. Final object of education is lost sight of. Managements expect devoted service from the teachers. Teachers demand certain rights e.g. right to strike. Trouble started because there is a change in the attitude of the society in general towards education. Teachers are interested in materialistic achievements such as better salary, more allowances, better service conditions.

A bad teacher is worse than a bad medicine. A bad medicine spoils life of the man who takes it, but a bad teacher spoils a generation and on this count the Management demands the right to remove a teacher. There the conflict between the management and teachers started.

Today industrial law occupies a prominent place in the legal system of our country. This law directly affects large sections of the population of India. Those most directly and vitally affected are on the one hand the important class of the capitalists or industrialists, and on the other, the large number of workmen, their families and dependents. The number whom it affects indirectly is naturally much larger. As industry is an important part of the life of the country, producing wealth in the form of manufactured goods for internal consumption and for export abroad, this law greatly influences the progress of our country. This law is of great importance in civilised societies.

It is the advent of large scale industries that brought new and large problems which did not exist before. In the days before the steam engine, industries were of a kind which we call 'cottage industries' today e.g. if a man worked handloom, he was probably assisted in the ancilliary processes by his family and perhaps if he throve in his trade, he had a few assistants. In sharp contrast, in present day industry, it is quite common to have 3000 to 4000 workmen in a single factory. Each and every problem is magnified a thousand times and new and other problems have arisen which were formerly unknown. As industries developed rules and regulations to solve problems of industrialisation had to be framed. These laws deal with settlement of disputes, regular payment of salaries, welfare, facilities, social and economic security etc.

The doctrine which once determined the attitude of Governments was known as laissez faire according to which Governments must not at all, or at any stage come between employer and workmen. The state should not interfere with the natural working of a nation's economy. It is now generally accepted that Government must interfere in the interest of the workmen and there should, therefore, be laws to provide a machinery for Government to step in if it is necessary to do so:

The development of Industrial Law during the last decade and several decisions of the Courts dealing with industrial matters have emphasised the relevance, validity and significance of the doctrine of 'social justice'. The concept of social justice has become an integral part of industrial law and industrial adjudication cannot ignore claims of social justice while dealing with the industrial disputes. It is based on the basic ideal of socio-economic equality.

The industrial law adopts a practical, realistic and pragmatic approach and refuses to blindly follow abstract notions. It, therefore, tries to solve the competing claims of employers and employees by finding a just and fair solution and obtains harmony between capital and labour. The ultimate object of industrial laws is to help the growth and progress of national economy on the principles of fair play and justice. Social and economic justice have been given a place of pride in our constitution and the Directive Principles of State Policy have enshrined these principles. Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate object is settlement of industrial dispute in such a way as to do justice to both labour and capital, establish harmony between them and lead to their genuine and wholehearted co-operation. This would lead to

more production and that naturally helps national economy and progress.

The question whether the relationship between Government, management, teachers and students is governed by labour laws has not yet been finally decided. Interpretations of statutes, judicial decisions differ widely on this issue. There are conflicting decisions of different High Courts and benches of Supreme Court on this point. The law on the point is not final and so it takes very long to arrive at a final decision and during this period the institutions, the teachers and the students suffer heavily. Labour laws is that branch of law which governs the relationship between employers and employees. Whether institutions of higher education are to be treated as industries or not is the basic problem which is yet unsolved.

The researcher herself is a lecturer in law and considers herself to be a student of law. She is, therefore, intensely interested in knowing the relationship between the Labour Laws and institutions of higher education. This interest lead her to choose the present topic for her research.

I.2 STATEMENT OF THE PROBLEM :

The problem under study is, therefore, stated as follows :

**"A Critical Study of Labour Laws as
Applied to Institutions of Higher Education."**

Important terms used in the statement of the problem have been defined for the purpose of clarification and for limiting the scope of the study as follows :

Critical Study :

The dictionary meaning of the phrase is to examine carefully, to make an effort to learn, to reflect, reflective thinking, judging the good and bad points.² For the purposes of this dissertation critical study means detailed study of labour laws as applied to institutions of higher education.

Labour Laws :

It is that branch of law which attempts to define relationship between employer and employees. The employer seeks to obtain better production at minimum cost and employees strive to obtain better service conditions. Labour Laws try to attain this healthy relationship between these two important components of industry. It tries to bring together these two equal partners of industry.

Labour Laws include Industrial Disputes Act, Minimum Wages Act, Payment Wages Act, Bombay Industrial Relations Act, Mines Act, Payment of Bonus Act, Employees' State Insurance

Act, Workmen's Compensation Act, Maternity Benefit Act, Factories Act, etc.

Institutions of Higher Education :

This phrase refers to Universities, colleges imparting higher education above the level of standard twelveth. It also includes research institutions such as Gokhale Institute of Economics, Mauni Vidyapeeth, Phule Vidyapeeth. It also includes institutions of professional education such as medicine, engineering, law, business management etc.

I.3 SIGNIFICANCE OF THE PROBLEM :

Education forms an important aspect of each individuals' life. It helps to form the character and future of each individual. The quality of the society depends on the individuals of which it is formed. The future of a society and ultimately of the country is shaped in schools and colleges.

Education can be looked at from different angles. The Supreme Court has now laid down that it is an industry. But it is a special type of industry. The special factor is the human element that is involved. The welfare of the teachers, who train the future citizens is an important aspect. Increasing the standard of education is an immediate necessity. This can be achieved only when teachers find their jobs attractive, rewardful and interesting. For this

purpose settlement of disputes, adequate and timely payment of salary, providing welfare facilities is very essential and, therefore, application of labour laws which provide for these facilities to educational institutions is an important problem.

The researcher has in this dissertation studied different labour legislations and its applicability to educational institutions. This study is made with specific reference to aims and objectives and the changing role of education. This will help to bring about a cordial relationship between the management and staff. It will help to solve disputes between management and staff amicably. It will ultimately raise the standard of education and that of the society. It will bring forth an egalitarian generation.

The study shall help to improve present practices prevailing in the settlement of disputes between management and staff. It will add to the existing fund of knowledge and widen the horizons of knowledge. Thus the present problem has great significance specially when in a rush for mass education and in times of rapid industrialization the aims and objectives of education are lost sight of. In the present study the researcher has tried to evolve a via media through which the teachers shall get all the benefits granted to industrial workers plus something more after considering the pivotal role they play in nation building.

I.4 OBJECTIVES OF THE STUDY :

The researcher has conducted the present study by keeping in mind the following objectives :

- 1) To evaluate the nature of the status of institutions of higher education namely whether they are industries or not.
- 2) To find out how far the different labour legislations can be conveniently applied to institutions of higher education.
- 3) To find out how far the aims and objectives of higher education can be achieved by the application of Labour Laws to institutions of higher education.
- 4) To evaluate existing measures for settlement of disputes between management and teachers.
- 5) To suggest measures for solving disputes between management and teachers quickly and peacefully..

I.5 LIMITATIONS :

Labour Laws include a long list of legislative enactments. All these Acts are not related to the subject of the researcher. Only those Acts which directly or indirectly cover institutions of higher education are studied by the researcher.

They are :

- 1) The Industrial Disputes Act, 1947
- 2) The Minimum Wages Act, 1948
- 3) The Payment of Wages Act, 1936
- 4) The Factories Act, 1948
- 5) The Employees State Insurance Act, 1948
- 6) The Workmen's Compensation Act, 1923
- 7) The Trade Unions Act, 1926.

The study is limited to the Colleges affiliated to Shivaji University, Kolhapur.

I.6 RESEARCH PROCEDURE :

The present research is mainly library research. It is concerned with the study of labour laws, role of higher education, its aims and objectives - all can be found in the books reports of education commissions and committees. Their study in depth and proper interpretation are of utmost importance as far as this study is concerned. The present study is divided into three parts :

- A) Study of labour laws which directly and indirectly affect institutions of higher education with special reference to the definition of industry.
- B) Higher education : its history, meaning, aims and objects and its changing role.

- c) Application of Labour Laws to the institutions of higher education.

So far the first part is concerned the researcher has studied the following Labour Legislations :

- a) The Industrial Disputes Act, 1947
- b) The Minimum Wages Act, 1948
- c) The Payment of Wages Act, 1936
- d) The Factories Act, 1948
- e) The Workmen's Compensation Act, 1923
- f) The Employees State Insurance Act, 1948
- g) The Trade Unions Act, 1926

The different Labour Laws are studied under the following heads :

- i) Objectives of the Acts
- ii) Important provisions of the Acts
- iii) Applicability of the Act to institutions of higher education.

The researcher has also studied the facts and decisions of important judicial cases on the problem under study.

So far as second part is concerned the researcher studied all the related literature e.g. Shivaji University Act, 1974 reports of different committees, reports of different education Commissions and different books on aims and objectives of higher education.

So far as the third part is concerned, the researcher has made certain recommendations as to how to apply Labour Laws to the institutions of higher education.

I.7 ORGANISATION OF THE DATA :

The data collected through the different reports of educational commissions and committees, books on higher education books on labour laws and important cases having bearing on education was analysed and interpreted and certain conclusions were drawn. Based on these conclusions certain recommendations are made. All this work has been systematically organised in various chapters the scheme of which is given below :

Chapter-I :

This chapter deals with the general background regarding the problem, statement of the problem, objectives and significance of the problem, limitations of research work, research procedure and organisation of research work in different chapters.

Chapter-II :

This chapter is devoted to discuss different Labour Laws under three different heads namely -

- a) Objectives of the Acts
- b) Important provisions of the Acts

- c) Applicability of the Act to institutions of higher education.

The researcher has also studied the definition of industry under the draft Industrial Relations Bill which failed due to the dissolution of the Parliament. The definition of industry as given in the Industrial Disputes Act is studied in detail. The provisions of the different Labour Laws which are directly and indirectly related or applicable to the institutions of higher education are studied in this chapter.

Chapter-III :

In this chapter the researcher has discussed important case law having bearing on education. The decided cases are mostly that of the Supreme Court or the High Courts of different States. Some of the cases deal with Hospitals or research associations but the cases lay down important principles which help to draw conclusions regarding the problem whether education is to be treated as an industry or not, and so the researcher has studied these cases also.

Chapter-IV :

In this chapter the researcher has elaborately studied the history of higher education. The researcher has also studied the meaning of education and the meaning of University.

The researcher has dealt with the changing role of education and the aims and objectives of higher education. The researcher has specifically made a reference to the role of teacher in education as the researcher wants to draw a difference between an industrial worker and a teacher.

Chapter-V :

In this chapter the researcher has analysed and interpreted the data collected and has drawn certain conclusions and recommendations. This chapter also states some problems related to the field for further research.

R E F E R E N C E S

- 1) Excerpt from the speech of Pandit Jawaharlal Nehru in his convocation address to the University of Allahabad in 1947, reported in the Report of the Education Commission, 1964-65, Para 11.01, p. 497.
- 2) A.M. MacDonald (Ed.), Chamber New English Dictionary, (Singapore, McGraw Hill For Eastern Publishers (P) Ltd, 1971).