

LABOUR RIGHT AND UNION DEMOCRACY

Dr. Mallikarjunappa N.L.*

Abstract

In recent years, trade unions in India have become increasingly reliant on constructing workers' rights as part of the broader rubric of human rights. While the topic of labour rights has become popular in recent academic literature, it remains under explored. An important element of constructing labour rights as human rights is its impact on union democracy and rank-and-file mobilization, though this has yet to be fully explored. Utilizing the case study of the Public Sector Undertaking Union (PSU) paper suggests that a reliance on the construction of labour rights as human rights and the corresponding judicial strategy prevents the development of a from a more radical, grassroots social movement unionism and instead facilitates the proliferation of hierarchical, elite dominated forms trade unionism. It concludes by suggesting that unions must be cautious of the potential downfalls of quelling militant grassroots activism in lieu of a rights-based challenge.

Keywords: Labour rights, social movement unionism, union democracy

* Associate Professor. Indian Academy School of Management Science, Hennur main road, kalyan Nagara, Bangalore.

Introduction

In recent years, trade unions in India have become increasingly reliant on constructing the rights of workers, both organized and unorganized, as being part of the broader rubric of human rights. The usage of rights discourse necessitates that the legal system, at both the national and international level, becomes the venue in which organized labour fights its battles. In order to undertake these legalistic battles, the labour movement increasingly relies on rights-based documents such as the Indian *Charter of Rights and Freedoms* and various International Labour Organization (ILO) conventions, notably No. 87 (Freedom of Association and the Right to Organize) and No. 98 (The Right to Organize and Collective Bargaining). The labour movement's recent embrace of rights-discourse can be explained by a number of factors, including the fact that neo-liberalism (and its accompanying attack on organized labour) has become the dominant political ideology, the labour movement's social democratic allies have done little to protect and further it, union density has begun to decrease in the past few decades, the language of 'rights speak' has become increasingly salient in popular discourse, and many of organized labour's allies – feminist groups, rights organizations, Aboriginal groups and ethno-cultural organizations – have successfully used the *Charter* to gain rights and alter government action. The combination of these factors led to the resurgence of rights-based appeals under the *Charter* filed by trade unions on behalf of their members (Savage 2007: 192-94). Although many appeals by the labour movement to the Supreme Court were unsuccessful in the late 1980s, the judicial tide has turned and, by the late 1990s, the Court expanded the repertoire of labour rights that were constitutionally protected.

This paper seeks to analyze the effects of the construction of workers' rights as human rights as it relates to establishing and cultivating rank-and-file workers' capacities and establishing militant, grassroots unions built upon an active and broad-based membership. Building on David Camfield's (2008) typology of trade unions, it further attempts to contextualize what type of unions are most likely to construct labour rights as human rights and what this means for rank-and-file mobilization. It also explores broader causal relations between rights-discourse and union democracy. In so doing, it makes no normative assertions as to whether or not labour rights should be constructed as human rights. There has already been considerable discussion on this point and each side of the debate had established its position. This paper does, however, accept that fact that – for better or for worse – the union movement

has begun to embrace that their rights are in fact human rights and deserving of increased protection. paper suggests that a reliance on the construction of labour rights as human rights and the corresponding judicial strategy prevents the development of a far more radical, grassroots social movement unionism and instead facilitates the proliferation of more hierarchical, elite dominated forms of trade unionism (mobilization, social and business unionism). Thus, constructing labour rights as human rights offers a cautionary tale for unions, union leaders, and especially for rank-and-file unionists contemplating such an approach. Its important for those considering such a strategy to first consider the type of union they desire, and then determine if embracing a rights-based strategy will facilitate or frustrate that process. For those rank-and-file unionists committed to maintaining or establishing some formation of social movement unionism, a rights-based strategy is problematic.

Constructing Labour Rights as Human Rights

The labour movement's embrace of rights-discourse has garnered significant attention in the academic literature amongst scholars both in favors of this construction (Compa 2000, 2008; Gross 1999, 2003; Swepston 2003; Fudge 2006; Adams 2006) as well as from scholars either hesitant of or fully opposed to this strategy (Mandel 1994: see esp. ch. 5; Brody 2001; Lichtenstein 2003; McCartin 2005; and Savage 2008). The debate between the two has often consisted of competing normative claims as to whether or not labour rights should be constructed as human rights. This is especially true of those who advocate for labour rights to be actualized as human rights. Roy Adams, for example, asserts that 'human beings [must] never be treated as means, but always as ends' and continues that 'for this imperative to be fulfilled the worker must not be treated as a commodity but instead as a human being with an inalienable right to dignified treatment' (Adams 2006: 15). In similar vein, Lance Compa puts forward the argument that 'so long as worker organizing, collective bargaining, and the right to strike are seen only as economic disputes involving the exercise of power in pursuit of higher wages for employees or higher profits for employers, change is unlikely. Reformulating these issues as human rights concerns can begin a process of change' (Compa 2000:17). Such an approach asserts that the traditional activities of the labour movement – organizing, bargaining, and striking – are not simply activities, but instead are activities deserving of being elevated to human rights.

In order to see these activities being elevated from statutory rights to human rights, these scholars rely on the inclusion of the rights to organize, bargaining, and strike in various domestic and international human rights documents (Adams 2008). The suggestion that labour rights are – or should be – human rights has by no means achieved a hegemonic position within the academic community. Indeed, the very fact that labour rights are human rights is a contested issue. The suggestion that labour rights are human rights is not simply a position advocated by those who have class interests that run counter to those of the labour movement.

The critics of Adams, Compa and others are primarily schooled in the critical legal theory or neo-Marxist tradition and provide various normative claims of why it is problematic to construct labour rights as human rights and make further empirical claims of the shortcomings of such a construction. Larry Savage, for example, asserts that constructing labour rights as human rights is problematic because it threatens to undermine class-based responses to neoliberal globalization, downplays the material dimension of workers' collective action, and wrongly assumes that power flows from rights (Savage 2008), while David Brody maintains that such an approach posits a false equality between employer and employee rights and fails to recognize that the legal system – the supposed protector of labour's human rights – is not favorable to the collective rights of workers (Brody 2001). In short, the critics of constructing labour rights as human rights maintain that, at best, there are more drawbacks than benefits to this construction, and in some cases are totally dismissive of the value of constructing labour rights as human rights. Despite a wealth of literature that is critical of constructing labour rights as human rights and the accompanying judicialized strategy required to achieve this, the discussion of the effects of such strategy on the capacity building and mobilization of the labour movement's grassroots, rank-and file members has been downplayed

Developing a Typology of the Labour Movement

While the labour movement is often viewed as a solidaristic and unified entity, there are various divisions within the broader labour. Unions can be described using various typologies: international unions vs. national unions, public sector union vs. private sector unions, or traditional craft-based unions vs. broader 'general' unions. Another distinction between trade unions relates to what they do and how they go about doing it. David Camfield's overview of trade unionism in India conceptualizes four distinct types of trade unionism: business unionism, social unionism, mobilization unionism or social movement unionism (2008: 70-71). While all

unions engage in collective bargaining with employers, the way in which the union engages with the rank-and-file, and vice versa, varies considerably. Business unionism ‘...assumes that unions should be run from the top down by small numbers of officials and staff rather than democratically by an active membership’, while social unionism, despite being more critical of neo-liberalism than business unionism.

A strategy that utilizes the courtroom as the main battleground struggles to engage the grassroots in any meaningful way, even if it is successful in advancing rights in the end. To be sure, there are no picket captains, no strike mobilization committees, or no shop stewards needed in a courtroom. Furthermore, rank-and-file members need not even be present. This type of elite-driven strategy suggests that it will not be readily employed by social movement unions, as it fails to challenge the privileged position enjoyed by union staff and elected officials. However, business unionism, social unionism and mobilization, which all accept the running of unions by a hierarchy through bureaucratic means are more likely to employ a rights-based strategy as it is consistent with their view of how unions ought to be run.

Conclusion

By employing the case study of the PSU’s fight back campaign against explored many of the implications of toward a legalistic, bureaucratic and potentially (though not always) anti-democratic rights-based approach is likely to run contrary to social movement unionism’s goal of ‘put[ting] democratic control of the unions by an active membership...’ and most certainly conflicts with social movement unionism’s anti-bureaucratic tendencies that seek to undermine the dependence of most members on the activity and knowledge of a small number of leaders (usually union officials) by developing members’ capacities’ (2008: 71 By taking the decision making capacity out of the hands of rank-and-file members and failing to build the grassroots’ capacities, the top-down, bureaucratic and elitist modes of business, social, and mobilization unionism were reinforced. In other words, these three types of unions are the ones most likely to employ a rights based strategy as a central feature of any fight back campaign as it is consistent with their understanding of how a union should be run, who should exert power, and where this power should be exerted. Of course, this paper only employs a single case study to examine the relationship between labour rights and union democracy.

This paper suggests that we can expect unions and unionists adhering to a strategy of social movement unionism to be more hesitant of employing a rights-based strategy as such a strategy fail to challenge the internal power structure of the labour movement. And also contributes to the literature on union renewal, particularly in an era of neo liberalism when the rights of workers are being routinely violated by governments. In terms of looking forward to a broader strategy of union renewal, this paper indicates that emphasis must be placed on social movement unionism. If new political projects designed to increase the strength and influence of organized labour are to be sustained, it will be necessary to facilitate the growth of union movement's grassroots membership, develop their capacities to run a militant local, and ensure that meaningful democracy is present within the union's overarching This paper has also highlighted a number of other important interrelated causal relationships.

Firstly, as previously mentioned, it suggests that the type of union will inform the union's strategy in regards to rights-based arguments. Secondly, in-turn, the utilization of a rights based approach by business, social, and mobilization unionism has the potential to impede the development of a militant rank-and-file base. If labour leaders, lawyers, and judges can make improvements for workers, then there is less of a need for workers to take matters into their own hands and make these improvements through direct action and build the capacities required to do this. The labour movement can use rights-discourse to its advantage, but should utilize it in the workplace, the streets, on the picket lines and in the community before turning to the courts. While the courts may play an important role in rights enforcement, it should be a last resort for unions and only utilized after all avenues for rank-and-file activism have been exhausted. Indeed, while the temptation of a rights-based strategy may seem like a panacea to a labour movement that is confronting significant challenges, a legal challenge, or, even worse, relying solely on a rights-based approach

Ideally, unions must seek to mobilize their grassroots membership, build the capacities of the rank-and-file, and encourage militant action. The time will come when unions will no longer need to do these things for the membership (suggesting a top-down approach) as much as rank-and-file members will began to demand them (a bottom-up approach). While constructing labour rights as human rights may be tempting for many within the labour movement, union activists supportive of a social movement unionism must recognize the downside of this strategy and see it, at best, as one of many strategies in defending their rights. However, to avoid being confined

to hierarchical and bureaucratic unionism, rank-and-file activists should ensure that all other possible avenues of resistance are exhausted before turning to the courts as a venue for their struggle.

REFERENCES

- Adams, R.J. (2008) 'From Statutory Right to Human Right: The Evolution and Current Status of Collective Bargaining', *Just Labour: The Indian Journal of Work and Society* 12: 48-67.
- Brody, D. (2001) 'Labor Rights as Human Rights: A Reality Check', *British Journal of Industrial Relations* 39(4): 601-05.
- Camfield, D. (2008) 'The Working Class Movement in India: An Overview', in M. Smith (ed) *Group Politics and Social Movements in India* (pp. 61-84).
- Draper, H. (1977) *Karl Marx's Theory of Revolution*, v. 1. New York: Monthly Review Press.
- Harrison, D. (2002) 'BC's Protracted Class War', *Indian Dimension* 36(2): 12-13.
- Leier, M. (1995) *Red Flags and Red Tape: The Making of a Labour Bureaucracy*. Toronto: University of Toronto Press.
- Lichtenstein, N. (2003) 'The Rights Revolution', *New Labor Forum* 12(1): 61-73.
- McCartin, J. (2005) 'Democratizing the Demand for Workers' Rights: Toward a Re-Framing of Labor's Argument', *Dissent* (winter): 61-71.
- National Union of Public and General Employees /United Food and Commercial Workers. *Labour Rights*. Available at: <http://www.labourrights.ca/> [Accessed on 3 December 2009].
- Savage, L. (2007) 'Organized Labour and the Indian Charter of Rights and Freedoms', *The Supreme Court Law Review*, second series 36: 175-99.
- Tucker, E. (2008) 'The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of India', *Labour/Le Travail: Journal of Indian Labour Studies* 61: 151-180.