National Commission on Labour

In his letter to the Minister for Parliamentary Affairs (copy reproduced for ready reference) the Chairman had mentioned that a special set of papers for discussion with the Members of Parliament will be prepared by the Commission. These are being forwarded under instructions from the Chairman. The papers are preceded by the list of selected questions on which the Commission seeks views of organisations/individuals appearing before it. The questionnaire of the Commission which has already been sent to Members of Parliament is also appended to facilitate ready reference.

2. IN FRAMING THESE PAPERS THE SECRETARIAT WAS ASKED BY THE CHAIRMAN TO INDICATE THE TREND OF EVIDENCE BUT TO AVOID ANY EXPRESSION OF VIEWS. THIS HAS BEEN THE MAIN CONSIDERATION IN THE STYLE ADOPTED FOR PRESENTATION. INTERNATIONAL EXPERIENCE WHEREVER RELEVANT HAS BEEN BRIEFLY SUMMARISED.

3. It is not necessary that in the time available for discussion every question should be covered. Members of Parliament are free to choose questions which they would like to discuss with the Commission. The papers could be used as a background for discussion.

(B.N. Datar)
Member-Secretary.

D.O.No.8(5)/68-NCL(C)

P.B. Gajendragadkar,
CHAIRMAN.

GOVERNMENT OF INDIA
NATIONAL COMMISSION ON LABOUR

New Delhi, the 2nd May, 1968.

My dear Minister,

As you are aware the National Commission on Labour was set up in December, 1966 to review the changes in the conditions of labour since Independence and to make recommendations about the various aspects of labour including rural and unorganised labour. The terms of reference of the Commission and other relevant material will be found in the printed Questionnaire, copy of which is attached.

2. On the basis of the replies received to its Questionnai the Commission has completed discussions on issues covering the whole field of its inquiry at 12 State Headquarters and other areas of industrial importance in different States. These discussions have been with State Governments and with persons/organisations interested in labour problems. We are hoping to complete talks with the Central Ministries and the remaining States by the end of July. The Commission hopes to conclude its work by the end of this year and to make its report by the end of March 1969.

3. The Commission considers that its consultations will be incomplete if it did not have the benefit of meeting the Members of Parliament belonging to different political groups; we know there will be many members who may be interested in problems connected with industrial and agricultural labour. This series of consultations can start some time in August or September this year, preferably during the period the Parliament is next in session, according to mutual convenience.

4. I am, therefore, to request you kindly to consult the Leaders of different groups in Parliament and write to me whether the Commission's proposal to have these discussions appeals to them. If it does, I hope you will advise us about the procedure we should adopt in inviting representative members from different parties.

p.t.o.

5. On hearing from you, I will ask Mr. B.N. Datar, the Member-Secretary of the Commission to get in touch with the Secretary for Parliamentary Affairs to work out further details. It is our intention to prepare a special paper for discussion with Members of Parliament. The structure of this paper will also be discussed by the Member-Secretary of the Commission with your Secretary.

With kind regards,

Yours sincerely,

Sd/-
(P.B. Gajendragadkar)

Dr Ram Subhag Singh,
Minister for Parliamentary Affairs,
New Delhi.

Encl: One.

NATIONAL COMMISSION ON LABOUR

CONTENTS

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Points for discussion when the Commission records evidence.

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1. Are you in favour of simplification of labour legislation by enacting an All-India Labour Code?
   Do you agree that "Labour" should be put in the Union List?

2. Are you in favour of a common pattern of Labour Judiciary?
   (a) Whom would you like to be appointed to the Labour Courts? How? and by whom?
   (b) Would you like an appeal to be provided to the High Court or to the Supreme Court, or to both?

   OR

   Would you like the Labour Appellate Tribunal to be revived?

3. Are you in favour of Collective Bargaining in the case of organised labour?
   Would you like to combine collective bargaining with an agreement for compulsory arbitration? Do you think wages should be fixed by collective bargaining or by voluntary arbitration?

4. What do you think about the problem of casual labour and contract labour?

5. Do you think there should be statutory provisions for recognition of Unions by the Employers?

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If so, what conditions should be prescribed?

(a) Should the representative character of the Union be determined by secret ballot? and, for how long?

(b) Would you favour industry-wise unions or plant-wise unions to be recognised?

(c) Should there be one recognised union for the same industry and for the same region?

(d) Should provision be made for recognition of craft unions, including organisations of officers and supervisory staff?

(e) In case unions are recognised, what should be the rights of the minority unions?

(f) Do you think the provisions about the recognised unions prescribed by the Bombay Act are satisfactory?

(g) Do the Works Committees perform any useful functions? If not, why?

6. Do you agree that the presence of outsiders in the trade union movement should be discouraged or prohibited? If yes, how would you define an 'outsider'?

7. Do you think it possible and desirable to recommend that trade union movement should be built up as one movement, without any political influence?

Does partisan political influence lead to the multiplicity of trade unions? and Does it make it weaker in the result?

8. (a) Does conciliation machinery help the settlement of disputes?

(b) In case of failure of conciliation, would you like

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the employees and the employers to be given a right to refer the dispute to arbitration directly?

(c) In regard to non-implementation of awards and wage board decisions, would you agree that it should be made penal and a right should be given to the employees to file a complaints in a criminal court in respect of it? Should a similar right be given to the employers to file complaints against the employees for their failure to implement awards, decisions, settlements, etc., imposing obligations on them?

9 Do you agree that in cases of wrongful discharge and dismissal, the normal rule should be award of compensation and not reinstatement?

10. Do you favour common standing orders or rules of discipline? Do you think it is feasible to prescribe complete and detailed procedure for holding domestic inquiries in accordance with the principles of natural justice? Would you like any standing orders to be framed about promotions If yes, on what lines?

11. Do you agree that a National Minimum Wage should be defined and prescribed?

(a) What is your view about the "need-based minimum wage"? - Its feasibility

(b) If you think it is not feasible today, can you suggest any method by which it may be introduced by phases?

12. What is your view about fixing wages by linking them with

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productivity?

(a) What do you think about the regional disparities in wages for the same kind of work?

(b) What is your view about wage differentials in the Industry at present?

(c) Considering that it is important to relate wages to productivity, how can one allow for shortage of raw materials, power, and other impediments which inhibit improvement in productivity?

13. Do you agree that all strikes without proper notice of 14 days should be declared illegal?

(a) Do you agree that the definition of 'strike' should include: work to rule, go-slow, pen-down, gherao, etc.,?

(b) Do you agree that participation in an illegal strike - whether peaceful or not - should be considered a misconduct?

14. What is your assessment of changes in the attitude of employers/workers towards governmental machinery in the Labour Department and vice-versa?

15. A point is very often made that labour administration should emphasise the correcting aspects and not so much the penal aspects of labour legislation. In view of the small number of cases taken to penal authorities, would it be right to infer that the educative aspect is in practice being adequately emphasised?

16. Why is the Factory Inspectorate not sufficiently staffed? Is it due to lack of finance or lack of

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technical personnel? If it is the latter, would it b advisable to retionalise the technical requirements of the job consistent with efficiency of service? Should some of the routine duties be left to non-technical persons who could be specially trained to take care of such routine?

17. Is it feasible to permit trade union workers to see that the provisions relating to working conditions are adequately satisfied?

18. It is said that the Fair Wage Committee did not have adequate statistics to rely upon when its recommendations were framed. There has been also a suggestion that the recommendations made by the Committee have been patterned after countries at a higher stage of development. The whole basis of the Fair Wage Committee thus requires to be re-examined. Do you agree?

19. Is it necessary to have dearness allowance as a separate component of 'Wages'?
Is the system of linking dearness allowance to Consumer price index numbers on a point to point basis sound? If not, what changes would you suggest?

20. Has wage rise been responsible for rise in prices or has increase in prices led to wage rise?

21. Minimum Wages Act has been designed to protect workers in unorganised sectors. There is, however, inadequate implementation of this Act even where there is concentration of these industries in one place. It would

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be more so when the area to be covered is wide in terms of location of such industries. How do we ensure minimum wage for workers in the unorganised sector?

22. Lack of transport is reported to be one of the main reasons for inadequate implementation of most of the labour legislation, particularly with regard to small industries, mines, plantations and even large industries located in smaller towns. How could such difficulties be got over?

23. The Payment of Wages Act merely expects the Inspectorate to check the registers and see whether payments are made according to the register. Very often the records themselves are not properly maintained, particularly in smaller units. In cases where workers are paid according to the weight of articles produced, is there a guarantee that the weight itself is properly recorded? What can be the remedy for workers in case of such default?

24. Do you agree with the view that providing of employment opportunities should have precedence over regulation of wages for rural labour?

25. There is very often a compalint that along with the volume of labour legislation, there is also an unmanageable volume of statistical information to be supplied to Government. It is also suggested that most of this information is not adequately utilised. What steps should be taken to systematize and collect the information and asist its

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collection/incerpretation for the benefit of all users of such information?

26. Are there adequate facilities for research institutions for drawing upon the information available with Government? What should be the arrangemtns for clearing coordinating requests for information made by such institutions?

27. To what extent does public respond to the aspirations of workers especially in case of public utilities?

28. Have you any suggestions to make about the payment of bonus? Has the recent Act worked satisfactorily? If not, what changes should be made in it?

29. It is said that the industrial relations, both in public and private sector, are unsatisfactory. Do you agree? If yes, what are the reasons for this position? Would the training of management as well as employees help? Is the present position due to the fact that adequate channels of communication are not present?

30. What do you think about the claim that in regard to employment in unskilled categories of work in industry, both private and public, preference should be given to local people?

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TRADE UNIONS IN INDIA

I. Growth of the Indian Trade Union Movement.

The right to organise was formally conferred on Indian workers by the Indian Trade Unions Act in 1926. The setting up of popular Governments in the Provinces in the late thirties, the Second World War and the advent of Independence quickened the pace of the trade union movement. The membership of unions which stood at 1 lakh in 1927-28, rose to 5.1 lakhs in 1939-40 and 13.3 lakhs in 1946-47. A substantial increase in the registration of unions took place in the post-Independence period. The number of unions registered increased from 2,766 in 1947-48 to 12,874 in 1964-65, the latest year for which figures are available. During the same period the membership of unions rose from 16.63 lakhs to 40.82 lakhs.

2. This increase in numbers and membership, however, does not reflect the growth of the real strength of unions; it testifies more to the growth of small unions, as is seen from the fact that the average membership of unions which stood at 3,594 in 1928 came down to 1,480 in 1946 and has since shown a gradual decline to 568 in 1956 and to 549 in 1964.*

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* As against increasing trade union memberships the number of unions in the United Kingdom declined from 720 in 1953 to 596 in 1963

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3. The proportion of trade union members to the total number of workers is estimated at about 24 per cent only in sectors other than agriculture; the degree of unionisation however, varies widely from industry to industry; it was 51% in mining and 37% to 39% in Transport and Communications, Manufacturing Industries and Electricity & Gas. Industries with a high rate of unionisation are: Coal (61%), Tobacco manufacture (75%), Cotton Textiles (56%), Iron and Steel (63%), Banks (51%), Insurance (33%) and Railways (33%).

II. The structure of the Trade Unions.

4. No simple generalisation should be attempted as to the basis on which workers are organised into trade unions. One can broadly classify unions into three main types: craft, industrial and general - some unions combining the character of more than one of these principal types. Unions in different countries have developed on different lines depending on social and economic compulsions of the early stages of industrialisation and the framework of the respective societies. In Great Britain and Denmark where the guild system was prevalent, trade unions came to be organised on a craft basis. Australian unions followed the British pattern. In countries where guilds were not strong labour tended to organise itself on an industry basis, all the workers

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in an undertaking or industry forming into one union. In Japan, the unions are mostly 'enterprise' based and cover all the workers.

5. The general pattern of organisation of unions in India is industrial unions - mostly plant level unions covering various categories of workers in an undertaking, with some unions covering several units of the industry in the same centre/area. In the early stages when the bulk of the labour consisted of manual workers, with little differences in their skills, with equal need for protection from exploitation and improvement of their conditions, the obvious method of organisation was plant-wise covering all the workmen. While this has been the general pattern, there have also been unions based on craft or category of employees. The tendency to form unions on a craft/ category basis appears to prevail in certain modern industries, such as Air Transport and to some extent in Railways and Shipping. It is more common in new industries based on modern technology and the growth of skilled technical categories of workers. General unions, covering workers in several industries do exist. They have their appeal in certain industrial centres.

6. Advocates of industrial unionism rest their case on the basic assumption that the industry is the primary interest of any group of workers. The main advantage

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claimed by industry unions is that collective bargaining at the plant level and the industry level is facilitated by their existence; according to them, it would be easier to reconcile sectional claims and easier also to achieve a coherent wages policy covering a whole industry/undertaking. Another claim is that negotiations on productivity and the introduction of technological changes would also be facilitated. Further, agreements on the basis of balanced concessions can be made with a single union, which is impossible when the interests of number of unions have to be met. Those in favour of craft/ category unions on the other hand, argue that workers belonging to a craft have closer common interests; these are apt to be ignored or are unlikely to receive adequate attention, in an industrial union covering all categories and as such to safeguard and advance their sectional interests, craft unions are advocated. It is also argued that the increasing complexity of modern industry makes it difficult for industry-wise unions to function effectively and smoothly and that the growth of technology and new skills demands craft unions to serve their interests well.

7. The Indian Labour Conference which discussed this issue in 1964 concluded that formation of craft/

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category wise unions was a decisive factor likely to weaken the trade union movement and that every attempt should be made to discourage the formation of such unions. According to the Conference, disadvantages of craft unions in the Indian context are obvious. With most trade unions confined to a single plant, the advantages of horizontal mobility will be absent and the disadvantage of having to bargain with too many unions in one plant would still prevail. They would add a new dimension to the multiple unionism already prevalent. Also countries in which unions are craft based have been having second thoughts on the advantages of such a system and taking steps to eliminate some of the disadvantages. The evidence before the Commission indicates support for the view that ultimately our trade unions will have to develop into national industrial unions and that the ideal of one union in one industry is a goal worth striving for. Evidence also suggests that steps should be taken to encourage the growth of larger industry unions covering a centre/ an area and ultimately the country as a whole. In making such suggestions, the need to overcome practical difficulties is realised. The very size of the country and diversity in the conditions from region to region makes any such attempt difficult. A workable system of recognition of unions would create, it is suggested, favourable atmosphere for industry unions in the

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different areas/regions to come together into national unions for effective bargaining with employers at the corresponding level.

8. Of the unionised workers, 60 per cent are affiliated to four Central Organisations of workers which have been recognised by Government for the purpose of representation on national and international conferences. Three other all India organisations have recently come into being. They are yet to be recognised as Central Organisations of workers. It would appear that there was a decline in the percentage of total union membership in the country accounted for by the four federations: from 78 in 1952-53 to 50 in 1959-60. In 1962-63 the percentage rose to 60. These Central organisations do not accept the popular criticism against them that they have links with political parties and often import politics in the trade unions. Evidence before the Commission suggests that the existence of many Central organisations with different trade union philosophies has been the main cause of inter-union rivalries; and the principal sourse of weakness of the unions as a whole.

III. Legal Status of Trade Unions.

9. Under the Indian Trade Unions Act, 1926, registration of trade unions is optional, but as

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registration carries with it certain advantages and privileges including immunity from criminal and civil liability, it is in the interests of unions to register, and most of them get registered.

10. Under the Indian law, any 7 persons can form a union and apply for registration as a trade union. According to the evidence reaching the Commission, this provision has been responsible for the emergence of too many unions. The qualitative deficiencies in Indian trade unions, particularly their financial weakness and general ineffectiveness, are in some measure, attributed to the ease with which trade unions could be formed and registered.

11. U.S.A., France, Netherland, Burma and Pakistan have a system similar to India. In U.K., Australia, Japan, Denmark, Norway and Sweden registration is optional and unions which do not register are not subject to any disability and are not excluded from the immunities accorded by the laws governing trade disputes. In several countries of South and Central America, and Middle East and East European countries, registration is compulsory.*

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* In Australia and Newzealand the Registrar may refuse to register an organisation if its members can conveniently belong to an organisation which is already registered. In UAR only one organisation of workers and only one of the salaried staff may be formed in any undertaking. If a workers' union has a membership of 60 per cent of the employees all the workers are deemed to belong to it.

12. Evidence before the Commission stresses the need for a revision of the present trade union law with a view to tightening up some of the requirements in regard to the registration and functioning of unions: number required for forming a union, submission of returns, auditing of accounts, elections of office bearers, etc. Some have suggested the raising of the minimum number (7) required under the present trade union law as an effective way to counter the emergence of too many small unions. Some others are in favour of leaving the present provision unchanged, on the ground that any such more would hamper the growth of the trade union movement particularly in the small scale and unorganised sectors where the movement has yet to take root. However, in order to prevent the growth of rival/multiple unions, a suggestion has been made that where a trade union already exists in a unit/industry, no new union should be registered unless it has a membership of at least 100 or 10 per cent of the employees.

IV. Role and Functions of Trade Unions.

13. The primary function of a trade union is to protect and promote the interests of its members; to maintain and advance the terms and conditions of their employment and generally their economic and

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social interests so as to achieve for them the highest possible living standards. Activities like running welfare schemes, mutual benefit societies, co-operatives, vocational training courses, employment offices, libraries, etc. promote the economic and social interests of the union members and are therefore clearly within the unions' functions.

14. The legislative support that trade unions require for the realisation of some of their objectives and the achievement of their long term interests inevitably leads to the involvement of the unions in politics. Unions have to take a stand in regard to the social and economic objectives of the community/country as a whole and exert pressures upon the process of public policy making so that the choices made and priorities adopted are not contrary to the interests of the workers. Whether they get directly associated with particular political parties would perhaps depend on the circumstances of each situation.

15. Some evidence before the Commission suggests that while the trade unions have a cardinal role in promoting the interests of their members, they have also an obligation in accelerating the social and economic advance of the nation. There can be considerable difference of opinion as to the priorities between the two and the way in which conflicts between these roles can be reconciled. The process of achieving the

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reconciliation of interests depends upon the creation of awareness of the identity between the two. It requires social, economic and industrial change which will produce an environment in which the identity can be seen in practice. The creation of such environment may involve a measure of State intervention in industrial and economic affairs, and in the relationship between the employers and the employees depending on the traditions of each country and the realities of the situation at a given time. But such obligations as the unions can have to the society, the unions argue, have to be reciprocal.

16. There is, however, a body of trade union opinion that in the present state of development of the trade union movement, when (i) organised trade unionism is confined largely to the urban industrial sectors; (ii) vast sections of labour employed in agriculture and small industries is still outside the pale of trade union influence; (iii) the levels of living, wages and working conditions of workers are to be protected and improved; (iv) several unions compete for the loyalty of the workers and have also to contend against the unhelpful, if not antagonistic, employers, the needs of sheer survival will force the trade unions to give priority to the immediate interests of the workers. Some of these situations are within the control of unions; others are not.

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17. Where unions are strong and well-organised and are able to determine the general levels of wages and working conditions of the bulk of the working population and where they constitute a major economic entity, the unions may rightly be expected to give due considerations in framing their policies to their responsibility in promoting the good of the community. In fact in such cases the good of the community and workers' good coelesce. Or, in the Communist countries, where the workers' interests more or less are identical to those of the State which is also the employer, the unions are expected to discharge certain social responsibilities, such as management of social security schemes, safety and health inspection in industry, labour welfare etc.- functions which are usually discharged by the Government. On the other hand, can one expect the same priority to national social and economic objectives from a trade union movement which is admittedly weak and divided?

18. State policy in relation to trade unions in India has, in the main, followed two basic objectives; (a) the protection of the right to organise for collective bargaining and (b) promotion of trade union participation in policy making in areas affecting labour and even on a wider plane. The former, as pointed out earlier, is covered by legislation which enables registration of unions with the minimum of formalities (some unions consider even these irksome) and affords

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them certain legal immunities. For the latter, Government has created outside the framework of law, tripartite forums where the representatives of labour discuss with the representatives of employers and Government, all important matters of labour legislation, policy and planning. The important role of unions in making the plans a success, and the need for their active involvement in the developmental process of the country has been stressed in the successive plans.

19. However, because of the inter-union rivalries, organisational deficiencies and the influence of outside factors, the trade unions have not been able to develop into effective instruments of collective bargaining particularly at the plant and industry levels. Although the trade union organisations represented at the tripartite have been showing a certain unity of purpose and present a joint front (except on a few issues like recognition of unions) because of the internal division and basic weaknesses their effectiveness even at the consultative bodies has not been as much as it could be. As the Third Plan document puts it: "There is need for a considerable readaptation in the outlook, functions and practices of trade unions to suit the conditions which have arisen and are emerging. How to make them an essential part of the apparatus of industrial and economic

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administration of the country and prepare them for the discharge of the responsibilities which attach to this position is the major task before the trade union leadership."

V. Problems and Weaknesses.

20. Some of these problems currently exercising the mind of all those interested in the Indian trade union movement as revealed in the evidence before the Commission are briefly discussed below:

21. The trade union movement still operates on a narrow base. This is a partly due to the large self-employed sector in the economy. The mass of workers employed in agricultural operations other than plantations remains outside the field of organised trade unionism. So are the workers employed in the cottage industries. Even in the small scale sector, trade union organisation is rather thinly spread. It is only in the relatively small sector of organised industries where workers enjoy comparatively better wages that the unions are better organised.

22. Another element of weakness is the small size of most unions and the inadequacy of finance. About 75 per cent of the unions have a membership below 300 and about 82.5 per cent of the unions have less than 500 members each; and they account for only about one fifth of total unionised workers. With a low average income of about Rs.3000 per year the majority of the

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Inidan trade unions are financially weak and unstable; and in no position to maintain an effective organisation, let alone undertake welfare and other activities for their members. Measures suggested in evidence for improving the finances of the trade unions are the enhancement of membership fee to 1 per cent of wages subject to a minimum of Re.1/-p.m. and the introduction of the system of check-off.

23. An important source of weakness for the Indian trade union movement as revealed in the evidence has been the multiplicity of unions and union rivalries resulting therefrom. While it has its origins in the influence of outside leadership allegedly political, it was nurtured by legal provisions which enable any union or group of workmen to raise disputes on behalf of workmen, under the Industrial Disputes Act. It continues to thrive because of the absence of any provision for union recognition. All parties responsible for peaceful industrial relations have, it is suggested, contributed to the multiplicity of unions; unions because of their rivalries for leadership, ideological differences etc, the managements in their desire for harmony setting up pliable unions; the Governments in their allegedly biassed particularly implementation of labour laws, and courts by their judicial pronouncements. There can be no two opinions of the harmful effects of such multiplicity.

24. The emergence of an integrated and unified trade union organisation will depend upon steps taken to tackle these various issues. Success will depend primarily on the efforts of the union leadership itself, although the process can be encouraged and accelerated by helpful attitudes in the community. Improvement could be expected if unions evolved a common code of conduct in regard to establishment of new unions and made determined efforts to avoid multiple unions. The experience of the working of the Code of Conduct adopted by the various Central unions in 1958 has not been very encouraging. More determined efforts appear to be needed if the principle is sound. Legal recognition of a representative union and clothing it with certain privileges would go a long way towards achieving this objective.

25. The evidence before the Commission while conceding the role of outsiders in developing the trade unions in the past, generally seems to favour elimination of the outsiders; there seems to be a feeling, that the unions today need good leadership, irrespective of whether it comes from inside or outside; that any legal restrictions on outsiders in unions will be incompatible with the provisions of the I.L.O. Convention on freedom of Association (No.87); and that in the present state of union development, when there is a vast field yet untouched, the outsiders can still play a significant role; that in any case the problem will

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solve itself if the conditions that gave rise to it are eliminated, particularly because in the not distant future the complexion of the working class will change and there will be more of educated workers participating in economic activity. It is suggested that it may be necessary to tolerate some element of outsider leadership for the time being, at least till such time that steps are taken to eliminate the fear of victimisation and to facilitate the emergence of internal leadership through proper educational and training programmes. The role of workers' education in building up internal leadership has been stressed by many. Among the other suggestions made to reduce the impact of the outsiders are: the reduction in the permissible number/proportion of outsiders on the union executive - ($\frac{1}{4}$ of the total or 2 whichever is higher) - a restriction on the number of unions of which an individual could be an office-bearer, etc.

(The trade union laws of some countries provide for disqualification from office on grounds of (a) nationality, (b) occupation and (c) political opinions. In many others there are no grounds for disqualification from office.)

VI. Recognition of Unions.

26. Industrial democracy implies that only trade unions can properly represent the wider interests of the working class and that the majority union should have the right to sole representation. Recognition

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by employers and Government implies an acceptance of the right of the unions to speak and act for their members, to enter into agreements and to be responsible for ensuring that agreements are observed. Recognition of unions is also fundamental from the point of view of developing strong and effective unions and promoting collective bargaining as the main method of settlement of disputes. This would also be the most effective means of reducing the multiplicity of unions and avoiding fragmentation and divisions.

27. That the need for such a provision has been long recognised is evident from the attempts made from time to time in State labour legislation. The Bombay Industrial Relations Act and certain other State Acts (Madhya Pradesh and Rajasthan), the amendment incorporated (but not enforced) in the Indian Trade Unions Act 1947 and later in the provisions incorporated in the voluntary Code of Discipline in Industry. The employers as has been the case all over, have been by and large slow to recognise the advantages of a single bargaining agent, many could still be considered antagonistic to granting union recognition. Even under the State Acts which provided for recognition, the employers could not be forced to grant recognition or to negotiate in good faith with the recognised unions. The provisions in Code of Discipline in regard to recognition have also not worked satisfactorily mainly because of the resistance from employers to abide by a provision which had no legal sanction behind it; and the

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use of it by both sides when it is convenient. When an employer refuses to grant recognition, the Government could only try to persuade him with doubtful chances of success. There is, therefore, a persistent demand, for making recognition of unions compulsory. Their stand has been that if the evil of rival unionism is to be curbed and the trade unions are to grow strong and stable, and if collective bargaining is to be enccuraged, there is no escape from making it obligatory for the employers to recognise unions under law. Unions desiring to secure that right can be required to fulfill certain conditions regarding membership and methods of work; but once these conditions are fulfilled they must be eligible to represent workers.

28. The most important question, however, is the procedure for ascertaining the union majority. Both under the State laws and the Code of Discipline, the representative status of a union is to be ascertained through a process verification, by an agency of the Government in the Labour Department, of the fee paying membership of the contending unions. The actual working of these provisions has, it is alleged, led to considerable dissatisfaction. Apart from partisan attitude and favouritism entering into the process of verification of membership, the process has involved delays leading to frustration and strife. It has also resulted in recognition being given to a union which, although having a

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larger membership than the other contending unions, may in fact be representing only a minority of the employees of the undertaking/industry as a whole. This feature has often given rise to considerable difficulties in representation. A minority union cannot command the allegiance of a large proportion of the employees and collective bargaining loses all its meaning when it is a minority union with which the employer has to bargain.

29. The method of determining the representative character of a union has to ensure objectivity, fairness and freedom from manipulation and should be expeditious. The alternative for verification, advocated generally is a procedure involving voting in a secret ballot. The variants of these two main alternatives, currently under discussion are:-

(a) Secret Ballot: (i) by all employees.

(ii) restricted to union members only.

(b) Verification of membership. (i) Verification by a Government agency.

(ii) Verification of membership by an independent agency headed by a person from the Judiciary.

(iii) Assessment of the relative strength of the unions by a Judicial authority on the basis of declarations by workers.

30. Those in favour of verification of membership base their preference on the premise that (i) it is the support of fee paying stable membership of registered trade

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unions only that should entitle representative status to union; and (ii) a regular check by a competent authority can alone satisfactorily determine whether or not memberships claims are genuine, Secret Ballot is opposed on the ground that it would 'politicalise' the trade union movement and that an atmosphere of elections, with some leaders resorting to making wild promises, would vitiate the atmosphere.

31. The supporters of secret ballot base their case primarily on the ground that it is the most democratic method for choosing the union that best represents the majority of the workers. Membership verification as a basis for selection of the representative union is considered unsatisfactory as it is at best an indirect method. When membership records and accounts of subscriptions received are often in an unsatisfactory state, and there are admittedly many questionable ways of boosting membership claims, the task of verification becomes very complex; in addition, it would suffer from the added disadvantages of delay, lack of objectivity and possibilities of manupulation, etc. As regards the argument about 'politicalisation', they contend that (i) politicalisation is inherent in a democratic set up and the process of representation in industrial democracy need be no different from that for political office; and (ii) the fear of wild promises and raking up of passions can be unduly exaggerated.

32. In the evidence reaching the Commission the case has been cogently and vigorously argued in favour of each of the alternatives by different parties who have to live with the procedure. A further modification has also been mentioned viz. adopt the procedure as is current at present (verification) but if it is found that the difference between two contending unions is more than a fixed margin to be laid down, (a fixed percentage to be recommended by the Commission) resort to a secret ballot of all workers.

33. As regards the administrative arrangements for implementing the agreed procedure regarding recognition, some seem to favour the existing arrangements, while others suggest the creation of an independent authority. This authority which should be judicial in character and independent of the normal labour administration machinery should be entrusted with the recognition work in its various aspects: (i) determination of the areas of bargaining, (ii) deciding the majority unions through due process, (iii) certifying the majority union as the recognised union for collective bargaining, (iv) deciding issues of unfair labour practices and (v) generally dealing with other related matters. The trend of opinion appears to be that only such independent authority would be able to inspire confidence among the rival unions/ parties and will eliminate suspicions of favouritism, etc.in

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this area of vital importance.

VII. Rights of Recognised Unions

34. It is claimed that unions recognised under any procedure as the representative union, should be given, besides the right of sole representation of the workers in any collective bargaining, certain facilities to enable it to effectively discharge its functions as the sole representative of the workers' interests and as the agency for collective bargaining with the employer. Among such facilities are, the right to collect membership fees on the premises, to hold meetings, the use of notice boards and the right to be represented on all bipartite consultative bodies, such as works committees, etc.

35. One of the facilities advocated to be given to recognised unions is that of check-off - an arrangement under which the employer collects the union dues at source from the pay of the worker and makes it over to the union. In their evidence before the Commission some have expressed support for the grant of such a facility to the recognised unions only. In their view, such an arrangement would make for greater regularity of membership payments and also relieve the union officials from the time consuming task of fee collection and leave them free to devote their time and energies to more important union work. Considering that a recognised union, if it is to fulfil its tasks and responsibilities, will have to devote much effort

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to its organisational work and other preparatory work for negotiations, the check-off facility would give its officials much needed relief. The arrangement would, of course, be subject to the written consent of the worker concerned. Since the union will be acting with the written consent of the worker, it is presumed that such deductions would be well within the provisions of the Payment of Wages Act regarding permissible deductions. The other argument is equally cogently advanced in opposition to this. It derives strength from the fact that fee collection every month gives union officials a regular opportunity to come in closer contact with the rank and file membership. Under a check-off arrangement, the union officials are apt to lose touch with their members and develop bureaucratic tendencies. There is also an apprehension that this will provide a handy source of information about union membership, names of members, finances etc. to the employer.

36. A facility which is enjoyed by a fairly large number of unions in some advanced industrialised countries and which, according to some enthusiastic supporters of strong unions, should be given to the recognised unions in India is that of union shop. Where unions are fairly well established, one of their legitimate objectives could be 100% membership. This could be brought about either through pre-entry (closed) shop or post entry (union) shop arrangements the more common method being union shop i.e. where employees are required to become members of the

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union subsequent to their engagement, although membership of the union is not made a precondition of employment. Union shop will no doubt involve some compulsion, but, its advocates argue when all workers in an establishment enjoy the benefits secured by the union, there is no reason why it should not be made obligatory upon all of them to join the union and to contribute to its activities, particularly when the union is the recognised as a representative union. If the union is to be an effective collective bargaining agent and is to fulfil its obligation to maintain peace and order and the accepted momentum of work, it will be better able to do that only if all employees in the plant/industry are subject to its discipline.

37. On the other hand, the introduction of union-shop on a statutory basis is opposed as inappropriate and inapplicable in Indian conditions because (i) even in advanced countries in which the system obtains, it is the result of mutual agreement between employers and their unions and not a legal imposition, (ii) in India also, it should be deemed as a right which the recognised union will have to bargain for and obtain through its own strength and efforts; (iii) in the present conditions when even the initial determination of the majority union is fraught with several complications and can succeed only with the active cooperation and good will of the various contending organisations, any attempt to give the benefits of union shop on a legal basis to the recognised union is

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likely to encounter serious opposition; (iv) the right time to consider the question of extending this facility would be when the system of recognition of majority union has worked for a reasonable time and the trade union jurisdictions and fields of operation become fairly well-settled.

VIII. Rights of Minority Unions.

38. Recognition of the majority union as the sole bargaining agent raises the question of the nature and extent of the rights, which may be given to the unrecognised minority unions. Under the Code of Discipline the recognised union would have sole rights of bargaining with the employer on behalf of workers, but this provision of the (voluntary) code has often proved infructuous in the face of the legal provision in the Industrial Disputes Act under which any union or group of workers can raise an industrial dispute and seek redress through conciliation, adjudication, etc. Under a recommendation of the Indian Labour Conference (1964), unrecognised unions should continue to have the right to represent individual grievances relating to dismissal and discharge or other disciplinary matters affecting their members. The claim for rights to unrecognised union is still based mainly on suspicions of the bonafides of other unions and is the result of past experience of union rivalries. In this view the majority unions may be vindictive and refuse to take up the case of workers who are members of other unions and it is therefore essential that their own unions should be allowed to process such cases.

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39. Those who are opposed to this, claim that acceptance of this would defeat the very purpose for which the system of recognition of majority union is being introduced - namely, elimination of rival unions, promotion of responsible collective bargaining and development of strong and stable unions. Allowing minority unions to represent cases of their members would mean admitting that these members are not represented by the recognised majority union, and cannot be. Where the recognised union is selected through a secret ballot of all workers, giving rights of representation even in a limited way to minority unions will amount to nullifying the very idea of recognition and representative status. Where the basis of recognition were membership check, allowing these rights to minority unions would make the position of the recognised union untenable.

40. On the question of the period for which recognition should be granted, it is generally considered that it should be for 2 years with provision for its continuation unless the recognition is challenged by a rival union.

IX. International Experience:

41. The experience in regard to the recognition of trade unions and related procedures, in certain other countries is briefly

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summarised below:-

(a) Countries in which the law distinguishes between organisations according to their representative character. In certain countries (e.g. Belgium, France, Austria, Netherlands) - where the trade union movement is divided along political, occupational or denominational lines, the law grades the unions by laying down criteria as to their representative character. For instance, in Belgium the most representative organisations are allotted seats on the basis of their membership on the joint industrial committees which play a major part in the negotiation of collective agreements and in the conciliation and arbitration procedure for industrial disputes. In France also the most representative organisations have certain prerogatives in the negotiation of collective agreements and under the conciliation and arbitration procedure as well as in representing the parties on a number of public bodies or institutions like Works Councils, Boards of Nationalised Industries, the Economic Council and the Higher Collective Agreements Board.

(b) Countries in which the law gives a monopoly of negotiating collective agreements to the most representative Organisation. In these countries (e.g. Canada, U.S.A., Japan, Philippines, etc.)

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only the most representative union has the right to conclude collective agreements applicable to all wage earners in the category/establishment concerned, irrespective of whether they are members of the union or not.

In the U.S.A. , the National Labour Relations Board deals with all issues relating to certification of the representative union; where the representative character of a union is disputed, the N.L.R.B. organises a secret ballot in which all workers participate. In Canada also a similar system obtains, with this difference, that the Board may not necessarily hold an election by secret ballot but can decide on the basis of examination of records also.

In Japan, the Minister of Labour may, if necessary after a secret ballot, designate the most representative organisation with power to appoint members to the negotiating committee set up in public corporations and nationalised industries.

(c) Countries in which contractual monopoly is granted only to a registered organisation.

In some countries (Australia, Newzealand, Egypt, Union of South Africa) only the most representative registered organisations in an undertaking or occupation have the right to take part in the

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compulsory conciliation and arbitration procedures or to conclude collective agreements on behalf of their members.

II

INDUSTRIAL RELATIONS

State Intervention*

State regulation in industrial disputes began with the enactment of the Indian Trade Disputes Act in 1929. The Act, framed as it was after the bitter experience of strikes during 1919-1921, curtailed the right to strike and lock-out, but without constituting any standing machinery to prevent or settle disputes by conciliation and arbitration. It provided for ad-hoc conciliation boards and courts of inquiry which also were put to use only rarely. The Bombay Trade Disputes (Conciliation) Act, 1934 was the first to provide for a permanent cadre of conciliators, but it had limited application. The Act was repealed by the Bombay Industrial Disputes Act, 1938, which introduced for the first time the principle of union recognition as also a machinery for the prevention of settlement of disputes. It restricted strikes and lock-outs by providing for compulsory conciliation and voluntary arbitration.

2. Powers of the Government in regard to industrial relations were widened during the Second World War through Rule 81-A of the Defence of India Rules. This authorised the Government during the currency of the Rules to refer any dispute to conciliation or arbitration, and make the decision reached thereon binding on the

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* 'Labour' is a concurrent subject under the Indian Constitution. Both the Union Legislature and State Legislatures can legislate. In the latter case the Presidents assent is required. Also the State Legislation cannot be repugnant to that passed by the Union Government.

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parties. The Rule prohibited strikes and lock-outs without fourteen days' prior notice. This war-time regulation provided an opportunity to the Government to intervene and settle the dispute. This experience was later used to deal with growing labour unrest after the termination of the war. The Government decided to continue with the conciliation and adjudication and Industrial Disputes Act, 1947 was the result.

Reasons for State intervention.

3. Lack of trade union preparedness for collective bargaining was the one overriding factor that weighed with the Government in assuming authority in labour management relations. Government hesitated to expose workers interests to a trial of strength because of the weakness of unions. Once struck root, adjudication could not be replaced by collective bargaining, though a serious attempt was made to retrace the steps in 1952. Later central organisations of employers and workers did not support even a temporary suspension of adjudication when the matter was discussed at the Indian Labour Conference in 1958.

4. With the launching of a planned economy, the Government's anxiety to maintain uninterrupted production effort was further intensified. To achieve the production targets of the plans and to accelerate growth rate of

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the economy, freedom to work stoppages continued to be restricted.

Strikes and Lock-outs

5. The Industrial Disputes Act, 1947 prohibits in a public utility service a strike or lock-out* :

(i) without giving a six weeks' notice to the other party;

(ii) within fourteen days of giving such notice;

(iii) during pendency of conciliation proceedings - and seven days after the conclusion of such proceedings.

6. A strike or lock-out in any industry is prohibited under the Act in the following situations :

(i) during the conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(ii) during the pendency of adjudication proceedings before a Court/Tribunal and two months after the conclusion of such proceedings;

(iii) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings;

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* The Act authorises the appropriate Government to declare any industry covered under the First Schedule of the Act (which includes industries such as Banking, Coal, Cement, Cotton-Textiles, Iron and Steel, Food-stuffs, etc.) to be a public utility service in the public interest for such period as it may desire.

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(iv) during the period of operation of settlement or award in respect of any matter covered thereunder.

7. Besides, the appropriate Government is empowered to make an order prohibiting the continuance of any strike or lock-out in respect of any dispute, when a reference is made to a Board/Court/Tribunal.

Conciliation Machinery and Procedure

8. The appropriate Government is empowered under the Act to appoint Conciliation Officers and/or constitute a Board of Conciliation to mediate and promote settlement of industrial disputes. The Board of Conciliation consists of an independent Chairman, two or four members representing equally the two parties to the dispute. The Act imposes a time-limit of 14 days and 2 months for conciliation proceedings before an Officer and Board respectively. The report of the conciliation proceedings is to be submitted to the appropriate Government. If a settlement is reached, it is binding on the parties. In case of failure, the Government decides whether to refer the dispute to a Board/Court or Tribunal.

9. While reference of a dispute to conciliation is discretionary on the Government, it is compulsory in case of public utility services. As soon as a notice

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of strike is given under Section 22 of the Industrial Disputes Act, the appropriate Government has to compulsorily refer the dispute for conciliation unless it considers that the notice is frivolously or vexatiously given.

Adjudication Machinery and procedure

10. The Industrial Disputes Act empowers the appropriate Government to constitute a Labour Court/ Industrial Tribunal/National Tribunal to adjudicate a dispute. Each of these bodies consists of one person only who is of the rank of a Judge of a High Court or District Judge of a certain standing. A person holding any judicial office for at least seven years can constitute a Labour Court. For appointment as a National Tribunal, only a High Court Judge is eligible. A Court or Tribunal can appoint one or more assessors having special knowledge to advise it on any matter. No time limit is fixed for conclusion of adjudication proceedings. The jurisdiction of the different adjudication authorities is demarcated under the Industrial Disputes Act on the basis of the issues involved in a dispute.

Court of Inquiry

11. Besides the conciliation and adjudication authorities, the Industrial Disputes Act authorises

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the appropriate Government to constitute 'Court of Inquiry' consisting of one or more independent persons and a Chairman to be appointed from amongst the members. The Court of Inquiry has to inquire into any matter relating to an industrial dispute and submit its report within six months.

Making of a reference

12. While any existing or apprehended industrial dispute can be referred for conciliation or adjudication, only the appropriate Government is authorised to make a reference to a Board/Court/Tribunal constituted by it to deal the dispute either on its own accord or on application of one or both the parties. In case of public utility services, the appropriate Government has to compulsorily refer a dispute to adjudication on receiving the conciliation report.

Nature of Settlement/Award

13. The settlement reached at conciliation proceedings and an award made by a Court/Tribunal are binding on the parties to the dispute. A settlement comes into operation from the date agreed to between the parties and remains in effect for a period agreed to in the settlement. If no such dates are agreed, the settlement comes into effect from the date of signing the settlement and remains

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in operation for six months. A report of the Board or award of the Court/Tribunal under the Industrial Disputes Act is published within 30 days of its receipt by the appropriate Government and comes into operation after the expiry of 30 days from the date of its publication. An adjudication award operates for one year, but can be extended to a further period of two years. The Industrial Disputes Act does not provide for variation of an award by a Court/Tribunal. Some of the States' laws, however, do make such a provision. In case there is a significant change in circumstances justifying a modification of the award, the appropriate Government is empowered to refer the award to the Court/Tribunal for decision whether the period of award need be shortened. The Act, however, empowers the appropriate Government not to enforce an award or part thereof in public interest and modify the award according to the procedure prescribed under the Act.

Appeals

14. Under the Industrial Disputes Act, an award of a Court/Tribunal is final and there is no provision for an appeal.* An appeal against an award lies to

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* Labour Appellate Tribunal was provided under the Industrial Disputes (Appellate Tribunal) Act, 1950 to entertain appeal against an award of a Tribunal, but it was abolished in 1956.

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the Supreme Court under Article 136 of the Constitution. A petition for writ of certiorari can be filed in the High Court and Supreme Court.

Enforcement of Awards.

15. The Act provides penalties of imprisonment or fine or both for breach of an award. The appropriate Government is empowered to refer a question of interpretation of an award to a Tribunal/Court/Board, constituted under the Act for the purpose of settlement or investigation of a dispute. If money is to be recovered under a settlement/ award, on application from the workman concerned, the appropriate Government if satisfied about the claim gets the amount recovered through the Collector as arrear of land revenue. In case computation in money terms of any benefit, due from employer has to be done, the matter is to be attended by the Labour Court on application made to it.

Evidence before the Commission on the working of the System

16. The evidence before the Commission reveals dissatisfaction with the working of the conciliation authorities. Conciliation proceedings are found to be dialatory and ineffective. Partly this is stated to be due to lack of training and the calibre of the conciliators. Mutatis mutandis similar complaints about the adjudication machinery also have been made. Since conciliator finds, at times, difficult to secure attendance of the parties before him

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power of subpoena to compel attendance and production of necessary documents is urged. Some feel that conciliation officers be given power of adjudication as well. There is a somewhat stronger feeling, collective bargaining should be the main method for the settlement of disputes, service of conciliation/ mediation authorities be made available only when sought for by the parties. Non-admission of certain cases to the industrial relations machinery has been resented and it has been insisted that the Government should notify to the parties the reasons for non-admission of their cases for conciliation. It has been suggested that employers should be represented at the conciliation proceedings by their senior officials who should be able to take on the spot decisions instead of postponing matters. The confidential nature of the report of conciliation has been disliked by parties; they require a legal provision that parties be supplied with a copy of the report. According to Governments, the performance of conciliation machinery is satisfactory. It could be improved if adequate postings with qualified persons could be made possible within Governmental resources.

17. Within the general frame-work of the industrial relations machinery, the role of adjudication has been recognised, inspite of the litigious attitude it has introduced in the parties and the delays it

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has caused. Elimination of adjudication is generally not considered feasible in the present state of affairs. A section of trade unions and employers organisations has favoured increasing resort to collective bargaining failing which Government should have the powers to intervene only in disputes where public interests are involved. There is a measure of dissatisfaction shown by parties over appointment of adjudicators. It has been almost unanimously suggested that the appointing authority should be the High Court. Some parties have been pleading for minimisation of legal and technical rigidities in adjudication have tried to maintain that labour judges should not be selected from persons below the rank of District Judges. Trade unions dislike Government's intervention in making a reference and have asked for right of direct reference to every registered trade union after failure of conciliation. The employers' organisation have insisted on framing of criteria to be strictly adhered by the authority concerned in making a reference.

18. For speedy adjudication, a suggestion is made for making each stage of proceedings time bound and the fixing of an overall time-limit for completion of adjudication proceedings. It has generally been recognised that parties take a long time in presenting

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their written statements and other documents to the Tribunal/Court and frequently seek adjournments during the hearings of the case which cause delays in making of the award. The rules of procedure for the Tribunals do set down time limits for different stages to be relaxed on the discretion of the Tribunal. In practice the latter clause is utilised the most and the time limits are not adhered to.

19. Trade unions have generally been of the view that entry of lawyers in tribunals/courts be barred and there should be no appeal against awards. Some have suggested a constitutional amendment to bar writs and special powers of Supreme Court. The employers have favoured revival of the Labour Appellate Tribunal. Trade unions have asked for unfettered powers to a tribunal to decide dismissal/discharge cases, hear the case de novo and set aside management's order of discharge and order reinstatement. Governments have generally shared this view. The employers organisations have suggested restricting the Court's/Tribunal's intervention only in cases of manifest unfair labour practice.

State Intervention in other countries

Australia

20. Australia is one country that has more than sixty years of experience with State intervention in

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industrial relations through compulsory conciliation and arbitration. The Commonwealth Conciliation and Arbitration Act, 1904 vests the administration of the Act in the two arbitral and enforcement authorities, viz., Commonwealth Conciliation and Arbitration Commission (CCAC) and the Commonwealth Industrial Court (CIC) to be constituted by the Governor General. This is the only role to be performed by the Government. The CCAC is composed of both judicial and lay members the assignments of each to be decided by the President of the Commission. Lay members are primarily concerned with conciliation, though many times they are appointed as arbitrators also. Experience with lay members' performance in arbitration has been very encouraging. They are now given increasing participation in arbitration functions. Some Federating States in Australia have statutory tripartite wage boards to deal with wage disputes. The jurisdiction of the CCAC is limited to disputes which have repercussions in more States than one. The Commission moves Suo motu or is moved to settle an apprehended or existing dispute. A registered organisation is entitled to directly refer a dispute to the Commission which is empowered to consider or not to consider the reference on its own merits. The Commission is empowered to implead any other party in a dispute referred to conciliation or arbitration which in its view may be

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affected by the dispute. Conciliation and adjudication proceedings under the Australian system are not time bound. Major disputes relating to wages, hours and leave are determined by the Commission in Presidential Session constituted by three or more members including at least one judicial member to be appointed by the President. The award of a Commissioner comes into effect after 21 days of its announcement unless otherwise agreed by parties or directed by the Commission. No such limitation is imposed on the award of the Commission in Presidential Session. The period of its duration is specified in the award subject to a ceiling of five years. The Commission can appoint a Board of Reference to deal with matters which under the award need be looked into from time to time. There is no appellate authority outside the Commission, which itself entertains appeals against a Commissioner's award. No appeal is provided against an award of Commission in Presidential Session. The Commission is empowered to suspend or cancel an award or any of its items applying to an organisation found guilty of breach of any of the terms of the award or if a substantial number of members of that organisation refuse to work on terms offered by the award. A union guilty of breach of an award or certain provisions of

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the Act can be deregistered. In case certain facts are over-looked in making an award or certain circumstantial change has occured justifying a revision, a party to an award can apply for variation of the award provided such variation is within the ambit of the award.

21. The Commonwealth Industrial Court is concerned with enforcement of awards and other provisions of the Act. It is constituted of three members at the maximum, all of whom are judicial. The Court enjoys the powers of a High Court to punish any contempt of its power and authority. The Court is empowered to order compliance with an award and punish with fine persons or organisations for non-compliance of the award. The Court's decision is final and cannot be appealed against in a High Court.

Right to Strike

22. A strike in Australia is made illegal either by statutory prohibition or by anti-strike clause in an award. In the federal legislation, there has been no anti-strike provision since 1930. However, most of the awards carry 'anti-ban' clause which prohibits any ban on work during the term of the award. The States' laws mostly prohibit strikes, but such provisions are not invoked uniformly in all States. It has been observed that while the Australian system of compulsory conciliation

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and arbitration has not succeeded in arresting the occurrence of strikes, the pattern of penalties evolved in system has reduced the duration of strikes.

23. Its contribution is not so marked in prevention of strikes and lock-outs as in regulation of service conditions of the working class and in the distributive mechanism provided by it for balancing the pressures in the economy. Though it originated in an atmosphere where labour needed protection, it thrived through the sixty years of its existence and is now a part of the Australian System. No organised group wants to part company with it, though currently certain sections of labour because of their superior bargaining power have frowned on State intervention. Collective bargaining has progressed in-spite of the ultimate remedy provided by the CCAC. It also operates in securing over award payments which are common in Australia in the context of labour shortages.

The United States

24. In the United States industrial relations are largely governed by collective bargaining. Legislation is enacted by the Government to ensure to workers the right to organise and bargain collectively. The

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legislation elaborately lays down unfair labour practices on the part of both employers and labour organisations and provides machinery to decide unfair labour practice charges and issue cease and desist orders to the defaulting party. With detailed regulation of trade union organisation and activities, the law seeks to ensure prevention of malpractices in employers' and workers' organisations. State intervention in industrial disputes is limited to actual or threatened strikes and lock-outs which imperil national health or safety. In such cases the President of the United States is empowered to appoint a fact finding board of inquiry, whose preliminary as well as final reports are made public to report on the circumstances of the dispute, stand taken by the parties and efforts made by them to settle the dispute subsequent to the appointment of the board. The President can obtain court injunction for restraining strike for a maximum period of 80 days to provide an opportunity to the parties 'to cool off' and enable them reaching a settlement with the assistance of Federal Conciliation and Mediation Service. If no settlement is reached during the first 60 days of this period provision exists for ascertainment of employees' approval or rejection of employer's last offer through secret

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ballot to be conducted by the National Labour Relations Board (NLRB). Upon the certification of the secret ballot results which is to be done within 5 days of the ballot, or upon a settlement being reached, the court injunction is to be lifted. The President then makes a report to the Congress giving full account of the proceedings including report of the fact finding board and results of NLRB's secret ballot alongwith his recommendations, if any, for consideration and suitable action.

25. The Government's intervention in U.S. even in public emergencies is limited to deferring strike action through Court injunction and to bring public pressure on the parties and provide them assistance of the Federal Conciliation and Mediation Service to promote a settlement rather than impose a decision. The parties are under no obligation to accept any proposal of settlement made to them by the Service. These emergency provisions are not frequently invoked and much less do they succeed in bringing settlement during the injunction period or averting strikes. The success of these arrangements is attributed more to mediators who command respect from the parties. Trade unions regard these provisions as anti-labour. This is also the reason why restraint is exercised in invoking them.

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26. On the whole the system seems to have worked well though voice is often heard against such restrictions as are imposed by law on the freedom of parties. Two trends have been certainly noticeable (i) to see that unions in forcing their claims do not reach out too far though part of this assured by employer pressure and the other part by pressure of public opinion - and this latter is an equally good sanction, and (ii) to prevent 'unhealthy' tendencies in union leadership. Over the last fifty years, or more, the State has been exercising in such institutional conflicts its role as a countervailing power. With the progress made in reaching a comparatively egalitarian system within the constraints of a free economy the tendency will always be to work the arrangements accepted by Society as reflected in the law of the land and seek changes again through constitutional measures. There will be exceptions but they do not dictate terms to the rest of the community. Also where the bulk of the population has reached a fair level of living it is expected that tall poppies in the community will be chopped to their size through public pressure and governmental action as need be.

Right to Strike

27. Right to strike is granted under the U.S. labour law except under certain specified circumstances. Strikes

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are completely prohibited in the U.S. federal Government service, while in situations described earlier they are curtailed during the injunction period. Strikes in all industries are prohibited during the 60-day notice period prior to modification or termination of a contract. Generally all contracts carry 'no strike' clauses prohibiting strikes during the currency of a collective agreement. Strikes relating to secondary boycotts, recognition of an uncertified union and jurisdictional disputes are prohibited under the unfair labour practices clauses of the 1947 Act.

The United Kingdom

28. Collective bargaining plays the pivotal role in industrial relations in the U.K. The Government has assumed no role even in promotion of collective bargaining. It has only reserved powers to intervene through Wage Councils where collective bargaining is not developed. The Government is authorised to constitute Wage Council where there is no effective wage regulation and the level of worker's remuneration calls for such regulation. Wage Councils are statutory tripartite wage fixing bodies. These councils consist of independent members appointed by Government and equal representatives of each of the employers' and trade unions' organisations.

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29. The State intervenes in settlement of disputes in the last resort, though it is empowered by the Industrial Courts Act, 1919 to refer a dispute to Conciliation. The Government has enacted legislation to regulate working conditions, hours of work and to protect health and safety of industrial workers but it does not assume the responsibility of fixing wages and settling disputes.

30. However, provision for voluntary arbitration does exist in Britain. Under the Industrial Courts Act, 1919, a permanent tribunal for voluntary arbitration viz. Industrial Court was established. Disputes can be referred to this Court by the Minister of Labour if consented to by the parties and if the Minister is satisfied that all conciliation failed to bring a settlement. All the members of the Court including the President and the one representative each of employers' and workers' organisations are appointed by the Minister. The Court in practice is independent of the Governmental influence and its decision though not binding on the parties is generally accepted. The Minister can appoint a single arbitrator or board of conciliation, if that be preferred by the parties. Some industries have their own arbitration agencies also. It is noticeable that in Britain Government intervenes

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only at the option of the parties. Both trade unions and employers' organisations in England are opposed to compulsory arbitration* in peace time as it undermines free collective bargaining. Arbitration in Britain, when adopted, is regarded as a mature method of collective bargaining itself and is kept subservient to it.

31. More recently the Government has assumed increased authority in industrial relations though collective bargaining is still the accepted method of disputes settlement. With the enactment of Contracts of Employment Act, 1963, the Industrial Training Act, 1964 and the Redundancy Employment Act, 1965, all of which provide for statutory regulation of matters covered under them the scope for voluntary action is reduced. Under the latest statute viz. Prices and Incomes Act, 1966 and 1967, the trade unions and employers are required to notify pay claims and awards to the Government which is empowered by the Act to withhold pay increases under certain conditions for a maximum period of seven months.

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* The Industrial Disputes Order, 1951 providing for compulsory arbitration was a temporary legislation, introduced as an adaptation of a war-time order. The striking feature of this was that it combined compulsory arbitration and freedom to strike and lock-out. Perhaps because this freedom was not curtailed, the Order was accepted by employers' and workers' organisations.

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32. The whole issue has been recently examined in the Report of the Donovan Commission. The main conclusions of the Commission are appended.(Appendix-I).

The U.S.S.R.

33. In the USSR industrial relations system is largely determined by three important factors emanating from the political and economic setting in which it operates. First is the formation of a socialist society which replaced private ownership of basic means of production by public. Second is the operation of a centrally planned and controlled economy which gives only a limited role to labour and management organisations. (Of late, however, increasing powers are given to local (plant) trade union bodies and also more autonomy is granted to individual enterprises to take decisions on employment, wages and productivity). The third influence is the existence of a single political party - the communist party, running the Government as well as organising trade unions. In this political and economic setting, the Soviet trade unions have a double role to perform - help carrying out party policy, look after production interests and at the same time assume their traditional role of protecting labour interests. The Government's intervention in industrial relations as such is effected jointly with the unions through their association in formulating and administering labour laws.

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34. In the USSR the Procurator, a legal officer of the State is authorised to intervene on his own initiative at any stage of grievance handling in order to protect the interests of a worker or the State. The Russian Labour Code empowers the central and local labour authorities to appoint Conciliation Boards and Arbitration Courts when applied for in agreement by a trade union and an employer. In case of a dispute with a State undertaking an arbitration court may be set up by the labour authority on application of one of the parties. An award of a conciliation board is to be adopted only by agreement between the parties while an arbitration award can be adopted by the Chairman, failing agreement between the parties. Both conciliation and arbitration awards in Russia are not open to review on points of fact. However, a labour authority is empowered to quash an award if it is not in public interest. The Government is empowered to compulsorily enforce the award if the parties fail to implement it.

35. In addition, there are Peoples' Courts authorised to deal with disputes arising out of implementation of labour laws, collective contract, contract of employment and rules of employment.

36. It is said collective disputes are mostly settled by higher trade union and administrative bodies. In case the two bodies fail to reach agreement, decision of the administrative body prevails. Direct action in the circumstances is inconceivable as the interests of workers

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and management are non-antagonistic and the State against whom a strike would be ultimately aimed, is identical with the working class.

37. In most of the industrially advanced countries, State intervention in industrial disputes is not accepted by the parties. Many countries, however, agree that disputes over rights (justiciable disputes) should be settled without resort to direct action and have established labour courts either of first instance (appeal against whose decisions can be filed with the ordinary law courts) or a complete labour judiciary. For disputes which seek to establish new rights, collective bargaining is the main course. Labour Courts were established in France years back. Later on similar courts came into existence in Germany, which form the basis of the present labour judiciary in West Germany. By the end of 19th century, Labour Court system was adopted in Australia, Norway, Switzerland. Latin American countries have also set up courts to deal with legal labour disputes.

II. Collective Bargaining

38. Collective bargaining has not made a headway in India so far. Its use is confined to larger undertakings which have well organised unions and enlightened management

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which has accepted the functioning of union and has faith in the efficacy of bilateral relationship. Collective bargaining has, therefore, been mostly at the plant level except a few instances of bargaining at the level of industry in a local area. Collective agreements in Cotton-textile industry at Ahmedabad and Bombay can be cited as local industry level agreements. A significant feature of collective bargaining in India is that labour at the bargaining table particularly in a plant, is very often represented by more than one union. The industry level bargaining is more often between the employers' association and the trade unions' organisations, though there are cases of bargaining between different employers on the one side and trade unions on the other, as in the petroleum industry. In the such cases, the agreement reached serves as a frame-work and model for separate company level agreements to be signed subsequently.

39. Collective bargaining in India is voluntary. There is neither a certified bargaining agent nor any compulsion for bargaining in good faith on the part of the employers and trade unions. Collective agreements are implemented voluntarily by the parties and there is no legal remedy for any infraction excepting by way of raising a fresh dispute and seeking intervention of statutory disputes settlement machinery.

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40. Most of the collective agreements are negotiated for long duration ranging between 3 and 6 years. Some of the collective agreements are entirely procedural in nature and lay down disputes procedures with a view to avoiding resort to the formal industrial relations machinery. Others are over substantive issues of remuneration, and other terms and conditions of employment. More frequently collective agreements are reached over certain selected issues and comprehensive collective agreements over the entire range of terms and conditions of employment are uncommon. Protection and regulation of workers' rights and interests through legislation and adjudication awards partly explains the restrictive use of collective bargaining practices.

41. The evidence before the Commission suggests that collective bargaining has not succeeded in India so far. The reasons advanced by and large have been the unpreparedness of either side, more on the employers' to settle across the table, lack of organisation on both sides and possibly the lack of negotiating skill on one side or the other. As the unions view it, unsympathetic and rigid attitude of the management even in the matter of union recognition presents another hurdle. The fear of unfair advantage likely to be taken by rival leaders, an occasional frown from shareholders or tax authorities are also other impediments though of a lesser order. Some sections of the trade union

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movement hold the view that availability of adjudication is the very negation of collective bargaining. Curtailment of the right to strike impedes trade union growth as collective bargaining agency. A trial of strength in their view must be allowed if collective bargaining is to succeed. There is also a strong school among unions which believes that while collective bargaining must be accepted as a primary method of resolving disputes, in case of 'stalemate' in negotiations, the dispute must be referred to adjudication instead of resulting in a dislocation of production. A section of employers while strongly supporting replacement of adjudication by collective bargaining have not objected to state intervention on exhaustion of bargaining process, where collective bargaining is not developed or where public interest or public utility services are involved. The employers' organisations are by and large of the view that easy availability of adjudication machinery, multiplicity of unions promoted by facility of easy registration, enactment of extensive legislation protecting workers interests have retarded collective bargaining in India. The superiority of collective bargaining over adjudication as a method of resolving disputes and maintaining industrial peace though generally been well recognised by all interest groups, Government's intervention where collective

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bargaining is not developed or where it fails, has not been generally resented by the parties.

Collective Bargaining in other Countries

42. Collective bargaining as mentioned earlier is the established method of industrial relations regulation in the majority of the industrialised countries. Experiences of two countries viz. Britain and America are significant. The former offers the example of free and voluntary collective bargaining while the latter of legally promoted and highly regulated collective bargaining.

The United Kingdom

43. Significant features of collective bargaining in U.K. are that recognition of trade unions was forced upon the employers by the strength of unions and not by any statute and that collective agreements are reached and enforced voluntarily by the parties. Collective bargaining in U.K. is mostly at the level of industry. Generally the representatives of trade unions and employers' organisations in an industry negotiate at national level through national joint bodies. Besides substantive issues these agreements also lay down disputes procedures. Supplementary agreements at factory level are signed over matters of detail or issues peculiar to a factory. Of late more and more adjustments are required to be made at factory agreements

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and importance of industry wide agreements is being diminished. Even in regard to disputes procedures, authority is increasingly transferred to factory and workshop level. The Donovan Commission 1965-1968 has endorsed this shift in bargaining from industry to plant level. On reaching a dead-lock in collective bargaining parties are free to resort to direct action or ask for state intervention through conciliation or voluntary arbitration, reserving their option to reject any settlement or decision made therein. The Royal Commission in its recent report has by and large recommended for retention of this voluntariness in industrial relations in U.K.

The United States:

44. In the United States the chief objective of industrial relations law is to promote collective bargaining. The Taft Hartley Act seeks to ensure to the worker the right to organise and bargain collectively. For this purpose the Act extensively lays down unfair labour practices both on the part of employers and labour organisations and provides machinery viz. National Labour Relations Board (NLRB) for dealing with unfair labour practice charges. The NLRB is also entrusted with the responsibility of determining a bargaining unit and representative union to be certified by it as the sole bargaining agent in a particular bargaining unit in accordance

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with the conditions and procedures prescribed under the Act. Collective bargaining is mostly at the plant level in the United States. A refusal to bargain collectively with a certified bargaining agent or unit is treated as an unfair labour practice on the part of an employer or the union as the case may be under the Taft Hartley Act. In practice the elaborate regulation of collective bargaining under the U.S. industrial relations law has brought in litigation in labour-management relations. More particularly the unfair practices clauses of the Taft Hartley Act has yielded interpretations often calling for Supreme Court rulings.

45. The scope of collective bargaining is, however, left open under the U.S. law, in the absence of any detailed specification of negotiable matters. However, the Board's and Court's decisions have to an extent laid down the scope of bargaining within which certain subjects are considered to be mandatory to be collectively bargained instead of unilaterally decided by the management.

46. A collective agreement concluded by a certified bargaining agent uniformly applies to all employees in a bargaining unit irrespective of their union membership. Collective agreements are legally enforceable in America. Under the Taft Hartley Act either party can directly file a violation suit in any district court. But the

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experience has been that few such suits are filed since the enactment of this provision, for both parties realise that such prosecutions are detrimental to their mutual trust and relations. Many collective contracts, therefore, carry 'not to sue' clause. A no-strike clause featuring in most contracts obligates the union to abstain from strikes during the currency of the contract. Many contracts themselves provide penalties such as termination of entire contract or suspension of union-shop arrangement for defiance of no-strike clause.

47. A provision is made under the contract for arbitration of cases relating to interpretation and application of any of the terms of a contract in the event of failure of the bilateral grievance procedure, provided under the particular contract. The arbitrator is a mutually agreed person and his decision is final and binding on both the parties governed by the contract.

48. A collective contract carries a managerial prerogative clause defining the broad area or specifying in detail matters over which management can take independent action. Broadly, the management under a collective agreement is free to manage the plant and direct the work forces and operations of the plant subject to specific limitations laid down in the contract.

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The U.S.S.R.

49. In the U.S.S.R., a collective contract under the labour Code can be negotiated by a trade union duly registered under the Code laying down conditions of work and employment in respect of an individual undertaking and specifying the contents of future individual contracts of employment. It is applicable to all the workmen of an undertaking including non-member workers. A collective contract can be negotiated both at industry or undertaking level. In case there exists an industrial collective contract, a local collective contract can be negotiated within the scope set by the former. Every collective contract is to be registered by the representative of the Peoples' Labour Commissariat (now AUCCTU) which is authorised to annul any of the terms that are less favourable to workers than those laid down under law. A collective contract remains in operation even when an undertaking is reorganised or its ownership is changed, unless a 12-days notice of change is given by either party. The assessment and disputes committees supervise the implementation of the contract. In case of a dead-lock in negotiating a collective contract, the matter is to be referred to the higher union body and administrative body who together decide the dispute. If they fail to reach an agreement, the decision of the administrative body prevails. Strikes have no place in the Soviet system.

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III. Disciplinary Procedures.

50. In India the Industrial Employment (Standing Orders) Act, 1946 makes it obligatory on the part of an industrial employer enganging 100 workmen or more to draw up a set of standing orders to regulate the terms and conditions of work. These Standing Orders have to conform to the pattern of the Model Standing Orders framed by the Central or State Government and are to be certified by a Government official appointed for the purpose. The Standing Orders lay down the circumstances justifying an employee's discharge or dismissal and the procedure to be followed in taking such action. The Model Standing Orders relating to discharge/dismissal are briefly described in the following paragraphs:

51. For terminating the employment of a workman, the employer is required to give in writing one month's notice in case of monthly rated and two weeks' notice in case of other workmen or pay in lieu thereof. A temporary worker is not to be paid wages in lieu of prior notice, but his services are not to be terminated as a punishment unless an opportunity is given to him to explain the charges laid against him. The Model Standing Orders prescribe a fine upto 2 per cent of monthly wage of a worker for certain acts and omissions on his part duly specified by the employer

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and approved by the Government. The employer can suspend a worker for a maximum period of four days at a stretch or can dismiss him without notice or payment in lieu thereof if he is guilty of duly specified misconducts.

52. Prior to dismissal order, the workman concerned is to be given an opportunity to explain the alleged charges against him. A workman can, however, be immediately suspended and the written order given to him shall elaborately state the charges laid against him and give him an opportunity to explain them in an enquiry to be conducted by the employer. The inquiry officer is an appointee of the employer. If the charges laid against a workman are proved to be correct, the workman is not to be paid wages during the suspension period to which he will be otherwise entitled. The punishment order is to be finally approved by the employer/manager who is required to take into consideration the gravity of misconduct and worker's previous record in making his decision.

53. Section 33 of the Industrial Disputes Act in regard to matters connected with the disputes requires maintenance of status-quo by the employer and restrains him from discharging or punishing a worker by dismissal or otherwise during pendency of conciliation or adjudication proceedings in an industrial dispute, save with permission of the authority holding such proceedings. In matters unconnected with the dispute,

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the employers' freedom as recognised under the Standing Orders with regard to above is not curtailed, except that he is required to pay one month's wages to a workman before discharging or dismissing him and seek the approval of his action by the concerned conciliating or adjudicating authority. While Section 2(k) of the Industrial Disputes Act, gave jurisdiction to Labour Courts and Tribunals over such disputes, the controversy whether an individual dispute was an industrial dispute was set at rest by the incorporation of Section 2-A in the Industrial Disputes Act, which clearly includes individual disputes over discharge, dismissal or retrenchment in industrial dispute even if not taken up by other workmen or a union.

54. In order to safeguard the interests of workmen the tribunals have gone into the reasons of discharge even when it has been in compliance with the procedure laid down under the Standing Orders, so as to examine the bonafide of the employer's action. Though a tribunal is not to sit in appeal over management's decision in cases where there is (i) want of bonafides; (ii) victimisation or unfair labour practice; (iii) a basic error of facts; (iv) a perverse finding on the material available, tribunals have intervened. Normal remedy for wrongful discharge/dismissal is reinstatement with back wages, but if it is to affect discipline in an undertaking, the tribunals have awarded compensation

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for wrongful discharge and have refrained from ordering re-instatement. The tribunals have not permitted discharge where actually it is a case of dismissal without holding an enquiry and giving workman a show cause notice. In cases of dismissal, tribunals have emphasised the observance of the procedure laid down under the Standing Orders and have generally ordered re-instatement with back wages where an inquiry has not preceded the dismissal order. However, where charge is clear and unambiguous and requires no explanation, lapse in holding domestic enquiry is condoned.

55. The evidence before the Commission reflects a good deal of dissatisfaction over the domestic enquiry conducted by the employer into the charges of misconduct laid against a worker, before ordering his dismissal. The fairness of an enquiry presided over by a management official in which the accused worker is not permitted representation by any other person and wherein presence of trade union officials is not allowed, is put to serious doubts. To provide a corrective, the following three suggestions have reached the Commission:

(i) An independent arbitrator should be interposed in the domestic enquiry. In order to expedite the proceedings, the domestic enquiry should be made time bound. The accused worker should be supplied with the record of proceedings of the enquiry.

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(ii) The industrial tribunals should be given appellate authority over the findings of the domestic enquiry; fresh evidence should not be permitted to be adduced before the tribunal.

(iii) An appeal against the decision of the domestic enquiry be taken to a mutually agreed arbitrator to be selected from a panel of arbitrators. Payment of subsistence allowance to a worker during his suspension is suggested in certain quarters.

56. One more proposal to prevent unfair dismissals made to the Commission is prescription of prohibitive compensation failing reinstatement of a wrongfully dismissed worker. A strong case is made out by some for minimum interference with employer's right to discipline workers in order to promote industrial discipline and efficiency.

Disciplinary Procedures in other Countries.

The United States:

57. In the United States, it is considered to be management's prerogative to suspend or discharge a worker for 'just cause'. Most of the collective contracts contain such a clause. A 'just cause' is interpreted on the basis of industrial practice, results of grievance procedure in the particular plant, and arbitration decisions. Most of the collective contracts provide for an appeal of discharge cases which is taken through the regular grievance procedure. Some contracts provide a time-limit for

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making such appeal after which a discharge is final regardless of merits of the case. Similarly the company has to give its reply to the appeal within a prescribed period, failing which it forfeits its right to discharge the workman.

58. Under some contracts if the company and union fail to agree on the justness of the cause, the matter is discussed in the grievance procedure. If no agreement is reached even at this stage, matter is referred to arbitration. It is said that large number of arbitration cases are over discharge. It is the management's responsibility to give sufficient proof to establish the need for discharge before the arbitrator.

59. Some contracts distinguish between causes for immediate discharge and those in which one or more warnings may be given. Milder punishment such as oral or written reprimand, suspension without pay, demotion, denial of vacation pay are provided in some contracts for less serious offences.

60. A large number of collective contracts lay down procedure for discharge. Many of these require the management to give prior notice of discharge detailing reasons for such action, to the concerned employee and the union. A hearing of the case is generally provided for which is to be attended not only by the employee concerned and management official but also by a union representative. No dismissal pay is given to workers

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discharged for a just cause. The National Labour Relations Board is empowered to order reinstatement with or without back wages of a worker discharged for a cause which is not just.

Australia:

61. In Australia, the right to hire and fire if properly exercised is regarded as employer's prerogative. The arbitration awards lay down the notice period for discharge of an employee. If an employer discharges an employee after giving him such prior notice his motive generally cannot be questioned unless the discharge is prompted by anti-union reasons in which case it would be a statutory offence. In New South Wales, the Industrial Tribunals are empowered to order reinstatement if the dismissal is harsh or meant to victimize an employee even though it has no anti-union motives. The federal tribunals have, however, stated their disability in exercising such jurisdiction.

The U.S.S.R.

62. In the U.S.S.R., the Labour Code requires a worker to sign a contract of employment with his employer which embodies terms of employment. The Code provides for termination of an indefinite period contract of a worker after giving a day's notice, if he is a daily paid worker or a week's prior notice if he is fortnightly or monthly paid. An employer can

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terminate a contract in cases of entire or partial closure, suspension of work for more than a month for industrial reasons, employee's unfitness for work, employer's persistent failure in fulfilling his duties, criminal offence connected with an employee's work etc. In case of persistent neglect of duties while an employer in a State undertaking, co-operative or other public organisation is free to take an independent decision, employer in other undertakings has to act in accordance with the decision of an assessment and disputes committee. Every contract of employment is terminable on the demand of the trade union. If an employer does not agree with the claims of the union, an appeal can be filed as provided under the dispute procedure.

The United Kingdom.

63. In the U.K., employer and employees are regarded to be equal partners of the contract and the employer has the right to dismiss an employee for whatever reasons he wishes. The only restriction on his freedom is requirement of prior notice to discharge. An employee dismissed without notice can claim wages in lieu thereof under the common law. The employee is not protected against malafide reasons behind the discharge except that he can seek court action for defamation in case there are imputations of dishonesty. Of late there is a move to provide more protection to an employee. The Contracts of Employment Act, 1963 for

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the first time laid down a minimum period of notice. Under this law an employee has a right to a minimum of one week's notice after putting in 26 weeks' continuous service, to two weeks' notice after 2 years and four weeks' after five years of service. However, the Act does not curtail the employer's right under common law to dismiss without notice for misconduct. In actual practice, however, workers are not always exposed to indiscriminate dismissal. Many employers have introduced procedure for consideration of a dismissal case at a higher level. In some big undertakings there is mutually agreed disputes procedure to which the trade union can take the case of dismissal. The Donovan Commission has observed in its report that the dismissal practices presently in vogue have led to labour unrest. Subject to the dissent of some of its members the Commission has recommended statutory procedure and machinery for dealing with dismissal cases. The Commission has stipulated certain reasons for which a dismissal should be considered unfair. It has recommended for provision of appeal within a specified time against an unfair dismissal order. In view of reality of the situation, the Commission has recommended for payment of compensation subject to a fixed maximum amount for a wrongful dismissal which can be waived by the parties option for reinstatement.

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64. In viewing international experience on this issue, it is important to recognise that in countries whose experience has been discussed, labour has been in short supply for a long time. There is also a fair measure of social security. Also as pointed out in the U.K. situation an employer apprehends union action in case he has taken unmeritted action. With these inbuilt safeguards any procedures, however informal and however defective, can work. In India, the situation is different except perhaps in case of skilled personnel. This important limitation has to be kept in mind in making recommendations which will work in India.

III

WAGE POLICY IN A DEVELOPING ECONOMY - SOME PROBLEMS AND ISSUES WITH SPECIAL REFERENCE TO INDIA.

I. Content and Objectives of Wage Policy.

In a comprehensive sense wage policy implies a set of principles which may be consciously adopted to effect and guide by means of legislation or other Government action the level, structure and movement of wages with a view to attaining given objectives of economic and social policy. The basic problems which such a policy has to deal with relate to (a) the determination of the level of wages, (b) the manner and mechanism of making appropriate adjustments in the level of wages under changing circumstances, (c) the methods of modes of paying wages and (d) institutional arrangements for (a), (b) and (c). Each of these problems entails in turn a range of related issues which in the ultimate analysis have to be examined and viewed in the context of the structural features and the evolution of the economy as well as the goals of social and economic policy motivating a country's efforts for further economic growth.

2. The question of determination of the size and level of wages is linked up with the problem of evolving and sustaining a wage strucutre which while based on generally accepted notions of fair remuneration to labour and a fair return on capital takes into account the relevant considerations of economic efficiency and incentives.

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Clearly within the framework of a society dedicated to the ideals of social justice the wage rates cannot be left to be determined by free play of the market forces of demand and supply. Instead the recognised purpose of policy has to be the elimination of the existing inequities and mal-practices in regard to wage rates and wage payments. In other words the problem of wage determination in a democratic society given to ideals of social justice is one of reconciling considerations of equity and fairness with the constraints and compulsions of economic factors. In this context the inherent inter-relationship between the wages and employment assumes a crucial significance. Developing countries with population above the optimum find themselves faced with the predicament of progressively reducing the backlog of unemployment and under-employment and paucity of resources for desirable scales of new investment and developmental effort. Their wage policies have thus to be viewed in terms of the problems of maintaining the employment equilibrium. A desirable but a difficult aim of these policies is to raise the average real wage level consistent with maximum growth of additional employment opportunities in the system.

3. Looked at in this light the questions of the size and structure of wages in the Indian context are reduced to evolving by stages a relative structure of wages which provides for suitable and feasible inter-industry, inter-regional and occupational differentials and thus cuts across all industrial as well as non-industrial

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activities in the economy. On grounds of social justice the concept of minimum wage has to fit in this scheme of things. It is another matter what such a minimum wage should be. That is largely a question of economic capacity - by no means static if viewed against the perspective of future growth. If initially the feasible minimum wage is not upto the standard of a need-based minimum worked out according to generally acceptable norms of consumption per family unit, the task of policy is to seek to successively raise the minimum as the economy develops. Ad interim the concept would have more of a protective value. It is only when the enforceable minimum crosses the limits of a bare subsistence it can be said that the welfare criteria are fulfilled to any satisfactory extent.

4. The minimum wage rates whether conceived as a general national minimum wage representing a weighted average of region-wise or industry-wise minimums or as a structure of wage rates obtaining and enforced in only certain specific sweated industries and/or uneconomic units and activities are a function of the "average" level of incomes in a community. If, however, wage and salary earners are taken as a category separate from self-employed persons, the latter constitute a predominantly much larger proportion of the working population in developing countries like India, there can be a closer connection between the minimum and the average wage rates. A narrowing down of the difference between the two is a

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measure of the progress in the social objective of reducing disparities in incomes. Egalitarian considerations have, however, to be reconciled with the basic economic and technical factors bearing upon wage and salary differentials. In any system a certain degree of wage differentials is indeed necessary for reasons of economic efficiency, incentives and technical requirements of combining different types of labour input in the production process; it is the width of the differentials which causes conflict. In theory wage determination depends largely on what pattern of wage and salary rates would under a given set of circumstances correspond to 'optimality' in terms of the social and economic desiderata involved. The possibility of more than one optimum combination cannot be ruled out. And this would raise the difficult problem of choice in practice.

5. The second area of wage policy, namely the manner and mechanism of appropriate adjustments in the level of wages, comprises issues and problems which arise due to the need for viewing wage determination in a dynamic framework. Under stable conditions, assuming that the wage structure devised is economically rational and socially acceptable, adjustments in wage levels are excluded by definition. But in a situation where the mutual alignments and inter-relationships in the system are changing on account of the expansion and growth of the economy the need of a regulatory mechanism is obvious.

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Often enough the growth process may lead to a rise in the general level of prices and a certain order of change in the structure of relative prices. In order to protect real wage incomes from erosion the level of money wages has to be adjusted to price changes. Besides in a democratic society the wage-earners expect to share in the gains of economic development and growth. Commensurate with the checks and restraints on consumption necessary for sustaining the growth process the standard of living of the workers has to improve. Such improvements and the rate at which they occur have additionally to reckon with the principle of inter se fairness as between wage and other incomes. This, in the aggregate converges upon the question of the share of wages and profits in the total product. The problem is further complicated if the changes in the supply of and demand for labour over a period of time are also considered. At the level of disaggregation this becomes a question of the comparative increases or incremental gains in wage vis-a-vis other incomes. In countries where due to the rate of population growth large additions to the working force take place from year to year, this aspect has particular relevance. The sheer number of new entrants to the working population signifies a tendency operating in the direction of a downward adjustment in effective wage rates, if the growth of the economy is inadequate; and the numbers themselves can be an impediment to growth.

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On the demand side the size and scale of new investments and the requirements of new industries for new types of labour and skills have also considerable importance. For new investment programmes considerations of maximising employment opportunities tend to moderate the scope for productivity increases through labour-saving techniques. In any case the inbuilt conflict between generating additional employment and raising wage levels has to be recognised.

6. In this area, the task of policy is to identify the principles and criteria which could be adopted as the basis for wage regulation from time to time. The inherent difficulty in deciding upon a suitable criterion lies in the fact that the considerations pertaining to raising the standard of living tend to be anti-thetical to the wider objectives of a rapid pace of development. In an inflationary situation the mere maintenance of the real wage entails monetary outlays which reduce the surpluses available for further investment and consequently the creation of additional employment opportunities. The principle of wage adjustments on the basis of changes in the level and disposition of other incomes in the system encounters the difficulty that the capacity to pay varies not only from sector to sector but also as between different productive units within the same sector. A practical solution to the problem has thus to be sought in terms of 'norms' which though necessarily flexible are able to take into account the more dominant considerations under a given set of circumstances.

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7. The third area of wage policy concerns the methods and modes of paying wages. In this sphere one aspect is the suitability of the system of piece-rate wages in particular lines of activity. A further question is the components of wage payments. This has practical significance in wage determination and regulation if a distinction is made between the different elements which form the total wage. In broad terms the choice lies in providing for a consolidated wage or of treating it in terms of well-defined separate components like the basic wages, dearness and compensatory allowances, bonus and benefits in kind. The basis for distinguishing these different elements of the total wage consists in providing for differences in such factors as cost of living, profitability, etc. Here the policy assumption essentially is that whereas there should be a close degree of uniformity and integration in basic wage rates in comparable avocations and occupations the quantum of the dearness and compensatory allowances should vary according to the cost of living; bonus payments should represent adjustments in relation to the overall working results of an undertaking and benefits and privileges in kind partake the nature of substitutes for cash compensatory allowances.

8. In situations characterised by marked changes in cost of living and productivity the pressure for wage adjustments grows. And to the extent these fluctuations may be deemed to be of a temporary or transitional nature

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there is a priori little justification for altering the basic structure of wage rates. A practical approach in such a situation is to supplement the money wage to off-set the erosion of the real wage.

9. In terms of the range of issues and problems which come within the purview of wage policy its broad objectives may briefly be stated to be : (i) to prevent and eliminate unfair practices in the matter of wage payments, (ii) to formulate and devise norms and principles of wage determination so as to evolve and maintain a suitable wage structure keeping in view the broad purposes of social economic policy, (iii) to provide for minimum wage regulation, if necessary, according to conditions in different areas and industries but more specifically to protect the workers in a weak position, (iv) to seek to improve the current and future remuneration of wage earners employed in different sectors in relation to the growth of the economy and the capacity to pay, and (v) to enjoin and prescribe procedures and measures for the effective implementation and application of the principles and norms underlying the wage policy formulated.

10. Each one of these objectives may need a different type of institutional set up. In some, mere governmental machinery would be adequate. This could consist of tribunals for framing wage awards or for supervising their implementation. In some others, both for

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reaching wage decisions and enforcing them, bipartite arrangements between employers and workers representatives may work. In still different types, tripartite machinery may be appropriate. All these can co-exist in the same country depending upon the traditions it has set up and the experience it has acquired in building up and utilising these different instruments of policy formulation and implementation.

Wage Policy and Perspective of Planned Development

11. It would be pertinent to advert briefly to the implications of a wage policy conceived in these terms vis-a-vis the broad perspective of economic development and to examine some of the main impediments to its implementation in the Indian context. By its very nature the process of economic development involves the simultaneous pursuit of a variety of objectives. It has to recognise that whereas the realisation of each objective is by itself desirable the whole set of the social and economic objectives have to be mutually reconciled in such a manner that the more dominant objectives subsume the achievement of the other subsidiary objectives. Given the imperatives of resources mobilisation for development the more dominant objectives of Indian planning are the advancement of the economy at a rapid rate in consonance with an equitable distribution of incomes which does not impinge upon a desirable rate of savings. This implies a degree of restraint on increases in consumption. It also denotes a balanced development of the different sectors of the economy.

This means that the questions of wage policy cannot be treated or viewed in isolation from considerations relevant to problems and policies in other segments of the economy.

12. In face of this basic constraint the impediments to the implementation of a wage policy are further aggravated by such factors as population pressure, existence of inequalities of incomes, a kind of dualism pervading the economy, the rise in unemployment and the resultant political and social tensions. By its very nature wage policy everywhere operates in an area in which emotive forces overshadow rational judgement particularly in the context of immediate needs. Social responsibility requires some restraints on all sides. However 'jam today' for 'jam tomorrow' is an eternal argument and can be made to acquire a new ring in the ears of every day. And in a country where the subsistence level is low all talk of 'jam tomorrow' sounds hollow.

13. The kind of dualism which pervades the Indian economy is easily traceable to its structural features. There is in the first instance the sharp contrast in the agricultural and industrial sector. Whereas a predominantly large proportion of the population is engaged in agricultural activities with the present level of production agricultural productivity could be low, the productive techniques employed are not modern and the product elasticity of supply is low. The modern

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industrial sector, on the other hand, is more developed, generates large surpluses but provides employment to a much smaller proportion of the population. On overall considerations, therefore, the wage policy in the industrial sector has to be formulated keeping in view its repercussions on agricultural labour, production and marketable surplus. A disparate trend in the growth of agricultural and industrial wages would accentuate conflicts.

14. A similar type of dualism is in evidence in relation to the small scale and cottage industry sector which in its essential characteristics is more similar to the agriculture rather than the industrial sector. Like agriculture this sector is consumption-oriented, the production processes are labour intensive and its competitive position vis-a-vis the large scale industrial enterprise comparatively weak. In many cases there is no employer-employee relationship either. However, depending on the location of units, wage labour engaged in this sector is apt to be influenced by what happens in the industrial sector. The third type of dualism cuts across the two mentioned earlier and reflects itself in widely varying productivities and standards of living in different regions and parts of the country. While the growth of modern means of communications and transport and development of social overheads conduces to a 'demonstration effect' the regional imbalances and

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disparities tend to persist and lead among other things to different standards of economic and operational efficiency.

15. Public sector has a vital role to play in India. The policy in regard to wages and salaries in similar units have to be in harmony irrespective of Sectors. As a rule there should be no significant disparities in the wage and salary patterns in the same industry in a region. Finally wage has to be in line with the policy for the regulation of profits and other non-functional incomes in the system. Profits which have the role of augmenting savings could be allowed to increase but a curb has to be placed on non-functional incomes which lead to conspicuous consumption. All this underlines that wage policy has to be viewed in relation to the overall economic context and that wage and profit incomes have to be fitted in a scheme on things which assists and smoothens the process of economic development. This may also serve to explain the shift in current thinking in favour of an integrated wages, incomes and prices policy.

Evolution and Assessment of Wage Policy in India

16. An analysis of the evolution of the wage policy as also the behaviour of wage movements in India since Independence may be attempted against this background. The growth of organised employment which permanently attracted labour away from land is a comparatively recent phenomenon in India, though the developmentof mining plantations and factories goes back to the 19th century.

It was only in the period since the World War I that a general awakening of labour in the cities has taken place. Apart from the early legislation for the prevention and settlement of disputes the first direct step in regard to protection of wages earned or due was taken in 1936 when the Payment of Wages Act was passed. The Defence of India Rules were clamped with the outbreak of the Second World war. Governments were vested with powers to prohibit strikes and lock-outs by referring wage disputes to conciliation and arbitration and to enforce compliance by the parties concerned of the decisions of the adjudicators. The powers which was originally envisaged only as a temporary measure came to stay with the enactment of the Industrial Disputes Act, 1947, with the result that almost since 1940 wage determination was no longer looked upon as a private matter for settlement between employers and workers and left to the freeplay of economic factors.

17. Another landmark in the history of wage determination was the five year programme of legislative and administrative action in the field of labour announced by the Interim Government in 1946. The programme included inter alia (i) the statutory prescription of minimum wages in sweated industries, (ii) standardisation of occupational terms and wages in all major industries and the determination of differentials in wage rates as between various occupations in an industry, and

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(iii) promotion of "Fair Wage" agreements including the introduction of time scales wherever possible with due regard to the capacity to pay of the industry. In 1947 the first Industrial Truce Resolution was unanimously adopted at a representative Tripartite Conference. The Resolution recommended suitable machinery for study and determination of fair wages and conditions of labour. In 1948 came the Government's Industrial Policy Resolution which inter alia emphasised the Government's intention (a) to fix statutory minimum wages in sweated industries and (b) to promote fair wage agreements in the more organised industries.

18. In pursuance of the first purpose the Minimum Wages Act, 1948 was enacted. This provided for the fixation of minimum wages by Government through notification on the advice of the Committees appointed for the purpose or otherwise in the case of agriculture and 12 other industries listed in the Schedule to the Act. The State Governments were, however, empowered to add to this list in the light of local conditions. The Act did not make any reference to the content of the minimum wage.

19. For the promotion of fair wage agreements the Government appointed the Committee on Fair Wages to determine the principles on which fair wages should be based and to suggest the lines on which these principles could be implemented. The Committee's recommendations,

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even though they were not given a statutory form, have exerted a good deal of influence on the wage fixing authorities. The Committee recognised that for evolving principles for governing the fixation of wages the background of the general economic conditions and the level of its national income should be taken into account and stated that at any level of national income there was a certain level of minimum wages which the society could afford. What it could not afford were the minimum wages fixed at a level which would reduce employment and thereby diminish national income and ultimately retard the progressive improvement of the wage structure.

20. The Committee defined three broad wage concepts viz. the "minimum wage","living wage" and"fair wage". The "living wage" according to the Committee represented "a standard of living which provides not merely for a bare physical subsistence but for the maintenance of health and decency, a measure of frugal comfort and some insurance against the more important misfortune". The "minimum wage" the Committee said, "must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker by providing some measure of education, medical requirements and amenities". According to the Committee while the lower limit for fair wage must obviously be the minimum wage the upper limit was set by the capacity of industry to pay.

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Between these two limits the actual wages will depend on (i) the productivity of labour, (ii) the prevailing rates of wages, (iii) the level of national income and its distribution and (iv) the place of the industry in the economy of the country. The wage fixing machinery it was recommended should relate a fair wage to a fair load of work and the needs of a standard family consisting of three consumption units inclusive of earner. The capacity of a particular industry in a specified region should be taken into account to determine the capacity to pay, and this in turn could be ascertained by taking a fair cross-section of the industry in the region concerned. In the actual calculation of the fair wage the Committee observed it was not possible to assign any definite weights to these relevant factors.

21. A clearer enunciation of wage policy in India came with the commencement of planning. The First Plan, while cautioning against a general upward movement of wages which would set in motion a wage-price spiral recommended that wage increases should be granted mainly to remove anomalies or where the existing rates were very low, and to restore the pre-war real wage as a first step towards a living wage. The Plan further recommended that in settling questions of wage adjustments the following considerations should be taken into account:-

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(a) All wage adjustments should conform to the broad principles of social policy and disparities of income should be reduced to the utmost extent; and the worker must obtain his due share in the national income.

(b) The claims of labour should be dealt with liberally in proportion to the distance which the wages of different categories of workers have to cover before attaining the living wage standard.

(c) The process of standardisation of wages should be accelerated and extended to as large a field as possible.

22. The essential features of the labour policy enunciated for the First Plan period were retained in the Second Plan. However, in view of the objective of a socialistic pattern of society the wage policy was further adjusted. Among the important recommendations during the Second Plan were:-

(a) the introduction of payment by results in areas where the principle did not apply (subject to adequate safeguards for workers, the main guarantees being a minimum (fall-back) wage and protection against fatigue and undue speed-up);

(b) the conduct of a wage census which should provide sufficient facts and a suitable basis for the formulation of principles, etc. by the wage fixing authorities;

(c) the institution of enquiries for the revision of the existing series of cost of living indices so as to facilitate consideration of demands of employees regarding the merger of a part of the dearness allowance into basic wages; and

(d) the setting up of tripartite Wage Boards for individual industries in different areas as such Boards, consisting of equal representatives of employers and workers and an independent chairman, were likely to ensure more acceptable decisions.

23. Two important developments in the evolution of wages need to be noted (1) - the 15th Indian Labour Conference (July 1957) agreed that minimum wage should be

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'need-based' and should ensure the minimum human needs of the industrial worker, irrespective of any other consideration. To calculate the minimum wage, the Committee accepted the following norms and recommended that they should guide all wage fixing authorities :-

(i) in calculating the minimum wage, the standard working-class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded;

(ii) minimum food requirements should be calculated on the basis of a net intake of 2,700 calories, as recommended by Dr. Aykroyd, for an average Indian adult of moderate activity;

(iii) clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average worker's family of four, a total of 72 yards;

(iv) in respect of housing the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidised Industrial Housing Scheme for low-income groups; and

(v) fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent the total minimum wage.

24. While agreeing to these guidelines for fixation of the minimum wage for industrial workers throughout the country the existence of instances where difficulties might be experienced in implementing these recommendations was recognised. Wherever the minimum wage fixed went below the recommendations, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the norms laid down.

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(2) Government appointed a Commission on Inquiry on Emoluments and Conditions of Service of Central Government Employees (The Second Pay Commission). The recommendations of the Commission though confined to Government employees had their influence on wage settlements in private industry. For framing its recommendations the Pay Commission worked out the money value of a "need-based minimum wage" on a basis different from that of the 15th Indian Labour Conference. This sparked off a controversy which lingers on till today.

25. During the period of the Second Plan another noteworthy development was that the institutional arrangements for the settlement of wage dispute began to undergo a change. Although the Government had since Independence actively encouraged the conclusion of collective agreements adjudication had thus far been the main instrument of wage fixation. The Second Plan had suggested that the suitable machinery for settling wage questions would be tripartite wage boards consisting of an equal number of representatives of workers and employers and an independent chairman, supported by an economist and a consumers representative. This instrument of wage fixation has since been increasingly in demand by workers and has emerged as a dominant method of wage fixation. The wage boards have been ostensibly utilised for bringing wage policy within the framework of the wider objectives of the Government's social and economic policy.

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26. The Third Plan reiterated the need for a purposeful pursuit of the policies on wages enunciated in the Second Plan and suggested that studies should be organised on aspects like the redefinition of calorie requirements, determination of wage differentials the manner of linking wages to productivity and the norms on the basis of which gains in productivity should be shared. There was thus as from the years since the beginning of the Second Plan a definite shift in thinking on wage policy towards an emphasis on productivity. With increasing pressures on prices and the need to hold down costs, only wage increases involving corresponding increases in productivity were deemed desirable.

27. The wage policy as it has evolved since Independence has made a noticeable impact on the emoluments of labour as well as on production. Indeed there remains quite a distance to be covered in further narrowing down wage differentials and progress towards a more integrated productivity oriented wage structure. The data pertaining to wages are by no means uptodate and are subject to deficiencies of coverage but some broad conclusions could be drawn. In general over the period of 1950 to 1960 the real earnings of industrial workers improved by nearly 15 per cent; almost all the improvement was between 1950 and 1955. In the period after 1960 the level of real earnings seems to have declined.

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In this period although the average level of money earnings continued to rise the rise in cost of living was larger. This has tended to bring the question of the maintenance of the real wage to fore. The movement of money wages in general has, specially since the beginning of the Third Plan, proceeded in a somewhat unplanned manner. The picture regarding inter-industry wage differentials has, therefore, changed. As regards the relationship between the level of real earnings and the rise in productivity in the organised industry the broad indications are that in general the rise in the level of real wages has tended to lag behind increases in productivity.

28. For meeting the situation arising from the rising trend in prices the practice of compensating wage earners for price increase through dearness allowance has come to be widely accepted in the organised sector of the Indian economy. According to an ad hoc Occupational Wage Survey conducted in 1958-59 over three fourths of the workers in factory industries, 61% in plantations and 85% in mines were getting dearness allowance. The information contained in this survey pertains to the year 1955 for factory industries and to the year 1956-57 for mines and plantations. 41% of the workers in factory industries were getting dearness allowance linked to the consumer price index, 27.3 per cent had a flat rate and for another 30.7 per cent dearness allowance varied according to income groups.

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In the subsequent years there are indications that the proportion of workers receiving dearness allowance linked to the consumer price index would have gone up as most of the wage boards have followed the principle of linking wages to the consumer price index. Again whil e sufficient data are not available to assess the impact of Government pronouncements on the actual spread of wage incentive schemes and the extension of the system of payment by results the broad inference could be drawn that wage incentive schemes as effective tools of management and productivity linked wage systems have been gaining in popularity.

Evidence before the Commission

29. It may now be worthwhile to take note of the broad trend of current thinking in India on some of the issues of wage policy as reflected in the evidence which has come before the Commission. On the question of the concept of a minimum wage as defined in the Report of the Committee on Fair Wages, the State Governments who under the Constitution have to deal with a large area of labour problems are in general of the view that the concept requires no modification. Under Indian circumstances the need based minimum could at best be treated as an ideal to be achieved in the long run and ad interim there should be a more realistic approach. Some employers organisatio ns including public sector undertakings consider that since the time this concept was devised, there has been an extension in social security

and fringe benefits to workers. Modification would be required on this account. Employers organisations have further contended that while the industry should pay a minimum wage, in the approach to be adopted in the matter of need based minimum there should be also considerations, the relevant consideration of 'capacity to pay' which bears upon the very survival of the industry. Smaller units in the industry feel that even the bare minimum should have a relevance to the unit's capacity to exist. The employer's contention is that the norms underlying the concept of a need-based minimum as recommended by the 15th Indian Labour Conference are unrealistic and should be reviewed in terms of national capacity and industrial costs. They argue that wages must be determined on the basis of the worth of the product and not entirely in terms of the workers' requirements. Workers' organisations have uniformly supported the concept and desire that the Commission should spell it out in precise terms. Even if there are difficulties in the implementation of the norms of a minimum wage the attempt should be to overcome the difficulties rather than to modify the norms.

30. While there are some doubts in Government circles as to the feasibility of the national minimum wage at present the employers' standpoint is that a national minimum wage, if at all feasible under existing circumstances, should primarily be a protective subsistence wage to be determined on an industry-wise or a region-wise

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basis. Workers' representatives while favouring the idea of a regional minimum wage insist that in working out the regional minimum, allowance should be made for the modes of living and the demand patterns of the working class.

31. The State Governments are of the view that given the fluctuating price trends the principles of compensating the wage earners by means of a separate component e.g. dearness allowance is necessary. The employers' contention is that in order to protect real wages the primary emphasis should be on holding the price line though within limits considerations of productivity and efficiency should also prevail. Trade unions have uniformly favoured the provision of a separate component for protecting the real wage. All unions have demanded full neutralisation at the minimum level, but some accept a small element of sacrifice in dearness allowance for workers at higher levels of wages.

32. Employers' stand is that the existing wage structure is the result of historical factors and haphazard developments and that rationalisation of the wage structure and wage differentials should be achieved on the basis of scientific job evaluation occupation-wise. Trade unions feel that the existing structure did not conform to any set economic principles and that the definite purpose in evolving a wage structure

should be to significantly narrow down the range between floor and ceiling. The Governments have contended that it has not been possible to adopt so far any objective tests for determining wage differentials.

33. While the State Governments, the employers and the workers are all agreed that wage fixation should be through collective bargaining, the differences in approach reflect themselves in the level at which the collective agreements should be arrived at. The employers consider that collective agreements should be on unit basis excepting where there are industry-wise organisations of workers and employers. The State Governments desire collective bargaining on a regional basis if it is to be effective, though it would be best if it were on a national level. Trade unions consider that collective bargaining should be on an industry-cum-region basis.

Wage Problems in India vis-a-vis international experience

34. While on surface it may appear that the trend of thinking on probl ems of wage determination and settlement in India is veering towards collective bargaining which has come to be the accepted institutional arrangement in the more advanced countries, issues and problems of wage determination and regulation in India are more complex and difficult. The nature of the problem and the trends witnessed in India stand out in sharp contrast to the experience abroad at least in some ways. Compared to the tendency towards an erosion of the real wage in India in recent years in the post-war

period real wages in most European countries as well as United States and Canada have shown a rise due to the sustained expansions of their economies. During 1950 and 1962 the real wages in manufacturing rose by 44 per cent in Canada, 60 per cent in France, 95 per cent in Federal Republic of Germany, by 40 per cent in Italy, by 71 per cent in Netherlands, 40 per cent in Norway, 44 per cent in Sweden and 33 per cent in Switzerland. Over the same period the increase in United Kingdom was 32 per cent, in U.S.A. 29 per cent. This order of improvement in the level of real wages in these countries took place notwithstanding the effects of instabilities on account of persistent or recurrent inflation in the sense of rising retail prices and certain periods of recession. Instead the pace of growth in India has been significantly influenced by erratic and at times sharp fluctuations in the levels of agricultural output. Both the character of inflation and the problems of wage adjustments in India have to be viewed in this context for aside from effecting employment a contraction in agricultural supplies implies a pressure on wage goods.

35. Moreover many attempts at implementing a wage policy in other countries have been made for dealing with specific emergencies such as a balance of payments crisis or internal inflationary pressures. The measures adopted have been of an ad hoc nature varying greatly in form and substance. It is only if all

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these measures and policies are viewed together that a common and consistent set of criteria for wage policy emerge. Several countries during the World War II and the U.S.A. during the Korean War as well were compelled to resort to some form of wage policy as a means of containing inflation. In Australia the capacity of the economy as a whole to bear a given wage increase has always been of the paramount consideration in the conciliation and Arbitration Commission. The requirements of economic development have governed wage policies in the Soviet Union and other centrally planned economies. In varying degrees the issues at stake in different countries have involved decisions on (a) the desirable increase in total wage payments and (b) the distribution of the total increase among various groups. In the Indian context each one of the considerations which have impelled and guided the adoption of wage policies by other countries is present to a smaller or greater extent. Additionally there is the problem of reconciling considerations of social justice with requirements of economic progress.

36. In Netherland, Norway, Sweden, France and United Kingdom restrictive wage policies have been adopted in recent years in the form of an incomes and prices policy. This has been largely prompted by concern over the balance of payments and the main aim

has been to ensure that an increase in wages and other incomes does not outstrip the growth in real national product so that a stability of the general price level is ensured. In the Indian context while an integrated type of incomes policy holds out promise of fruitful results the pursuit of such a policy has to be in a different manner. This is because in developing countries like India self-employment of the working force is the rule. In contrast with this there is the pre-dominance of wage employment in the developed countries. Further considering that no incomes policy can ensure a growth in real incomes higher than what can be attained without it, the policy instruments for the implementation of an incomes policy in India have to be different and more complex than in the developed countries. This means that in the process of planned development the specific role of incomes policy has to be merged to ensure that the broad pattern of generation of money incomes is consistent with the objective of planning and that the disparity in income distribution and consumption is reduced in terms of the social policy objectives as they are phased out from plan to plan. Needless to say that in pursuing these objectives concurrently certain conflicts no doubt arise but there is the other side of it that the pursuit of multiple objectives would be easier when the national income is growing rapidly than when it is stagnant or growing only gradually.

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37. In regard to minimum wage regulation, another issue which has a good deal of importance in countries like India, a perceptible difference in the nature of the problem as well as the approach to it is discernable. The orthodox function of minimum wage regulation in a number of countries has been to provide for the establishment of a machinery for wage determination in such trades or occupations in which no collective bargaining or other effective method of wage determination existed or in which the wages were unduly low. In terms of this approach the minimum wage regulation has in effect emerged as a device to supplement collective bargaining. However, simultaneously with this approach two other approaches have been developed in several countries including U.K., Belgium and Switzerland. A number of countries specially in Latin America have legislated for minimum wage regulation in nearly all industries although in practice its application is often much more limited than what is prescribed by law. Still other countries have provided for uniform minimum rates applying to a large number of wage earners in several industries. The minimum wage is thus no longer set for individual trades; it becomes almost a national minimum wage. It might be fixed and adjusted by law as in United States, by arbitration award as in Australia or by Government decision after consultation with industries as in France. Theoretically the minimum wage might apply to all

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employees in the country concerned without exception. In practice, however, for economic and other reasons the number of wage earners covered is usually much smaller.

38. The basis adopted for fixing minimum wage rates in a number of countries is identifiable with two criteria namely that of "prevailing wages" and of "a suitable standard of living in terms of a minimum household budget". Both these criteria are not necessarily taken to represent a "desirable standard of living". The yardstick of "prevailing wages", for instance, can be regarded as sufficient for maintaining a suitable standard of living only in the sense that the standard of living which it represents bears some relation to the general level of development and prosperity of the country or region. In terms of the second criterion the household budget is usually calculated as the lowest cost of food-stuffs that some statistically average family ought to buy if it were to attain certain dietetic standard plus the cost of some other commodities necessary for the maintenance of a standard consistent with essential human requirements of health, decency and frugal comfort. Alternatively such a budget may be drawn up on the basis of what people are actually spending. For example, it appears that the "typical budget" on which the French national minimum wage is based is calculated in the

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second way. Intrinsically both these approaches imply that the national minimum wage simply sets a floor under the existing wage structure and is not directly related to a "desirable standard of living" under a given set of circumstances. Essentially, the French, the Australian and even the U.S. national minimum wage is of this character. It falls well below the income per head of the economically active population.

39. In developing countries like India the idea of a minimum wage based on standards consistent with essential human requirements - commonly referred to as "need-based minimum wage" - has, however, come to be interpreted in a different manner. Minimum wage rates are conceived as representing minimum family budgets calculated on the basis of medical and other opinion concerning human needs. The standard which a need-based minimum wage calculated in this manner represents a wage above the "prevailing wages". It thus no longer remain synonomous with fixing a legal lower limit within the existing structure of wage rates and becomes an instrument for redistribution of the national income. The fundamental question it leads to is that how far the redistribution of national income involved could be undertaken within the constraints of the basic needs of resource mobilisation for development? Is it that the imperative needs of development have to have a precedence or could it be that both claims could be reconciled in a phased scheme of social advancement?

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IV

LABOUR IN UNORGANISED SECTORS

I. Introduction:

Total labour force in the country can be divided into (a) the self-employed persons, (b) persons engaged in organised sectors of the economy but by themselves (i) organised or (ii) unorganised, (c) those engaged in unorganised sectors but by themselves (i) organised or (ii) unorganised and (d) unprotected labour. A part of category (d) may belong to (a) and some of it to (c). This section proposes to discuss the problems falling broadly under the category (c). In the Indian context the numbers involved in (c) will be large. It would, therefore, be adequate to take up some major groups where the number of workers is large and information is relatively not scanty. In any case there can be dangers in trying to be exhaustive in this area. Apart from wage labour in agriculture and allied activities, the unorganised workers covered in this discussion are:

(i) workers in household industries and handicrafts;

(ii) construction workers;

(iii) bidi and cigar workers;

(iv) workers in small enterprises in urban and semi-urban areas.

2. Wage paid agricultural labour accounts for about 31 million. According to the 1961 census the

total number of non-agricultural wage-earners is about 24 million. If from this the total number of workers employed in organised sectors namely factories, mines, plantations, government and quasi-government bodies, ports, insurance, banks, etc. which number about 14 million is deducted, one gets a rough estimate of workers employed in the unorganised sector. Besides this, there is a large number of workers other than 'employees' in the various cottage and household industries and handicrafts. According to 1961 census the number of such workers is 11 million.

3. Beyond a mention in the 1946 Labour Policy Statement, Governments have hitherto given inadequate attention to these workers though they constitute a fair bulk of those who produce goods and provide services. Even in the organised sector a proportion of the total labour force had to be left out of the purview of legislation because some establishments employ workers less than the minimum prescribed in the law. In the absence of proper organisation they are not able to support their reasonable claims and secure proper working conditions. Apart from the ineffectively implemented Minimum Wages Act, they do not seem to have any other legislative protection. The Minimum Wages Act provides for statutory regulation of wages in agriculture and other scheduled employments

where workers are not sufficiently organised and where sweated labour conditions usually prevail. In taking cognisance of the plight of such labour, the Third Plan mentioned that "while considerable improvements had occured in the living and working conditions of employees in large and organised industries owing both to State activity and trade union action, a great deal of lee-way remained to be made up in respect of the workers engaged in agriculture and unorganised industries and that their conditions should become a matter of special concern to government as well as to labour organisations". A reference was also made in the Plan to the building and construction industry in which programmes of expansion called for greater attention to safety standards. The informal meeting of Labour Ministers in August, 1962, endorsed the Plan Statement in its conclusion: "Greater attention should be paid to the conditions of labour in unorganised industries which could not be effectively governed by legislation. There should be a separate code for them laying down minimum service and working conditions and labour officers should be appointed to assist in the proper enforcement of the code". In spite of this decision there seems to be no satisfactory machinery for taking cognisance of labour disputes formal or informal. Even where some sections of this labour are covered by legislation there are innumerable difficulties

in the effective implementation of their legal rights. Thus a question can well be posed whether it is possible to find an effective machinery for the purpose. If a machinery could be evolved, in what way can it be utilised for tackling problems concerning hours of work, wages, social security,etc.

II. The Indian Experience.

4. The important characteristics of the unorganised sector are: (i) low capital investment per person employed, (ii) the relatively primitive techniques employed in consequence of (i), (iii) casual nature of employment, (iv) predominance of self-employed or family workers and (v) the existence of middlemen who have their 'cut' in the 'value added by manufacture' between the entrepreneur and the worker. (i), (ii) and (iii) are true of the entire unorganised sector. In the sections of labour under discussion (iv) is mainly true of agricultural and household enterprises, and (v) prevails in Bidi and Construction industries. The Minimum Wages Act provides for the fixation and revision of Minimum Wages and matters like hours of work, overtime payment and weekly day of rest. Yet the Act lacks teeth to make itself effective; it is merely ethical in value and does not serve the purpose of securing the social discipline required of an entrepreneur. Legislation which is not enforced

raises false hopes and brings the other laws also in disrepute. Fortunately, though it is an irony, labour in this sector is not aware of its legal entitlements. While this may be true it would be unwise not to recognise the special difficulties in law enforcement. These are:

(i) It requires a system of labour inspection to ensure that work-places are inspected regularly to see if the legal provisions are being applied, to advise the workers and employers on the requirements of the law and how to comply with them and to institute appropriate legal action if necessary to secure compliance. This difficulty acquires significance because of the scattered nature of work places to be inspected.

(ii) Governmental finances come in the way. Even where finance is no problem as in case of factory industries inspection has not been upto standard.

(iii) From the point of view of small employer compliance with the provisions of law is no less difficult. The small entrepreneur who has his hands full running his shop usually finds it difficult to comply with all formalities of the law especially if it is complicated nor is he in a position to employ separate staff to look after the various formalities involved.

III. Agricultural Workers.

5. Nearly 70 per cent of the working force of the country is engaged in agriculture. Population is increasing at an annual rate of over 2 per cent compound. Potentialities for extension of agriculture to new areas are not commensurate with this increase nor can non-agricultural employment opportunities grow fast enough. The resources available for a broad-based programme for promoting productive employment in rural areas are thus limited. At the same time, Indian agriculture is called upon to play an important role in the economic development of the country i.e. important role has to be played by labour which is almost at the lowest rung of the economic ladder. The status of these workers is often ill defined. The social status is also not such as would give them comfort; indeed it is a cause for a large measure of discomfort. They do not enjoy the facilities and advantages available to the persons engaged in non-agricultural occupations. The relative backwardness of agricultural labour is no doubt partly due to historical reasons and partly due to certain special features of agriculture itself such as, existence of many small farms scattered all over the country. To organise such workers is difficult; illiteracy among them prevents understanding of their rights

and responsibilities. A contributory factor is that a large proportion of women and children form the work force. Because of the small size of the operational holding the surpluses are not such as would give labour satisfactory working conditions. Then there is a variety of employer employee relationships. Many small farmers with uneconomic holdings and without any resources to exploit the potentialities of new methods consider themselves and actually are worse than the landless agricultural workers. In some cases, tenants have permanent occupancy rights paying cash rent and having a status almost equal to that of the owner operators, in others one finds arrangements such as share-cropping and in still others purely master-servant relationships can be in vogue. In many systems, where land is cultivated by a person other than the owner, some arrangements exist for the division of produce between the land owner and the tenant or worker. In some cases, it is the cultivator or the worker who is regarded as making payment to the owner for the use of land and in others the payment is made by the owner to his worker for the services of the latter. There will be many such complications where distinction is difficult to make and yet it seems to be essential. Another important characteristic of agriculture is that there are no workers who could be considered as purely employers and others who are

purely employees. Even working members of small peasant households do go out for wage paid employment. The share croppers and tenants also employ other agricultural workers to assist them. Thus it should be borne in mind that one individual may often assume many roles:tenant, wage labourer and perhaps even proprietor. In considering arrangements for protective legislation many of these niceties will come into play.

6. Due to rise in land values, increase in farming expenditure, etc. it has become difficult for landless workers, tenants and share-croppers, to purchase land and become owner cultivators. As such improvement is not possible under the normal circumstances, it has to be promoted by State action. Agrarian reforms programmes of varying scope and effectiveness have therefore been instituted in India. Security of tenure and reduction of rents is the first stage in the tenancy reform with the ultimate objective of conferring permanent occupancy rights on a large number of tenants. Other well-known features of agrarian reforms are: (i) redistribution of land in favour of the peasants through land purchase - either from State or from landlords (ii) the establishment of ceilings on land holdings in order to meet part of the problem of landlessness

(iii) Measures for converting tenants into owners (iv) Reduction in rents (v) Elimination of intermediaries (vi) the promotion of cooperatives especially in the credit and marketing fields.

7. Such institutional changes cannot be expected to proceed without encountering a number of obstacles. The very formulation of measures is beset with difficulties due to the many conflicting interests involved. Implementation raises many problems, particularly because of the lack of suitable administrative machinery and of trained staff and the opposition of vested interests and the lack of understanding of their specific rights on the part of the beneficiaries. In many cases delays in the firm enforcement of the land reforms has left the social structure of villages unaltered. Land values are rising and this impedes land reforms further. Legislation can, in addition be made ineffective by recourse to courts and seeking shelter under their proverbial delays. Nominal transfer of land to relatives to remain within the ceiling limit is common. Thus one finds in the villages the spectre of the existence of large estates which are inefficiently run side by side with smaller farms of progressive farmers, run on efficient lines and yielding production increases not witnessed earlier. Land reforms are not reported to have improved the lot of agricultural workers in any manner, though it may have benefited

some. In fact in some cases eviction of share croppers is reported to be on the increase. The remedies to be suggested cannot avoid situations where the spirit of the law is deliberately to be made the victim; and human ingenuity can be trusted to discover loopholes which can be exploited.

8. While the wage paid agricultural labour is liable to total unemployment, other agricultural workers such as small farmers, tenants and crop-sharers who are self-employed or work in their own family holdings suffer mainly from under-employment. The lot of wage paid agricultural workers appears to be particularly precarious. Due to high levels of unemployment and under-employment in agriculture, individual worker is often more concerned with getting any kind of employment than with obtaining satisfactory wages and conditions of work. The tendency for persons to alternate between wage employment and cultivation of their own small holding and between agriculture and other pursuits in accordance with the demand for their services which fluctuates sharply according to season, crop, area, etc. often implies the need to seek temporary employment for which it is difficult to lay down any special conditions. Conditions of employment are generally difficult to regulate since payment to labour in many cases

is still in kind rather than in cash and it is also difficult to fix minimum wages. And even here the person who hires labour is at an advantage. In days when his produce can fetch better price he would insist on making money payments in others - he would dismiss workers claims by a share in the produce. In such circumstances legislation applicable to wage labour in agriculture must be included as an integral part of overall agrarian reforms and rural economic development programme. Moreover statutory protection will not help agricultural labour unless the labour is able to command some kind of bargaining power. A statutory guarantee of a certain minimum wage will be ineffective unless there are alternative employments at the statutorily fixed minimum wages.

9. In agriculture, permanent labour employed by a few land owners forms a small proportion of total workers. Recent studies reveal that during peak agricultural seasons almost all the available labour in the Villages is utilised and that the wage rate paid to the worker during the peak harvesting season compares favourably with the industrial wage rate. During the slack seasons these workers are forced to seek odd jobs here and there. This appears to be the general position in almost every village. One could therefore ask 'How long can such a situation

where agriculture depends on extra labour during the peak season but cannot support it throughout the year be allowed to continue?' And if it is not to continue what can be the remedy?

10. It is, therefore, obvious that emphasis in the rural set up of India should be for increasing employment opportunities. Inspite of rapid industrialisation for a long time to come, there will be increase in the number of agricultural workers. The importance of providing permanent employment opportunities in rural areas becomes clear from the reported observation of some landless labourers that they were living better in a famine year than in a normal year because of special famine works opened by the Government. It is often said that "industrialisation is the ultimate remedy". But the real question is the pace at which industrialisation can be achieved and that the snag here is the inability of the economy to meet the challenge of the increasing numbers in agriculture. As industrial output goes up, modern techniques continuously become better and the numbers that can be absorbed at even higher level of industrialisation are smaller than before. The country's industrial production during the decade 1951-61 has increased by 80 to 90 per cent. However, the industrial population - the persons

employed in factories, mines and so forth has not gone up by more than 35 per cent. More-over the base industrial population being small the addition to industrial working force forms a small proportion of the total increase in the labour force. In a way therefore difficulty arises because the base of agricultural population is wide and the transfer of even a small percentage from this base would mean in terms of numbers a very large addition to non-agricultural labour force and correspondingly a heavier investment in the economy.

11. It is in view of these considerations that I.L.O. recommended (a) expanding employment opportunities in agriculture through: (i) bringing new land under cultivation, (ii) providing more productive work on land already under cultivation through alternative patterns of land use and (iii) promoting labour intensive methods of cultivation through securing all possible economies in the consturction of large scale irrigation works. The I.L.O. also suggested exploring possibilities of increasing employment opportunities through development of (i) animal husbandry (ii) forestry and forest-based industries and (iii) fishing, diversifying the rural sector through modernisation of existing handicrafts and small scale industries and the development of new ones, improving marketability of rural produce through processing of agricultural raw materials, and also by the location of manufacturing industries in rural areas.

12. The existence of small peasants with such uneconomic holdings that prevents the full utilisation of even their own family labour on the farm, side-by-side with the large number of share croppers and tenants as well as the agricultural proletariat with no land adds further complications to the agricultural situation. For example when surplus land becomes available as a result of ceiling on land, the question arises whether this land should be given to the small peasants with uneconomic holdings or should be distributed to the agricultural proletariat with no land. The requirements of social justice, the excessive hunger for land, and the peculiar social and economic situation in the country suggest that such land should be distributed to landless agricultural workers. But economic consideration as well as overall and long run agricultural development suggests a different course. If land is given to small peasants who are already in possession of some land, so as to make their holdings viable, the immediate impact of this would be reduction of under-employment of workers in such families. Apart from this, this would give these farmers incentive to take up improved agricultural practices and bring about increased production. Farm management studies reveal that crop complex mainly

determines the volume of employment and that a small holding with a cropping pattern of high intensity of cultivation and high intensity of labour input for each crop would give more employment to farm family and hired labour per unit of area. Moreover such a measure reduces the number of workers from such families who would seek wage-paid employment either in agriculture or non-agricultural sector. To the extent this occurs there will be less competition for wage paid employment, so that rural labour who do not own any land would find it easier to obtain wage paid employment. The only way, it is suggested to improve the wage rates in agriculture is to make agricultural labour scarce and this could only be done by drawing these rural labour away from agriculture and also organising large construction and other programmes employing a large labour force at fair wages in and around rural areas. Such a policy would force even small farm families to adopt intermediate technical implements for their farm operations, a development which would help agriculture, farm families and rural labour in the long run. The Japanese experience lends sufficient support for this assessment of the overall agrarian situation.

13. But all this does not mean that the picture of agricultural labour is the same everywhere i.e. equally depressing. It has been found from the

limited study of their conditions that in areas where (i) there is adequate and timely water supply (ii) the distance from the main urban centre is not long (iii) the village is on the main highway national or state or sufficiently near it and (iv) the community is sufficiently forward looking, significant changes have taken place. These cannot be measured statistically but the contrast between them and villages in outlying areas really strikes an observer. Though instances are rare, it is reported from some areas that rural labour is in a position to dictate terms. What is significant, however, and this change seems to have come allover, is that the aspirations of workers have undergone a change. It is not the same dumb worker whose description one finds in the economic and sociological literature prior to Independence. At the same time it has been stated on all sides, in the evidence reaching the Commission, that the pace of this change could have been faster.

14. It is also to be noted that most of the workers in this group belong to the Harijan and Adivasi Communities. Social taboos associated with these groups vis-a-vis the other village communities are also undergoing a welcome change. This is borne out both by the evidence reaching the Commission and in the studies undertaken in rural areas. Here also the dominant impression one gets is that the

change could have been faster. Among the Harijans and Adivasis such of those as are somewhat better economically suffer less from the social disabilities than others. It is urged that mere constitutional guarantees can be of no avail in this regard. Intensive and continuous educational effort requires to be built up.

IV. Workers in Household Industries and Handicrafts.

15. Household industries and handicrafts occupy an important place in the economy of the country. According to the 1961 census about 1.4 million wage paid workers were employed in this sector apart from the large number (about 11 million) of workers - 'other than employees'. One of the objectives of the Fourth Plan is to encourage the emergence of widespread entrepreneurship and greater dispersal in the ownership and control of industries . This indicates the establishment of large number of small industrial urban complexes in contrast to current pattern of concentration in very small number of over-crowded metropolitan centres. Small-scale dispersed units must perform at an intermediate technical level and provide opportunities of self-employment for technically trained persons and also encourage them to start small undertakings in rural areas based on intermediate types of technology.

16. As the 'Approach to the Fourth Plan' indicates, the problem of dispersal has to be tackled at three levels. The first is the level of the traditional village industry where there is a twofold problem of (a) immediate sheltering so as to avoid additions to technological unemployment and (b) programming for continuous technological improvement so that the wage income of operators in the industry reaches average levels at an early date. The second area is that of small-scale industry which is not the out-growth of traditional village industries but which is established either in consumer goods with widespread demand or in the processing of local agricultural material or in providing intermediate goods or small scale instruments and implements in general demand. The third area is that of small-scale industry which is ancillary and subsidiary to individual units in large scale industry.

17. Some of the special characteristics of traditional household industries and their impact on labour as assessed in the observational studies by the Commission are:

(i) A large proportion of workers in these enterprises are family workers. The cooperative form of organisation which extends to areas of small enterprises and in some cases to industries for

processing farm products for which the major raw material is supplied by the members of the cooperatives is a more recent development.

(ii) Many of these enterprises are seasonal in character, specially those concerning the processing of agricultural commodities. In such cases the owner operators would be more concerned with the speed of operation and workers with the maximisation of earnings and consequently such questions as holidays, weekly period of rest, annual holidays, etc., tend to assume less importance though this may not be the case with questions relating to safety and health in work places. Again in such an industry any long-term measure designed to promote private labour-management relations is likely to have, in view of the high seasonal turnover of labour, only limited appeal to both parties.

(iii) A number of these enterprises operate in urban and semi-urban areas where the working conditions and safety provisions are far from satisfactory. The wage rates are also considerably low.

(iv) By their very nature, small industries are expected to have a comparatively easy problem of labour management. The closer contact with the employer - very often the employer himself works with his employees on the shop floor - should help the employees to understand management

problems better. Psychologically workers in small enterprises are relatively free from the complexities of mechanised processes and routine operations connected with them. This freedom is expected to lead to better job satisfaction. There can even be a feeling in a small enterprise worker that his contribution counts: he is in a position to see what he contributes much better than the worker with a highly mechanised process where the workers' contribution can only be the tightening of some screw which, in the final product, is invisible, or watching dials in an automated process. But this mental satisfaction is not something which will answer fully his basic requirements, particularly, in a situation where he finds himself in a situation of rising prices and his reserves to meet such situation will always remain inadequate. Also, in terms of welfare facilities, which his colleagues working in larger establishments may get, he feels himself deprived merely because of the size of operation his employer has embarked upon. However, in terms of total satisfaction, the debate will always continue because of the subjective element involved in judging satisfaction.

(v) The workers in the various unorganised industries are widely dispersed and this hampers the carrying out of training programmes for workers as well as for the management. It is rather difficult to cover these workers scattered in various small industries in urban and semi-urban areas under the 'workers education' scheme which is showing good results.

18. It is ofen argued that at the current stage of economic development in the country and also in view of low labour productivity of these enterprises, the choice is between (i) employment at low labour standards and (ii) increased volume of unemployment. Opinion is also voiced that an improvement of labour standards is likely to have particularly serious effect on the stability of the small enterprises and the amount of employment they can provide. In considering this question, I.L.O. recommends that three factors should be kept in mind, namely:

(a) Labour costs and specially the costs of hired labour do not usually constitute a very high proportion of total costs in small enterprises. As such, a small increase in labour costs through improvement in labour standards should not increase the total costs significantly even if the improvements in labour standards led to no increase in productivity;

(b) Though the amount of profits earned in the majority of small undertakings appear to be low or even very low, in a certain number of these undertakings substantial profits are earned. These

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undertakings could afford to raise labour standards; and

(c) As the working conditions and the physical environment within the undertaking has an important effect on morale and efficiency of workers, on labour management relations and on productivity of the undertaking as a whole, this problem deserves a special consideration in small undertakings where poor working conditions and unsatisfactory physical environment are among the direct causes of a low level of morale and efficiency of workers.

19. In cases where the improvement of working conditions etc. cannot be borne by the enterprise, alternative solutions which will not put the entire financial burden on the owners of the enterprises should be explored. One possible action would seem to lie in the establishment by the Government or private corporations of industrial estates on which workshops and other buildings of satisfactory standards can be constructed, provided with water, power, compressed air, drainage and transport facilities. While encouraging development of small industries such action would enable the small employer to provide a satisfactory working environment

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without requiring him to undertake heavy capital expenditure. Already a number of such industrial estates have been established in the country. In many cases the financial working of these estates has encountered difficulties because of difficulties of getting raw materials. But on the labour side, even in the units which do not have such difficulties the standards are not encouraging.

20. There is conflicting evidence in regard to the effect of wage regulation on the fortunes of such undertakings. Very often the nature of awards, and the nature of employer employee relationship which is built up at the unit is the main determinant of the effectiveness of such regulation rather than the enforcement machinery which the State can provide. In any case the latter will be ineffective in a situation where labour is too willing to 'contract out' of its legal benefits. Evidence also suggests that wage regulation has not unduly affected the working of such units as is popularly believed. Experience in other countries is also more or less in line with the above statement.

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V. Construction Workers:

21. Employment on the construction or maintenance of roads or in building operations is one of the scheduled employments under the Minimum Wages Act. The construction industry covers a wide diversity of work and operations including construction of buildings for residential, commercial and industrial users, construction of roads, railways, bridges, dams, irrigation canals and maintenance and repair works on all these and work ancillary to construction. According to the 1961 census, over 2 million workers were employed in major sectors of construction and maintenance. It is suggested that this number is an under-estimate. The building and construction industry has expanded rapidly during the last 20 years. While the Central and State Public Works Departments are among the major employing authorities, a significant amount of building and construction work is in private hands. It was pointed out in the Third Five Year Plan that there was need for greater attention to safety standards in the industry. There is no labour Act governing these workers in the matter of annual leave, safety provisions, social security benefits, etc. Some elementary protection is given in the form of a Fair Wage clause in the contract entered into by the contractors with the Government construction authorities. This is, however, inadequate. There is no statutory

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enforcement machinery. In the U.K., the Factories Act takes care of building operatives and workers of engineering construction sites, and comprehensive regulations have been framed. In the United States the Bureau of reclamation is responsible for all projects and has detailed regulations which are administered by the operating offices within their jurisdiction. The Government of India have under consideration, comprehensive legislation covering health, welfare, safety and other aspects of working conditions in this industry. Wages have been fixed by Government under the Minimum Wages Act, 1948. The proposed legislation on contract labour will also give some protection.

22. The industry is characterised by a high proportion of small undertakings. This is particularly the case in maintenance works which employ only a few workers. The construction works are not located at definite points permanently but by its very nature the place of works changes at varying intervals. In case of some kinds of construction work such as roads, the work point moves continuously along the road alignment. In minor construction projects the work may get completed in a matter of few months and the workers have to move to some other place where construction might be going on. On major construction projects like dams or irrigation schemes, work may go on at particular site for

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several years, but even here it does come to an end after some years and the workers employed there have to look out for work elsewhere.

23. Another aspect of this industry is its seasonal nature. During the monsoon work often comes to a stop. Further on the same project, at different stages of the project, the number of workers employed differ widely. Due to these special characteristics the large number of workers employed in the industry are casual. These special characteristics of the industry greatly hampers the propagation and general adoption of several working practices in the industry and also labour inspection. Another effect of smallness of the size of various works is that many units find it difficult to afford the services of a Safety Officer since the cost of such a full time officer may be high when account is taken of the total number employed and of the quantity of work which is carried on by the undertaking. When sites of works are not only remote but short-lived employers are reluctant to provide even reasonable accommodation facilities to workers. Construction workers are not organised in trade unions. The casual nature of their employment is itself one of the obstacles to the growth of unions in the industry. As an I.L.O. document observes, the development of industrial relations has always presented special problems in the construction

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industry with its generally high rate of labour turnover and the variety and temporary nature of work on most sites. It is true that the scattered labour force, the multiplicity of units, the large proportion of unorganised workers and the fluctuating nature of employment tend to reduce the large scale protest action by workers. The questions that arise in this context are:

(i) How can conditions of work be improved and the safety and health of construction workers be effectively safeguarded ?

(ii) How can trade unions which have hitherto catered primarily for organised industries be made to take interest in these unorganised workers?

24. Most of the construction work is actually done by big and small contractors, the small contractors usually working as sub-contractors under the big principal contractor. There are no organised arrangements to regulate employment in the construction industry at present except in respect of technical and skilled workers directly employed by government who are usually recruited through employment exchanges. The main contractors usually maintain a small nucleus of skilled workers

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necessary for their operation and out of this pool the required number of skilled workers is deployed at work sites by the contractor. The main recruitment of labour is of unskilled type and these workers are usually recruited locally nearabout the place of work through middlemen. The general absence of any regulative protective legislation applicable to the construction industry results in many abuses like employment of child labour, or women labour under conditions which are not permissible in factories and mines. Since construction contracts are given out by tender, there is a practice among contractors to economise on labour amenities and wages so as to keep their bids low. Though Central and the State Governments have prescribed certain standards regarding wages and other amenities to be provided by contractors to their workers on government contracts, it is the common experience that the conditions prescribed in the contract rules are not observed. The evidence before the Commission suggests that un-regulated entry of contractors into the industry regardless of qualifications or resources has been a major cause of bad labour conditions and also sub-standard and slipshod work. Some system of classification and registration of contractors on the basis of their qualifications

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and resources should be introduced. The system of wage-payment in the industry is that the contractor pays the sub-contractors on piece-rates, but the latter pay individual workers by daily rates. This leads to complaints of non-payment or short-payment to workers. The Planning Commission recently set up a Working Group to draw up a standard contract form for construction work. The group suggested among other things that contractor should be required to maintain muster and wage records for all the workers employed on the projects in the prescribed form and also to issue employment card to each worker and that 'the wages due to every workmen shall be paid to him direct'. Possibly this can be a solution to the state of affairs in the industry.

25. Because of scarcity, skilled workers in many cases do enjoy a fair degree of security of employment. The semi-skilled and unskilled workers have no such security. In fact since the recruitment of the unskilled workers is made by sub-contractors the principal contractor assumes no responsibility about continuity of employment and the problem for unskilled workers is to have at least the minimum security of employment. Both the structure of the industry at present and the inherent nature of the industry make this difficult. In large urban centres where some construction activity can be

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reasonably expected to go on all the time even if the actual location of the construction work may move from point to point within the centre, it should be possible to evolve some kind of a decasualisation scheme on the lines of the one common in the Ports and Docks. The Government is the largest principal employer (sponsoring authority) in the construction industry. Another suggestion is that by devoting some care to the planning and coordination among different Governments and local authorities, it should be possible to phase the launching of major construction projects in such a way that a steady volume of work and level of employment are maintained. There are certain kinds of jobs in the construction industry which are not really casual at all. Similarly the work of operating and maintenance of construction machinery is not casual. Unfortunately a majority of workers employed on these works, either by the State Government or by some other public authorities like Zila Parishads do not enjoy the benefits of permanency. They are employed either as muster roll or as work-charged staff. These workers could be made permanent and should get all the benefits of permanency.

2.6. The International Labour Organisation has produced considerable material about safety in construction industry. Some draft proposals to enforce better safety conditions in industry,

it is reported, are also ready with Government. Action to implement these proposals has been lacking.

VI. Bidi and Cigar Workers

27. Employment in tobacco, including bidi making manufactories is included in the Schedule to the Minimum Wages Act, 1948. According to 1961 Census there were 9 lakhs of workers in the industry of whom about 5.5 lakhs were in the household sector. The working conditions prevailing in the bidi and cigar establishments have been unsatisfactory for the reason that although the labour laws, like the Factories Act, apply to such establishments, some employers circumvent the provisions of the Act, by splitting their concerns into smaller units. Most of these units are ill-ventilated and workers are crowded together in dark and dingy rooms. There are also no fixed hours of work in these establishments. There are no special permanency benefits to these workers. Victimisation in small units is quite common. If a worker takes his complaint to the employer he is listened to sympathetically but if he routes it through the union he becomes a suspect.

28. A special feature of the industry is the manufacture of bidis through contractors and distribution of work in private dwelling houses where

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the workers take the raw materials given by the employer, or his contractors. At home women and other members of the family also help in preparing the bidis. There is also workshop or factory system of production. The system of payment in the bidi industry is mainly on piece-rate basis, except in the case of workers like wrappers, labellers, sorters, etc., who are normally employed on a monthly basis. Deductions from wages in the industry are frequent and are of various types. Wages are deducted for preparation of sub-standard bidis, misuse of leaves, shortage of tobacco etc. No payment is made for rejected bidis though they are also sold in the market.

2.9. Since the employer-employee relationship is not well defined the application of the Factories Act has met with difficulties. If the Factories Act is made applicable, certain other Acts, like the Payment of Wages Act and Employees' State Insurance Act may also apply. Some State Governments passed special laws to regulate the conditions of work of these establishments but were unable to enforce the law owing to high mobility of the industry and its tendency to move on to an area where no such law prevails. The Central Government has, therefore, enacted the Bidi and Cigar Workers (Conditions of Employment) Act to regulate the contract system of work and licensing of premises in which the

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manufacture of bidi and cigar is carried on, and also deal with matters like health, hours of work, spreadover and annual leave.

30. One of the ways in which workers can get relief is through organisation of cooperatives. Attempts made in this direction have not yielded results so far. In one centre where work is organised on this basis side by side with the units of a regular employer, the organisation of the cooperative complained of marketing difficulties. Bidis usually go by brand names even in rural areas. Ultimately the State had to come to the aid of the cooperative by assuring purchases for the inmates of jails. Also whether cooperatives themselves will treat paid labour any better than a private employer is an open question.

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Minimum wage regulation has been designed to protect workers in unorganised industries. There is admittedly inadequate implementation of this act even in areas where there is concentration of these industries. It is more so when the area to be covered is widely scattered. The question arises how to ensure minimum wages for workers in the unorganised industries. One answer can be adequate organisation but this also would mean begging the

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question. In this context the observation of the I.L.O. may be a guide.

> "The existence of such practical difficulties does not mean that such small enterprises should remain unregulated in cases where they are outside the scope of the legislation or should be taken out of the scope of legislation where they are included. Wherever appropriate, the possibilities should be examined of adapting the legislation, without impairing its effectiveness, to special conditions of small establishments. In this connection, establishments of trades associations and similar organisations by small employers may be helpful in keeping them informed of legal enactments and their requirements. In addition such associations can in appropriate cases undertake part of the administrative work involved. Education and enlightenment of both management and workers can considerably facilitate the efficient implementation of the legislation. The labour contracting cooperatives would seem to have certain potentialities in enlightening the small industrial workers about their rights and obligations under the labour protection legislation. Small industrial extension

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services can be useful in providing information concerning such laws, their social and economic importance and the methods of applying them in small undertakings. The establishment of model workshop and similar pilot projects can, in particular, be of great value in providing practical training and demonstration as to how the working environment can be improved."

The Commission may well have to consider how many of these suggestions could be practicable in the Indian context.

V

LABOUR ADMINISTRATION

In recognition of its duty to protect the working class and promote its welfare, a blueprint on labour policy - A Five-Year Programme for Labour - was drawn up in 1946 when the Interim National Government came to power at the Centre. The main features of the plan for bringing about essential reforms in the interest of the working classes of India were inter alia:

Statutory prescription of minimum wages in sweated industries and occupations and in agriculture.

Promotion of 'fair wage' agreements

Steps to secure for workers in plantations a living wage.

Reduction in the hours of work in mines.

Legislation to regulate hours of work, spread-over, weekly rest periods and holidays with pay for other classes of workers not now subject to regulation.

Overhaul of the Factories Act.

Organisation of industrial training and apprenticeship schemes on a large scale.

Provision of adequate housing for workers.

Organisation of the Health Insurance Scheme.

A central law for maternity benefits.

Strengthening of the inspection staff and the Inspectorate of Mines.

2. As would be seen from subsequent events, many elements of the programme were given legislative support in the years 1947 to 1952. The Constituent Assembly

which was set up soon after Independence took note of the Plan in its deliberations. The Constitution finally adopted, contained several articles which reflect the general desire of the community to stand by the working class. Many Directive Principles of State Policy stated in the Constitution have a bearing on labour; they need no reproduction. /

II. Legislation and Voluntary Arrangements.

3. The Legislative support for the Programme referred to above was given partly by (i) strengthening the then existing legislation through suitable amendments, (ii) overhauling some of it and (iii) supplementing it by new statutes where none had existed before. The important pieces of labour legislation which evolved through all these processes could be divided into the following main groups:-

(i) Legislation about employment and training.

(ii) Legislation on working conditions.

(iii) Legislation on labour-management relations.

(iv) Legislation on wages, earnings and social security.

(v) Legislation on welfare.

(vi) Miscellaneous legislation.

Some details under each head are shown at pages 24-25 of the questionnaire issued by the Commission (appended).

4. In addition to this labour code, voluntary arrangements which are evolved in tripartite discussions have added to the benefits which are expected to accrue to labour. In this category fall the recommendations of the Indian Labour

Conference, the Standing Labour Committee and Industrial Committees. The benefits which workers get out of the Wage Board awards so far owe their origin to the tripartite decision that the unanimous recommendations of Wage Boards will be given effect to. The Code of Discipline which has given recognition to some unions, provides for the setting up of a grievance procedure, and generally promotes constructive cooperation has also been the result of a tripartite agreement. Many other similar instances can be cited.

5. These and other legislative measures/tripartite decisions continue to provide the main structure for protecting workers and improving their working and living conditions. Without entering into the controversy, as to the size of legislative protection it could be said that in terms of the range and content of legislation, the Indian labour law framework could compare favourably with what is available for workers in many advanced countries. As has been argued by some in the evidence before the Commission, if labour policy had in the course of years helped the development of strong unions, part of the legislation would have been redundant. Accepting the statement for what it is worth one does feel that a just and efficient administration of the provisions of labour laws would go a long way in improving the conditions of labour and establishing a climate for improved

labour-management relations. The problem, therefore, is to find out ways as to how labour administration could be made to yield better results to those for whom laws have been enacted.

6. The administrative arrangements envisaged for implementing the legislation enacted by the Parliament/State Legislatures and decisions taken by tripartite bodies at the Centre/States fall broadly under four agencies; (i) The Central Government, (ii) The State Governments, (iii) Local Bodies and (iv) Statutory Corporations. There is envisaged, however, a wide area of cooperation and coordination between these agencies. For instance, the Employment Exchanges (Notification of Vacancis) Act and the Apprenticeship Act are administered by State Governments though there is active effort at laying down standards and coordination of activities by the Centre. Under working conditions, the Centre has assumed responsibility for the Mines Act, the Indian Dock Labourers Act and other similar Acts. The States administer the Factories Act, the Plantations Labour Act, the Motor Transport Workers Act, the Employment of Children Act and other protective legislation passed by State Legislatures. Local Bodies in most cases are entrusted with the administration of the Shops and Commercial Establishments Act. Legislation on labour-management

relations again has been the Centre's responsibility in regard to industries specifically mentioned in the Industrial Disputes Act, 1947. The Indian Trade Unions Act, the Industrial Employment (Standing Orders) Act and a major part of the Industrial Disputes Act is again administered by the State Governments, apart from the legislation passed by the State Legislature for improving the labour-management relations in the States. Statutory Corporations administer the Employees State Insurance Act, the Employees Provident Fund Act and the Coal Mines Provident Fund and Bonus Act. The legislation on welfare is administered partly by organisations specially created by the Central or State Governments and partly departmentally.

III. Implementation.

7. The passing of legislation and accepting certain resolves in bi-partite or tri-partite meetings and parcelling them out to different agencies for implementation can hardly provide the desired benefit in real terms to the working class if the spirit of legislation is inadequately understood and the resolves accepted at the national level do not reach the units where they are expected to operate. This fact has been recognised from time to time in the reports presented to Parliament by the Central Government and presumably also in similar reports presented to the respective State

Legislatures. The Planning Commission in presenting its plans to the country has emphasised this crucial aspect in almost every report.

8. Broadly, while the approach in the First Plan was on persuasion the Second talked of deterrent penalties. This change in approach was probably because, though improvement did take place in working and living conditions of labour between 1951 and 1956 partly as a result of increasing consciousness among workers, favourable price situation and not too difficult an employment situation and partly because of enlarging the base of labour legislation, implementation was not as effective as it should have been.

9. When the Government took power after the second General Election in 1957, the Minister for Planning, Labour and Employment made a statement to the effect that the policy of his Government would be oriented to implementing adequately the legislation which has been already passed and avoiding as far as possible passing new legislation. In his inaugural address at the 15th Indian Labour Conference which followed shortly and which recommended a package deal for workers, the Labour Minister referred to the growing indiscipline in industry, the causes for which could be traced to "the sins of ommission and commission .

. of the management concerned." This statement provided the basis for the Code of Discipline (1958).

10. By about the end of 1959 the Code of Discipline, as adopted by the central organisations of employers and workers was debated on various platforms interested in finding out ways for improving industrial relations. Implementation and Evaluation Cells were set up at the centre and in a number of States. This machinery consists of an Evaluation and Implementation Division and a Tripartite Implementation Committee at the Centre and Evaluation and Implementation Committees in the States. The important functions of the E&I Committee are to examine the extent of the implementation of the various laws, agreements and awards, to fix responsibility in cases of their violations, to consider cases for out-of-court settlements, to review the working of the Code of Discipline and to maintain a two-way exchange of experience between State level committees and the Central Committee. While the functions as envisaged for the cells were wider, in its actual operation mainly because of complaints about non observance of the Code, the cells directed their activities more to see that the Code was implemented in its proper spirit.

11. By the time the Third Plan (1961-66) came to be written failures in implementation acquired a notoriety which the Plan had to comment upon.

Said the Third Plan:

> "The failure to implement awards and agreements has been a common complaint on both sides and if this were to continue, the Codes would be bereft of all meaning and purpose."

The Plan further stated:

> "A full awareness of the obligations under the Code of Discipline has to extend to all the constituents of the Central organisations of employers and workers, and it has to become more a living force in the day-to-day conduct of industrial relations."

12. The Industrial Truce Resolution adopted in November 1962 during the Chinese aggression was a further attempt to strengthen the bipartite arrangements over the whole area of industrial relations. The tripartite discussions in the last six years have, therefore, been both in relation to the Code of Discipline and the Industrial Truce Resolution.

13. The advisory panel on Labour which was constituted for the fourth Plan also emphasised the administrative aspect pointedly and pleaded for a review:

> "the problems of labour administration have not been reviewed in a detailed manner inspite of the marked changes which have occured in the size and the composition of the labour force and legislative measures undertaken to protect the labour interests."

14. Following this thinking the Draft Outline of the Fourth Plan stated more specifically that the analysis of labour administration problems should be in the following direction:

> "Three sets of problems of implementation will call for special attention during the

Fourth Plan. Firstly, there is room for considerable improvement in the administration of the legislation which has been enacted for the protection, safety and welfare of industrial workers. In the second place, important schemes such as works committees and joint management councils have made very limited progress. It is necessary to orient both workers and employers to these changes and find ways of meeting the practical problems which have been encountered. Finally, there are several directions in which execution of programmes which have large bearing on the welfare and prospects of workers need to be strengthened, for instance, workers' education, provision of facilities for imparting higher skills and training to workers, social security and labour research."

IV. Administrative Arrangements.

15. At the highest policy level, Labour and Employment is an independent Department at the Centre. In the States the pattern varies; at times labour is tagged on with Industry and in some cases it goes with other Departments. In the evidence recorded by the Commission so far a plea is made by employers that wherever possible the Minister for Industries should also hold the Labour portfolio. If for some reasons this is not possible, at the level of Secretary to Government at least, the Department of Industry and Labour should be under one charge. There is also a suggestion that since a greater part of the work of Labour Department is concerned with industrial relations or matters which have a bearing on the subject, the name 'Labour Department' should be changed to 'Industrial Relations Department'. The logic

given for changing the name is that by calling it 'Labour Department' the staff of the Department is so conditioned psychologically that it has to look to the interests of labour first. This conditioning is, it is stated at times, harmful to promoting better industrial relations.

16. In a majority of cases, as pointed out earlier, administration of labour laws is the responsibility of the State Governments, the Central Government exercising advisory and coordinating functions. Thus while factory inspectorates are appointed by the States, the Director-General Factory Advice Service and Labour Institutes (who was till recently designated as 'The Chief Adviser of Factories') deals with all matters which help Government through him to understand the working of the Factories Act and the rules made thereunder. The Directorate seeks to keep itself posted with problems of implementation from the State Factory Inspectorates and on that basis advises Governments about the action to be taken keeping in mind the all India picture. The Central Labour Institute and its regional counter-parts which have now started functioning are expected to strengthen the technical content of the advice rendered by the organisation. The Directorate General of Employment and Training has the same functions in regard to the administration of the

Apprentices Act, 1961 and the Compulsory Notification of Vacancies Act, 1959. Both in the training and employment aspects the organisation has been given research wings, which help the Directorate General in understanding the latest developments in India and in other countries. Labour Bureau, Simla, helps in setting standards for socio-economic enquiries to be undertaken to understanding labour conditions as also coordinating information on Consumer Price Index Numbers which have for some time become an important area of debate in industrial relations, not so much between employers and workers but between Government on one side and employers and workers on the other; each group for its own reasons. The Chief Labour Commissioner's Organisation stands on a different footing. Though it has no coordinating or advisory functions, it has recently started training courses for State Government officials concerned with the settlement of industrial disputes. Apart from these, the Statutory Corporations set up by Government like the Employees' State Insurance Corporation and the Office of the Central Provident Fund Commissioner have their respective responsibilities for administration of social security arrangements.

17. All States have set up organisations for the administration and enforcement of the various labour laws which are in force within their

territories and for the collection, compilation and dissemination of statistical and other information relating to labour. All States have appointed Labour Commissioners for the purpose of administration of labour laws and welfare activities in their respective areas. In the discharge of their functions, Labour Commissioners are generally assisted by Joint Labour Commissioners, Deputy Labour Commissioners and/or Assistant Labour Commissioners and Labour Officers. Most of the States have also appointed (i) Chief Inspector of Factories and his inspectorate; (ii) Chief Inspector of Boilers and his inspectorate; (iii) Commissioner for Workmen's Compensation under the Workmen's Compensation Act, 1923 and (iv) Registrar of Trade Unions under the Indian Trade Unions Act, 1926 for administering the respective pieces of legislation. The Labour Commissioner often combines the functions of some of these officers enumerated above. In several States, the Labour Commissioner is also the Registrar of Trade Unions under the Trade Unions Act, and the Chief Inspector of Factories. But the practice of separating the posts of Labour Commissioner and the Chief Inspector of Factories has now been increasingly in vogue. In some States the Chief Inspector of Factories is an authority independent of the Labour Commissioner and in others the latter exercises his

supervisory jurisdiction over the former.

18. In the current context as also of the future when industrial development is likely to acquire a tempo and labour is likely to become more and more aware of its rights and privileges, persons required for manning the labour administration machinery may have to be equipped for new tasks; there will have to be an increasing number of them. This is one of the warnings being sounded in the evidence before the Commission. It is also being mentioned that the task of the labour administrator in industrial democracy is not merely to see to the compliance with the legal provisions under the various Acts. It is more to create the necessary atmosphere in which the obligations and responsibilities under many laws are understood and accepted, and to create the necessary consciousness for the observance of these provisions. It should also promote the activities and arrangements which aim at improving the efficiency of implementation of statutory obligations. While it is true that in this area more than any other, the social and political environments in the community as a whole will be reflected in the attitudes of employers and workers it is equally possible that with increasing organisation of labour, it will set pace as to what should happen in the community. And it

is this possibility that will have to be kept in mind in equipping personnel for labour administration.

19. Barring the Indian Trade Unions Act,1926 the provisions of most of the labour laws impose one obligation or the other primarily on the employer. These obligations may be in regard to conditions of service, working conditions, maintenance of sanitation and hygiene, up-keep of the work place, remuneration to workers, welfare facilities, safety measures, notification of vacancies, training of apprentices and the like. Each one of these obligations affects different employers differently. Implementation of the legislation in this field particularly depends on the willing acceptance or otherwise of such obligations by the employers. To understand the limits of this acceptance an analysis of the procedure for evolving labour policies by the Central and State Governments is necessary. The Central arrangements are discussed below in some detail.

20. In the Indian system, the evolution of most of labour legislation or voluntary arrangements has been through tripartite consultations. Certain measure of willingness on the part of Governments, Central and States, employers, public sector and private sector, large or small and workers could thus be presumed. Since as stated earlier, a major responsibility for implementation is rightly fixed

on the employer it may be useful to discuss that component of the tripartite first. Communications within an employers' organisation being what they are, it is possible that the limits of acceptance or compliance with the provisions of the law will vary depending upon the nature and extent of consultation within the employers' organisation, the size of the employing unit, its location, the closeness of the employer with the central organisation, apart from his capacity to provide the minimum facilities required by the Act. Specifically, it may also mean, approaching the employer group sector-wise or according to size, and also according to whether the sectors and sizes excluded from the tripartite could say that obligations accepted by employers' organisations need not be necessarily binding upon them. Since this argument was at one time heard from the public sector, arrangements have recently been made to give the units under it a proper representation in the tripartite. The problem of size has however not been solved. Small units can still argue that obligations cast on them on the same basis as those on large size units make their working uneconomic. Even so, a majority of employers, would accept these obligations, though, in their assessment the obligations, at least some of them, may be an avoidable burden. No one, presumably,

wants to be on the wrong side of the law. In a minority of cases it is possible that law is objected to both in its letter and much more so in spirit. It is these cases which make news and create an impression of ineffective implementation. At least this is the impression which employers wanted to convey to the Commission so far.

21. Then there is the general problem of communication and limits of acceptance in unions also; somewhat more complicated perhaps because of shifting loyalties to a union among the rank and file of workers. Also, as in the case of employers, many workers' organisations are either independent or affiliated to federations other than those invited for tripartite consultations. With the limit placed by Government on federations of a minimum membership to qualify for consultations this problem will continue to remain unless trade union unity which has eluded union leaders so far becomes a future reality.

22. On the side of Government again the problems posed can be discussed in a similar way. Certain obligations are accepted by Government but when it comes to giving a concrete shape to them, there have been cases where Government has faltered giving the impression that what has been suggested by one Ministry cannot necessarily be the view of the Government though in tripartite meetings the

the Ministry is looked upon as the representative as a whole. of the Government/ This may happen within a Government, Central or State. But the problem of communication may also be as between the Labour Ministry at the Centre and Labour Departments of State Governments. But by and large this latter problem has not been faced so far in any significant form, though one need not take it for granted that this will not arise at all.

23. It is within these limits of acceptability that implementation of labour policy i.e. labour administration has to be viewed. Legislation and voluntary agreements have to be treated differently in this context. Whether there is acceptability or not legislation has to be followed, since most of the legislation does contain provisions for imposition of penalties and prosecution for non-observance of obligations; not so is the case with the latter. A view is often expressed that the writing of penalties in a legislation gives it the character of persecution, prosecution in case of non-compliance. Labour legislation being mostly social in character, should develop its sanctions through the process of education. According to this view persuasive methods yield better results and they should be adequately used. The other view is also equally strongly put forward, namely that irrespective of

penalties which exist in the law today legislative requirements have been bypassed; penalties laid down not being deterrent enough.

24. Cases have been brought to the notice of the Commission where after legal action has been initiated by officers in consultation with Government, Government has for unknown reasons, changed its mind and officers have been asked to withdraw prosecution. Such cases may be rare, but their occurrence is disturbing.

25. But whatever be the machinery for detecting non-implementation and the nature of penalties, once non-implementation is established, it goes without saying that just as the framework of legislation and voluntary arrangements is developed through a tripartite effort, supervision over implementation should also have a tripartite character, though of a different type. This aspect is now being increasingly realised by the consultative institutions created by Governments. Indeed, tripartite discussions are, in recent years, devoting much more time to implementation than they used to before. The role of Government will continue to be important particularly in the matter of creating/strengthening a permissive type of machinery to which complainants could come for redress. While such an arrangement will work where the industry, both labour and management, is organised, in small units and in unorganised

sections of workers greater vigilance on the side of Government will still be necessary. It has also been urged that the Commission should distinguish between cases of genuine hardship in small establishments and those where an employer is wanting to deny to workers the benefits available under the law by sub-dividing his unit into smaller parts in order to evade legal provisions. In the former case an employer may be wanting to operate on a small scale as a matter of necessity; in the latter, the intentions of the employer are not above board. It should be the responsibility of Labour Administration to see that remedies should be tried out for avoiding such evasion.

26. Some unions have complained of the state of implementation in public undertakings. According to them the argument generally advanced by management is of the social orientation of the public sector and absence of profit motive. In some cases the argument is that the privileges enjoyed by workers in totality are better than those enjoyed elsewhere. Neither of these arguments can be a valid justification for seeking exemptions from specific legal requirements, which in most cases lay down the minimum requirements only. Profit or loss has to be worked out on the basis of costs which take into account all the requirements of legislation. The argument

that public sector units should operate on no profit basis itself is also untenable on the ground that public undertakings are expected to create a surplus which helps them develop further. The social-orientation argument again cannot be stretched too far in favour of claiming exemptions under labour legislation because by hypothesis labour legislation itself has a social orientation. The stretching of this argument would mean that what is given to labour as a matter of right by legislation is denied under the specious argument that the total output of the public sector has to be generated on socially oriented considerations and labour should not claim what is due to it under statute.

27. Case studies of industrial relations and implementation of labour laws in public sector undertakings undertaken by the Implementation and Evaluation Division of the Ministry of Labour and Employment suggest that the position concerning implementation of labour legislation in public sector undertakings has been generally satisfactory, but some instances of inadequate observance of safety and welfare provisions have been noticed. It was found that the defects noted are neither intentional nor were they major lapses, they could be rectified with some more attention. While these arrangements are expected to improve the situation over time,

the fact that investigations were necessary to establish whether public sector units observe the statutory obligations is itself a comment on the state of affairs in them. It is reported that managements are faced with procedural difficulties in obtaining financial and other sanctions from their principals in distant places, a disadvantage not suffered by private undertakings. There is also the difficulty of following a policy suitable in one area for fear of its repercussions elsewhere. The managements are therefore a bit hesitant to take quick decisions and often express their helplessness. All these arguments will have to be carefully weighed in reaching conclusions.

28. The responsibility for administration of labour laws is shared between the Centre and State Governments. To avoid complications which are likely to result in the event of non-uniformity of working conditions according to practices in different States a demand has arisen that industrial relations in some public sector units should be brought within Central jurisdiction. It is also suggested that certain fields now falling under the jurisdiction of the Centre should appropriately be transferred to the State machinery. For instance, under the existing arrangements, mica mining is an industry for which the appropriate Government will be the Central Government but a factory processing mica under the same management and in the same

neighbourhood will be supervised by the State Government. It has been contended that bringing both these within the purview of the same authority, preferably in the State sphere, would make enforcement more effective. Under the present arrangement it is possible in the case of disputes arising in such composite units that industrial relations machinery set up by the Centre and the concerned State may take a different view and create conditions under which management would be difficult.

29. In discussing the problems of administration apart from the working of the various offices under the Ministry/Department of Labour, the Ministry/ Department itself has been a subject of some comment. Some observations on this point have already been made. It has been suggested in the evidence before the Commission so far that Labour Ministry/Department, though it may have the last word in labour matters in theory, has to bow down very often to the dictates of Ministries which are considered to be of a more prestigeous type. Conflicts arise due to the very nature of the functions of the Labour Ministry/Department with either the employing departments or departments of Finance, Industry etc. The experience in States narrated mainly by trade unions is that in such

conflicts the Labour Department is helpless. In matters where departmental undertakings are involved the Department of Labour is singled out for criticism as if it is not a part of the Government. It is also claimed that in many cases the Labour portfolio is held by a junior Minister and in case a senior holds it, he will be given other portfolios. In either case interest of labour suffers because of lack of weight attached to the views of a junior or inadequate attention paid by the senior Minister to the work of the Department.

30. Two important functionaries in Government at the official level dealing with labour are (i) the Secretary to the Department and (ii) the Labour Commissioner. In many States Labour Secretary also attends to the work of other departments entrusted to him. Here again, because of the somewhat heavier responsibilities in these other departments, labour matters at that level acquire. secondary importance. Added to this, the entrusting of Labour Commissioner's office to a service officer makes it difficult to establish continuity in that office because of the officer's eligibility for transfer which again is detrimental to problems of labour administration. What is true of the labour portfolio at the Ministerial level is also alleged to be true at the level of Labour Secretary/Commissioner. Because of

the thankless task which the Labour Secretary/ Commissioner is required to perform it is reported that this has turned out to be an unwanted responsibility.

31. Then there is the larger area of comment/ criticism which directly concerns the office of the Labour Commissioner - the work relating to settlement of disputes and registration/recognition of unions. Observations have been made on the inadequacy of inspectors under the Payment of Wages Act and the ineffective way in which Minimum Wage legislation has been administered. But by and large the major portion of criticism is on the working of the conciliation machinery. This aspect requires to be gone into in some detail. The comments on conciliation machinery - which have been brought before the Commission - fall mainly under the following heads*,(i) delays; (ii) attitude of parties towards conciliation; (iii) the inadequacy of conciliation machinery; (iv) the quality of personnel; (v) the powers of conciliation officers; (vi) the assessment of the working of the machinery; and (vii) suggestions for improvement. While all these matters require

*Some of the arguments made against the adjudication machinery and the functioning of wage boards are also on these lines.

to be gone into it is the last item which should be posed for discussion.

32. Most of the complaints against the working of the conciliation machinery originate from the status, powers and training of the persons entrusted with the task of conciliation. Some of the suggestions which have been repeatedly made are: a) The conciliation officer should have powers to adjudicate in regard to disputes in small units or in matters which do not involve high stakes; b) The officer's assessment about reference of a dispute to adjudication should be respected; c) The implementation of settlement reached in conciliation should also be the responsibility of the same officers. (b) and (c) would mean that a conciliation officer should combine in himself the functions of a conciliator, adjudicator and implementator.

33. There seems to be a practice in some States to seek conciliation officer's confidential reports about the attitude of the parties towards his effort to bring about a settlement. In some cases these reports are brought to the notice of the parties. The result is that a frank assessment of the case at conciliation stage through reports which are not to be made public becomes difficult; and so does the future work of the officer because his attitude towards one party or the other, howsoever objective

it may be, gets known and the party commented against nurses a grievance which is not healthy for future settlement of disputes. The evidence points out that even a more difficult situation is created when a conciliator seeks to settle a dispute in a public undertaking. In such cases when the dispute is not settled the officer's comments on the attitude of management or trade union concerned in it are sent for comments through the Labour Department and the Employing Department to the same officer, about whose attitude the report is made This, it is contended, creates an anomalous situation.

34. Discretionary powers which vest with Government have come in for a major share of criticism. Their misuse has been commented so adversely by trade unions that some went even to the extent of suggesting that existing powers of Labour Department should be curtailed. Their claim is that the discretion which vests in the Labour Department is used to labour's disadvantage. A more general complaint, however, seems to be that the Department uses its discretionary powers to protect trade unions of particular brand. In some cases Governments have it is stated, , reserved for themselves the right of judging the merits of each demand and referring only some of them to industrial tribunals and withholding others. The implication is that in case of

unions which do not find favour with Government, it is only the minor demands which go in for adjudication, if at all.

35. At pre-conciliation level, the administrative discretion is involved in the matter of treating the dispute - whether to encourage informal mutual settlement or without such encouragement even decline conciliation proceedings or accept the dispute in conciliation. At higher levels of Government, there is discretion whether to declare a particular industry a public utility service for the purpose of Industrial Disputes Act and the discretion to amend/modify an award. Reference or non-reference of a dispute to a particular agency has its impact on industrial relations; influencing union policies, employers' attitudes, problems of inter-union rivalries, nature of political influence of trade unions, employers and so on.

36. It has been argued with equal force that the alleged misuse of discretion is not a reality. If certain demands get left out it is because there may be existing agreements/settlements/ awards governing them. It may also be that as a matter of prestige such demands are put forward again by rival unions even before the awards/agreements etc. run their course. Since questions of prestige of this type cannot be a guide for governmental action, selective

references may take place and with justification. The argument about "favoured" unions is also not reported to be valid. In every debate on demands for grants, this point is made in the Parliament by Members of the opposition and refuted by Government with statistics at its command. (The same may be the case with State Legislatures.) In fact, many trade unions have put forward a plea that the so-called "favoured" unions have been getting a raw deal at the hands of Government in the sense that because of the instrument of agitation which is always in the hands of unions alleging step-motherly treatment, Governments have, at times, found themselves shy of granting references to tribunals where they are due in case of the "favoured" unions.

37. One argument which has been put before the Commission from the Government side is that at the secretariat level decisions have been taken purely on merit. The rules of the game which have been settled in tripartite meetings are followed. Cases where discretion is wrongly used at a level higher than the secretariat are indeed rare. But it is such rare cases which perhaps strike headlines, so to say. They become more an issue of prestige. The situation is made worse by persons, who are near the seats of power, claiming that their word will be listened to by Government more readily and

improving their popularity thereby.

38. Discretionary powers with Government operate, it is alleged, more harshly against labour in the case of public sector undertakings, especially where the Central Government is involved. Delays in Central Government in processing such cases handled by the concerned State Government, if it happens to be the appropriate authority, add to dissatisfaction inherent in the situation. Many cases arise where the State Governments do not act without a signal from the Centre. And at the Centre, the procedures of consultation are so rigid that the formalities take a long time. In the last three years the Ministry of Labour at the Centre have taken steps to expedite the process of clearing such references but the full effect of these steps is yet to be felt.

39. Cases have been reported that discretion has been used even against the registration of unions such registration does not give any special powers in terms of recognition to persons who seek to come together. The main argument advanced by unions against the procedure of verification is the alleged interference by Government to help a favoured union.

40. A point mentioned in the course of evidence before the Commission so far is that a good part

of labour legislation may not be self enforcing. Labour organisations may not be equally strong every where to enforce compliance. But for reducing the burden on implementing authorities the Commission should consider the possibility of giving workers' organisations the statutory authority to approach courts direct for redress. The present arrangement under which the parties have to approach courts only through Government causes avoidable hardship to unions. It also leaves room for a charge that Government's discretion is used in its political interest. The arguments against the proposal about the unions to be given this power ; a multi union situation and vexatious litigation have also been advanced. The inadequate compliance with the provisions of Shops and Commercial Establishments Act has been voiced everywhere by workers. The complaint is that because of its administration by local bodies, where the voice of owners of these establishments is stronger than that of workers, prosecutions are hard to come by. This complaint received a mild support from officials of some Civic Corporations also. The same objection is valid a fortiori to the proposition that the implementation of the Minimum Wages Act in agriculture should be left in the hands of Panchayats.

V. Conclusion

41. For several years now there have been periodic discussions about the working of the implementation and enforcement machinery and the best method of improving it. These discussions have revealed certain common factors which are responsible for inadequate implementation of labour laws in most of the States. While evaluating the working of the labour administration and enforcement machinery, one has to distinguish between two types of problems faced by the administrator. Firstly, there are certain difficulties which are due to the prevailing legal provisions themselves; then, there are problems which arise not out of the legal provisions but due to other physical and environmental factors. Lack of power to call for certain records or to compel attendance at proceedings etc. fall in the former category and so do cases where delays occur as a result of differences in interpretation of awards/ settlements/agreements as between employers and workers. In seeking remedies such distinctions require to be kept in mind.

42. Lack of resources to augment their inspection and enforcement staff is another, but very important hurdle. Although the need for such strengthening has been fully appreciated by the labour department as well as other departments, Central or State,

it has not been possible in most cases to translate this need into a reality because of financial stringency everywhere. The inadequacy of staff and their being over-burdened with several duties has resulted in delays. Such a state of affairs is admittedly unsatisfactory but can be remedied only if adequate additional staff is appointed. It has been suggested by some States that the Central Government should share a part of the expenses involved in the implementation and enforcement of labour legislation.

43. Finally, there is a suggestion that in order to minimise political influence on the industrial relations machinery, it may be advisable to have a Central Cadre of Industrial Relations Service to which the Central and State officials should belong. These officers should be transferable from the State to the Centre and vice-versa. There is also the suggestion that for minimising political interference the industrial relations machinery should be under the supervision of an independent authority like the Industrial Court.

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