ON INDUSTRIAL RELATIONS

AITUC REPLIES TO GOVT. QUESTIONNAIRE

ALL-INDIA TRADE UNION CONGRESS

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REPLIES OF THE A.I.T.U.C. TO QUESTIONNAIRE ON INDUSTRIAL RELATIONS.

I—PRELIMINARY

1. Do you consider revision of the Industrial Disputes Act, 1947, necessary? If you do, in what respects and for what reasons?

1. The industrial Disputes Act of 1947 and similar laws in the States should be immediately repealed. They are so bad as to be incapable of any intelligent and helpful revision.

The Acts are bad not because the framers could not frame good ones. They are bad because they were framed with an evil objective, and that evil objective was to make such an Industrial Relations Law that it should make the growth of good, strong, democratic trade unions impossible, keep the workers divided and unorganised, help only company unions if at all unions were to grow, help to delay in settlement of disputes, help the employers to attack the workers with ease and make strikes almost impossible, help the big employers against the small employers—in short make progress impossible in any direction.

That the objective has not so far succeeded, that occasionally the workers received a good award from the machinery of tribunals under the Acts and that independent unions have grown and strike struggles have won, is not the fault of the law-makers or their objectives.

The inherent strength of the working class and the healthy class-outlook and confidence that it acquired in its early struggles and leadership has enabled it to withstand the powerful onslaught launched against it through the medium of these laws on industrial disputes and relations.

These implied objectives of the 1947 Act were not its own creation but in a way are an inheritance and continuation from the past.

It is notable that no law on industrial disputes and relations existed prior to 1929. The first law on industrial disputes came in, when the employers wanted to launch a powerful attack on workers' wages and introduce rationalisation and when the workers began to resist doggedly and

successfully. The powerful strike-struggles of 1927, 1928 and 1929, the great upsurge of trade union movement, with mass membership, functioning factory committees and cadres, and the recognition that the employers had to grant to these trade unions moved the British Government to bring in the Law on Trade Disputes in 1929. And when the Law failed to break the movement, they attacked the unions and their struggles with all the forces at their disposal, including illegalisation of unions, conspiracy cases and detention camps.

In 1934, the Bombay Government framed a law on conciliation and brought in Labour Officers and Conciliation Officers *as a substitute for and alternative to trade unions.* The employers refused to deal through unions which were not amenable to them and Government thought they could divert the worker from trade unionism to Government Law Courts, officers and company unions.

The same spirit pervaded the legislation of the Bombay Congress Ministry of 1937. It was fully applied during the war and the Act of 1947 and the Bill of 1950 continued the legacy to the further detriment of the working-class and the trade-union movements.

That is the genealogy in short and the parenthood of the Industrial Relations Acts and Bills that are the subject matter of this questionnaire.

Even after this questionnaire was issued responsible ministers have been making speeches and inadvertently betraying the same old objective behind this questionnaire and the law that is expected to follow from it—i.e., to make the existence of the All-India Trade Union Congress and the trade union movement led by it impossible and to make certain political ideologies and ideals, described as communist, untenable, if not unlawful.

The working of the present laws on industrial relations has shown that they were designed to enable only the political party of the ruling classes, the National Congress, to become entrenched in the trade union movement through its subsidiary organisation, the Indian National Trade Union Congress (INTUC). Despite express provisions against recognition of company unions, the INTUC unions —though financed and supported by the employers—have been recognised and the law was so framed as to make their recognition alone possible to the exclusion of any other union. The law was so designed that even when lacs of workers struck against the agreements excuted by the INTUC unions, or awards accepted by it, these unions continued to be "approved", "recognised and representative".

We submit, therefore, that the present law be repealed and a new law be framed, not with the same objectives, but with different ones, i.e., without political prejudices and with the idea of enabling the workers to build strong democratic trade unions and through their recognition and strength to achieve their demands for improved standards of living and conditions of work, to resist the attacks of the employers, and to take leadership in building a prosperous, democratic and peaceful economy for the country and the people.

II—NATURE OF LEGISLATION

2. Do you consider it necessary or useful to have a uniform basic law relating to industrial relations applicable to all States, or

3. Would you allow States to have their own legislation if they do not wish to avail themselves of the central legislation?

4. Would you prefer the law relating to industrial relations to be a short and simple one containing only the minimum indispensable provisions, or

5. Would you make it an exhaustive one, providing for agencies and authorities, all of which may not be availed of by all States?

6. Is it necessary to incorporate the provisions of the Industrial Employment (Standing Orders) Act, 1948, in the industrial relations law?

2. It is necessary to have a uniform basic law relating to industrial relations applicable to all States.

Indian economy is capitalist-landlord economy. It has its own Central State guarding the fundamental class relations on which this economy is based. The basic laws of capitalist economy in the industrial sector or in the employer-employee relations operate throughout the Indian Union in a uniform manner, though different areas or States may be at different levels in their industrial development. The different States in the Indian Union are not independent sovereign states and in a position to raise economic barriers against each other, as say, England, America or France can do, in order to shape their capitalist economy in their own way and distinct from each other.

Moreover, capitalist economy throughout the capitalist world breaks down individual State or industrial barriers and operates on the basis of uniform laws in their relation to the working class. Wages or hours of work in one industry or State anywhere in any part of the world affect

capitalist economy, through the market and competition in other parts of the capitalist world and consequently the labour conventions even in such a body as the ILO show the necessity and inevitability of the laws in relation to the working class in the domain of employer-employee relations assuming uniformity. And this uniformity not only grows on a national scale but even on the international scale.

3. No State should be allowed to have its own legislation on certain basic questions to the detriment of the workers though some variations in the application of the Central laws will be permitted.

For example, the basic law on eight-hour day, child and women labour, etc., cannot be changed to longer hours or permitting child labour by any State.

But a State predominantly concerned with mining or chemicals may legislate for 6-hour day for work in underground mining or dangerous chemicals. Similarly different States in carrying out the law regarding minimum living wage will be required to have different money quantums to yield a more or less uniform content of minimum living wage.

No individual variations beyond this can be allowed.

In the matter of settlement of disputes in particular, the present anarchy and confusion of laws must be ended.

4. & 5. We would prefer the law relating to industrial relations to be a short, simple and effective one with the necessary indispensable provisions.

6. The present Industrial Employment (Standing Orders) Act, 1946 should be repealed and a new set of Standing Orders meeting the criticism of the workers of obnoxious provisions of the present Act be framed.

III—JURISDICTION OF THE CENTRAL AND STATE GOVERNMENTS

7. (a) What should be the respective jurisdictions of the Central and State Governments in regard to industrial disputes? Does the division of jurisdiction provided for in Section 2(a) of the Industrial Disputes Act, 1947, require any alteration?

(b) Under Section 32 of the Industries (Development and Regulation) Act, 1951, industrial disputes concerning such controlled industries as may be specified in that behalf by the Central Government are to come within the Central sphere. What considera-

tions should the Central Government bear in mind in deciding to bring within the Central sphere industrial disputes in any such controlled industry?

(c) Should disputes in cantonment boards and air transport companies be brought within the sphere of the Central Government?

8. Employers having branches or establishments in several States have increasingly been asking for expansion of the jurisdiction of the Central Government. In view of the difficulties of centralised administration, do you think that it is necessary or proper for the Central Government to agree to any large-scale extension of their administrative jurisdiction?

7. (a), (b) & (c). If an industry or a concern has branches in more than one State and the dispute concerns all such employees, the initiative for the application of the law will have to be with the Central Government. Otherwise, the particular State Government should act.

No special considerations need apply in relation to controlled industries or cantonment boards etc.

8. As in 7. The central administration has become difficult because of the present cumbrous nature of the legislation.

IV—SCOPE OF LEGISLATION

9. (i) Should the law apply only to industrial establishments as commonly understood or should it apply also to—

(a) commercial establishments,
(b) banking and insurance companies,
(c) transport services,
(d) service establishments such as telegraphs, telephones, broadcasting, irrigation, public works, etc.,
(e) plantations and agricultural establishments,
(f) any other establishments?

(ii) Should the law apply to—

(a) small establishments employing less than a prescribed number of employees;
(b) Armed forces and police forces;
(c) Civil Servants;
(d) persons employed in a managerial or administrative capacity;
(e) apprentices;
(f) domestic servants?

10. How should the expression "civil servants" be defined?

9. (i). The law should apply not only to industrial establishments but also establishments, concerns, undertakings and services mentioned in the question itself.
9 (ii). It should apply to categories mentioned in a,b,c,d, e, f.

Some distinction may have to be made in the case of the armed forces and the police forces.

Members of the armed and the police forces are also citizens of the State, and as such should be given all the rights of citizens including the right to form associations. These rights, however, are in practice extremely limited by the exercise of the restrictions under Article 19 (4) of the Indian Constitution even for ordinary citizens.

Members of the services under the Union or State Governments are also in part specially governed in regard to employment, discharge, etc., by Chapter XIV regarding "Services under the Union and the State".

In a State, where the army and the police stand contraposed to the people as such, and where the armed and police forces exist not merely for defence against a foreign invader but also for suppressing the people, especially the workers and peasants, and for maintaining the existing system of exploitation, the ruling class and its State cannot tolerate the conferring of democratic rights on the members of the armed and police forces and allow them even the right of association.

In such a State, the right to strike and collective bargaining of the working class, if applied to the forces, would be interpreted as right to mutiny. In the present conditions of democratic consciousness and organisation and the present social order, we do not think we can ask for the trade union law being made applicable in all its implications to the armed and police forces.

But we do hold that certain rights of forming associations, and agitating for their demands without the fear of court-martials, discharges, etc., must be allowed to the armed and police forces.

It is well known that during and after the end of the war, the armed and police forces in India, England, U.S.A., etc., did take to forms of organisation and protests not allowed to them, in order to secure from their employers, i.e., the State, the satisfaction of the demands in the matter of pay, repatriation, allowances, compensation, punishments and bureaucratic injustices.

Hence we think some elements of the law on employer-employee relations must be made applicable to the armed and police forces. Which these should be and in what form

can be considered separately. Rigid discipline of the army and democratic rights are not necessarily incompatible. In fact, discipline is strengthened under a real democracy, where it becomes conscious, voluntary and self-administered.

10. "Civil Servant" should be defined as one who holds any civil post under the Union or the State Government.

V—DISPUTES IN BANKS

11. It has been suggested that the uninterrupted working of a bank is of far greater public importance than that of a factory or other industrial concern and that it is, therefore, necessary to evolve a special scheme for the regulation of employer-employee relations in banks as distinct from the general scheme of industrial relations in industry. What are your views in the matter?

12. Do you think that strikes and lockouts, as legal instruments of bargaining in banks, should be banned and replaced by an alternative machinery consisting of conciliation and adjudication, which will automatically be available to the parties without the intervention of, or interference by, Government?

13. Should the Standing Tribunal envisaged in paragraph 12 be a multi-member Tribunal including an expert in banking?

14. It has been suggested that expert knowledge of banking is necessary for the successful administration of the special law proposed for banks and that the Reserve Bank should, subject to the control of the Central Government, be made statutorily responsible for the administration of that law instead of the present industrial relations machinery. What are your views in the matter?

15. In order to safeguard the position of office-bearers of trade unions in banks, do you think that, without prejudice to the general power of dismissal in accordance with the prescribed procedure, no punishment should be inflicted on an office-bearer, and no office-bearer should be transferred from office to office within twelve months of the previous transfer, except in consultation with the trade union concerned and, in the event of disagreement, except with the approval of the Conciliation Officer?

16. In view of these special features of employer-employee relations in banks, is it preferable to provide for them through a separate legislation?

11. The suggestion that the working of a bank is of far greater public importance than that of a factory or other industrial concern is baseless and can emanate only from the bankers.

The "uninterrupted working" of a bank is not interrupted only by a strike of the bank employees. There have often been severe bank failures in history, as a result of the speculations and shady deals of bank monopolists and due to the crisis in the capitalist economy. When the public are ruined in such cases, what special law was or is there to protect the public against it?

Strikes and struggles by bank employees, however, have nowhere led to any bank failure and loss to the public and to their deposits.

Nor do strikes affect the system of banking as a whole in such a way as to give a setback to production and distribution of goods. A strike is not a failure of a bank but merely suspension of its day to day operations, which in their totality embrace only a small fraction of the people and of the movement of goods.

Banks have nothing to do with production of goods, of real wealth and values. They merely help to skim the profits. In the matter of "public credit", they are not different from money lenders and one never talks of giving special protection to money lenders. They should have no special privileges in the law regarding employer-employee relations.

Since we do not recognise that the employer-employee relations in banks have any such special features as to demand special laws regarding them, the discussion of the other questions, 12-16, is superfluous.

The suggestion that the Reserve Bank which itself is a big employer and a bank of the bankers should be the administrator of the special law can only excite laughter in the working class.

The demand for special laws curtailing rights of bank employees evidently emanates from the bankers since the bank employees became conscious and strongly organised.

VI—DISPUTES IN DEFENCE INDUSTRIAL UNDERTAKINGS

17. It has been suggested that civilian workers employed in industrial undertakings under the Ministry of Defence should be excluded from the scope of the law relating to industrial relations for the following reasons :—

(i) Such workers belong to a class distinct from ordinary industrial labour and have, by the very nature and importance of the duties on which they are employed, to be subject to a stricter code of conduct than corresponding personnel in civilian establishments.

(ii) They differ even from other Government employees engaged in industrial undertakings in that they generally work in close association with service personnel from whom a very high standard of discipline is expected and the possibility of such personnel being affected by any laxity in their fellow civilians in the same establishment cannot be ignored.

(iii) It is necessary to exclude such workers from the general law in the interests of security and of the imperative need for avoiding situations which might adversely affect the efficiency of the armed forces, as will happen if work in defence factories and installations is brought to a standstill as a result of labour strikes.

What are your views?

18. As an alternative to the exclusion of defence civilian personnel from the industrial relations law, it has been suggested that industrial disputes relating to such personnel should be decided by *ad hoc* boards consisting of—

(1) a representative of the Ministry of Defence as Chairman,

(2) a representative of the aggrieved workers, and

(3) the Director or the Officer-in-Charge of the establishment in which the dispute has arisen,

instead of Industrial Tribunals. Please state your opinion

17. Civilian workers employed in industrial undertakings under the Ministry of Defence should not be excluded from the scope of the industrial relations laws.

If, as the questionnaire suggests, their work is so important for the State and security, they should have more rights and avenues for satisfaction of their demands and not less than the civilian workers.

In the name of defence, security and efficiency of the armed forces, hundreds of thousands of workers cannot be deprived of their rights as workers. No amount of such talk or threats of discipline prevented strikes during the war in ordnance factories in England and other capitalist countries. Recently even the workers in the atomic plants and the bomber air forces resorted to strikes in the U.S.A.

In fact as the State is the employer in such undertakings, the workers must have more right of organisation, strike, etc., inasmuch as they have to contend against a far more powerful employer, i.e., the State, than the private factory owner.

Some at least of the inefficiency, corruption and pilferage in the undertakings under the Defence Ministry are due to the fact that the workers and the staff in several of them are not allowed to exercise the right of protests and demonstrations against those high placed bureaucrats who engage in corrupt practices.

Strikes of the working class have never injured the interests of security and defence of a country. It is the corruption, the selfish interests and betrayal by the decadent ruling classes that have always endangered a country's independence. Hence, we reject all that is implied in these questions as a libel on the working class.

18. Does not arise, see above.

VII—BASIC PRINCIPLES

19. Having regard to the fact—

(i) that in an economy which is organised for planned production and distribution, such as is envisaged for the country in the near future, strikes and lockouts have practically no place,

(ii) that the country is at present passing through a period of economic emergency, and

(iii) that it is imperative to maintain production at the highest possible level,

which, if any, of the following basic approaches to the problem of industrial relations would you recommend :—

(a) The parties should be left to settle all disputes and differences by negotiation and collective bargaining among themselves without the intervention of the State except to the limited extent of providing a machinery for voluntary conciliation or arbitration. The State will encourage bi-partite negotiations by setting up joint committees at every level and for all important industries.

(b) The State should take an active role in the settlement of disputes by making both conciliation and arbitration compulsory in the event of the failure of negotiations and by reserving to itself the power to refer disputes for compulsory arbitration.

(c) The law should put restraints and restrictions on the freedom of the parties in the earlier stages of a dispute by making notice of change of conditions and of strikes or lockouts obligatory, by making conciliа-

tion compulsory and by prohibiting strikes or lock-outs for defined periods, but it should place no ultimate restrictions on the freedom of the parties to resort to direct action and should not make arbitration compulsory.

20. Which of the following methods of settlement of disputes would you prefer, or object to, and why :—

(a) Mutual negotiation and collective bargaining;
(b) Voluntary or compulsory conciliation by the machinery prescribed by the law;
(c) Voluntary arbitration by machinery—
  (i) chosen by the parties;
  (ii) provided by the law;
(d) Compulsory adjudication?

19. The questionnaire suggests certain "facts", which, it holds, should become the basis for determining the basic approach to the problem of industrial disputes. It is assumed as a "fact" that the economy envisaged is a planned economy, wherein strikes have no place, that the country is passing through an economic emergency and that production must be maintained "at the highest possible level".

We do not agree that these assumptions called "facts" are correct.

It is true that the economy envisaged in the near future is called "a planned economy" by the Government, but in reality it is nothing of the kind. Planning a certain amount of investment of capital and a few establishments to give an estimated production is not called "planned economy" for the country as a whole. In an unplanned economy also, governments and industrialists always sit together and "plan" certain developments, executed by huge cartels or syndicates with Government participation. Their unplanned character is distinguished from the planned economy by the fact that the main volume of production is carried out on the basis of competition for private profit, the anarchy of the market prices and their ruinous hold over people's consumption, by the absence of the control of the workers' and peasants' organisations over the main means of production and distribution and over the State which is the main directive agency of planned economy and further by the absence of rise in the living standards of the people which must be the very basis and starting point of the plan. Without eliminating these defects there can be no planned economy.

The so-called planned economy of the Government of India does not contain any of the essential features of a Planned Economy. The planners have not even a rough idea as to what and how much can be produced, as is pointed out by many economic journals.

The very fact that war-manoeuvres of the Anglo-Americans in Korea led to sudden increases in certain lines of production in our country, gave huge profits to certain monopolists and caused inflation and rise in prices; the fact that the cessation of stockpiling by the Anglo-Americans led to a serious disturbance in our markets and caused an unheaval; the fact that as soon as production increased in the country, prices fell and were about to give relief to the consumers, the Government and producers came forward with schemes of curtailing production and raising prices; the fact that unemployment has gone up by leaps and bounds and what was supposed to be produced for the needs here was sent out of the country in order to arrest the decrease in prices and cost of living—all these and many other facts show that what is envisaged is not a planned economy for the people, not even an economy for developing Indian industry to satisfy people's needs.

So long as our economy can be disrupted by the capitalist anarchy and invasion of the Anglo-American markets, advisers, experts and diplomats; so long as it is led by those who participate in their plans of profits and investments and are guided by them; so long as it is tied up to their supplies of capital goods; so long as it is not based on control of monopoly profits, elimination of landlordism in the domain of food production and ushering in higher standards of living; so long as the workers' and peasants' organisations are not given the right to check up, control and guide production and distribution at all levels, along with the owning classes—our economy for the future cannot be a planned economy.

Such an economy will always remain in a state of emergency.

Such an economy can never maintain production at the highest level.

Hence upheavals are inherent in such an economy, because it is essentially based on the anarchy of a capitalist-landlord economy, with the added factor that it is disrupted and exploited by foreign capital also.

Such an economy is bound to suffer from strikes and lockouts, and if they are sought to be banned by law, they will take place despite the law.

Hence if legislation is to proceed on the basis of assuming "facts", which are not "facts" but mere fictions, and is guided merely by the idea of suppressing the workers' efforts to improve their standard of living, in an economy which cannot guarantee them even subsistence and employment—such a legislation will prove a failure and collapse under the very weight of the inevitable effects of the laws of capitalist-landlord economy.

Having rejected such an approach, we disapprove not only of compulsory arbitration but also the suggestion that everything be left to the contending parties without *any* State intervention. While we reject 19 (b) totally, we do not accept 19 (a) and (c) also.

In a planned economy the problem of industrial relations is not only a problem of settlement of disputes. If an economy is to be planned, then every unit of production must be guided, checked, controlled, criticised and encouraged by a joint organisation of the management and elected workers' committees, led by the trade unions of the industry.

Such an organisation has to be based fundamentally on the recognition of the trade unions.

In this matter, we hold that the State must intervene and legislation on industrial matters must begin with compulsory recognition by employers of the trade unions of their employees.

So, as suggested in 19 (a), disputes, where they arise, should be left to be settled by negotiation and collective bargaining between the employer and the trade union.

But we do not agree that the State should only "encourage" bi-partite negotiations through joint committees at every level and for only "important" industries.

The State must legislate for compulsory recognition of unions and collective bargaining in all fields where employer-employee relations exist.

In the event of the failure of negotiations and collective bargaining, the workers should be free either to exercise their right to strike or to refer the dispute to arbitration, for which a machinery should be at their disposal for use at their will.

Notice of change of conditions by an employer is a necessary part of the contract when he hires labour and as such must remain, even if there is no dispute.

A strike without notice, where an employer changes conditions without notice or does provocative acts, must be permitted.

But normally, under conditions where trade unions are recognised and collective bargaining provided, strikes do not take place without notice.

20 (a). We prefer, as already stated, mutual negotiations and collective bargaining.

Because that alone can develop the organisation, consciousness and democratic strength of the working class. That alone can effectively lead to the control of the parasitic and dictatorial forces of all-powerful capital and its state-machinery and lead to improved standards of living for the workers, better and increased production by voluntary and conscious effort and democratic and peaceful conditions for all.

(b) No — unless it is a machinery and law for recognition of unions and collective bargaining through unions and not through a machinery of officials.

(c) We prefer voluntary arbitration machinery provided by the law.

(d) Compulsory adjudication and arbitration in a state based on capitalist-landlord relations, as ours is, lead to and positively mean an open dictatorship over the working class in the ultimate interests of the exploiting classes. It always worsens the condition of the working class in the final analysis.

VIII—RIGHT TO STRIKE OR LOCKOUT

21. To what extent is the right to strike or lockout to be deemed inviolable?

22. Should there be a specific provision in the law that no employer shall dismiss, discharge or otherwise punish a worker by reason of the fact that the worker has gone on, or joined, a strike which has not been held by a prescribed authority to be illegal under the provisions of the law?

23. Should there also be another provision to the effect that no employer shall prevent a worker from returning to work after a strike which has not been held by prescribed authority to be illegal unless—

(a) the worker entered, or continued to remain, on the strike after refusing an offer of arbitration from the employer, or

(b) the worker, not having refused arbitration, has failed to offer to resume work within 15 days of a declaration by Government that the strike has ended?

24. Should Government be empowered to prohibit strikes and lockouts in any industry during a public emergency if such prohibition is necessary or expedient for securing the public safety or the maintenance of public order or for maintaining supplies and services essential to the life of the community? If so, what safeguards, if any, would you suggest?

25. What curtailment, if any, of the right to strike or lockout would you consider profitable in the case of public utility services?

26. Where the right to strike or lockout is denied or curtailed in accordance with the foregoing paragraphs, what provision, if any, should be made for the just settlement of the claims of the parties?

27. What restrictions or prohibitions, if any, should be imposed on strikes and lockouts—

(a) started without going through the prescribed procedures such as service of notice, prior negotiations, etc.,
(b) before or during negotiations;
(c) during the pendency of conciliation, adjudication appeal or similar statutory proceedings; and
(d) during the period of operation of settlements, collective agreements, awards, etc.?

21. A detailed answer to the question as to how far the right to strike or lockout is inviolable will expand into a treatise. Hence, here we can only consider the basic points.

In the present laws in this country, as well as in all capitalist states, strikes and lockouts are placed on an equal footing. If they admit the right to strike, they admit the right to lockout. And when they restrict or ban strikes, they also speak of banning lockouts.

They say that the capitalist is at liberty either to employ a worker and carry on production or not to employ and cease production. He is the master of his capital and has a right to use it or suspend its use.

Similarly the worker. He is at liberty to hire himself to the employer for wages and work or not hire himself and go out of employment. He is the master of his own capacity to work, his labour power and has a right to use it or suspend its use.

The right of the capitalist not to hire a worker is his right to lockout. The right of the worker not to hire himself out to the employer is his right to strike. Both are equals and the State and law must treat them equally. If law bans one, it must ban the other.

In this, the framers of the law take their stand on the

conception of formal equality between the employer and the worker.

Such conceptions are not based on the reality of the situation.

We hold that there should be no right to lockout but there is and should be the right to strike.

Why is a lockout declared by the employer? Because he wants to make more profits or cut out losses by reducing wages or worsening the conditions of employment of the worker. When the worker refuses to accept the employers' conditions, he is locked out. Production comes to a standstill.

Why is a strike carried out by the worker? Because he wants better wages to meet the rising cost of living or to improve his standard of living or because he does not accept a wage-cut or worse conditions offered by the employer. When the employer refuses to accept the worker's demands, he goes on strike. Production comes to standstill.

No doubt in both cases production ceases. And using this, the State, pretending to be a neutral agent acting for the people, comes forward with proposals to ban or control both strikes and lockouts, pleading that continued production is a social necessity.

But this argument for continued production only comes up in days of rising profits and demand for goods. When the usual crisis of capitalism creates surplus of goods, fall in prices and profits, then both the State and the employing class argue for lesser production, the inevitability of depressions, closures, etc. Thus production for social use is not the main worry of the State or the employer, but production for profits.

And it has been proved in history that no capitalist state can ever plan or carry out a plan for continued rising production and especially production for the people's needs. Therefore, let us not argue on that basis at all. But confine ourselves to the question of lockout and strike as between employer and employee in the first instance.

As stated above the seeming equality between the two in its actual results is a total inequality in which the worker as man and producer of wealth is hardest hit and the only sufferer.

If an employer locks out a worker and stops production, does he lose his living? He may lose his profits or save his losses. Though it is a fact that profits are his income, yet their loss or stoppage does not face the employer, in the case of a lockout, with starvation and death.

For example, who can think that a lockout or strike can face, say, the Birlas or Tatas with starvation and death?

In large-scale industry, the employer's living, as such, has no connection with the profits or losses or the industry. Large scale capital is without life or soul.

But what is the effect on the worker? With his only means of livelihood gone, the worker, who always lives only by labour from day to day, is faced with immediate starvation leading to deaths of several in case of prolonged stoppage.

Thus the right to lockout is a right to starve and kill a worker or the right to threaten him with starvation and death.

If a worker goes on strike and stops production, he loses his livelihood but does not affect the livelihood of his employer. He only ceases to produce profits for his employer in the hope that the fear of losing in competition, the fear of social opinion unable to witness the suffering of the workers and the might of collective action may bring the latter to agree to the demands of the worker.

Thus, the right to strike is not a right to starve the employer but a right to bring pressure by refusing to produce profits and by voluntary suffering and collective action.

The right to lockout and strike in their effect are not the same. The one is a right to starve, the other is a right to live.

Hence the right to strike is inviolable, the right to lockout is anti-social and not permissible.

The large-scale capitalist has all the powers at his disposal to force his will on the workers. His greatest power is money. Withholding it from the worker, he can starve and bend him. He has the power of the press, propaganda, "public" opinion and finally the State forces at his disposal

The worker has no money, no press and no State forces to help him. His only power is to offer or withhold his labour-power, which can live only if it works and it works only if the capitalist buys it for profit. Hence his only weapon is not to sell it temporarily when the capitalist wants it on his own terms. Thus strike is the only weapon of the worker against the employer. And it is not unlimited in its effectiveness, because a worker cannot strike for long.

Hence we must protect the right to strike from being curtailed or weakened because that will only benefit the already powerful and ruling forces of organised capital.

These are some of the points on the question of strike and lockout, arising from industrial disputes. Political

strike and solidarity strike must not be made the subject matter of the law in industrial relations.

22. Yes. The question seems to underline the assumption that the employer shall have the right to dismiss, discharge or otherwise punish a worker by reason of the fact that the worker has gone on or joined a strike which was declared to be an illegal strike under the provisions of law. We do not agree to such an assumption.

23. No worker should be prevented from returning to work after a strike, whether legal or illegal. If the State decides to hold some strikes to be illegal, the penalty for joining such an illegal strike must not be loss of employment, which means loss of a living.

24. "Public safety", "maintenance of public order and essential services" are all phrases, which are used in order to suppress the demands of the workers and to enlist the support of non-workers in such suppression. The Government and employers have done it so often in the case of the railway workers and others. We do not want the Government to have such powers.

25. Lockouts should be banned. There should be no distinction made between a strike in a public utility service and one in any other industry.

26. The question does not survive.

27. Penalty should be provided for lockouts. If workers go on a strike during the pendency of proceedings before a tribunal or a court of enquiry, the tribunal and the court of enquiry proceedings should be terminated provided that the strike concerns issues involved in the proceedings.

IX—PUBLIC UTILITY SERVICES

28. Is it necessary to amend the list of public utility services mentioned in Section 2(n) of the Industrial Disputes Act? If it is, what items would you add to, or delete from, the list?

29. Should Government be empowered to declare any industry or establishment a public utility service "if in the opinion of the appropriate Government, public interest or emergency so requires"?

30. Should public utility services in the public sector be treated any differently from public utility services in the private sector?

28. As stated by us before, no distinction should be made

between the public utility services and other industries. The whole list, therefore, should be deleted.

29. Does not survive.

30. Does not survive.

X—AVOIDANCE OF DISPUTES

31. Should the conditions of employment of workers and matters of general interest to them be reduced to writing in the form of standing orders? If so, what procedure would you suggest for settling the terms of standing orders and what provision would you make for resolving differences regarding the interpretation or application of standing orders?

32. Is it necessary to lay down in concrete and specific terms the duties and responsibilities of both sides? If so, is it possible to do so? For instance, can a manual be prepared showing what work is expected of each category of workers and what should be the minimum output and quality? Is it also possible to lay down what wages and other privileges the worker is entitled to? What steps should be taken to make the contents of such a manual known to workers, the large majority of whom may be illiterate?

33. Do you consider the functioning of shop-stewards, wherever they exist, useful? What steps would you recommend for developing that agency?

34. Is there any complaint at present that workers, individually or collectively, are unable to approach managerial authorities at different levels for redress of grievances and if so, do you think that clear instructions issued by the employer in this respect will reduce the number of disputes or, at any rate, assist in solving them promptly?

35. Have Labour Welfare Officers functioned effectively in promoting the welfare of labour, in avoiding disputes, and in creating goodwill and understanding? Have you any suggestions for making them more useful.

31. We have already stated that in the new Act itself, a schedule be appended giving a list of items on which Standing Orders should be formulated. For settling the terms and for resolving differences regarding the interpretation or application of Standing Orders the procedure should be the same as for any other dispute. Matters of general interest should not be reduced to writing. As far as possible the conditions of employment should be uniform.

32. No. Duties and responsibilities of both sides cannot be laid down in concrete and specific terms. Matters of wage rates, standards of occupation, etc., do and must form part of collective agreement in a concern. But these cannot form part of a law. We do not think that a code or a manual will be of much use to workers. The Railway Service Code is an example in point. The best way to make known to the workers their wage rates, privileges, duties, responsibilities, etc., is for the employer to afford all facilities to their trade unions to acquaint the workers.

33. Yes. But we might think of this at a later stage when trade union recognition has been properly established. Otherwise today the shop stewards and committees become a substitute for trade unions.

34. Our experience is that almost as a matter of rule approach to managerial authority has become impossible to the workers whether acting individually or collectively. Only in cases of extreme dissatisfaction accompanied by a strong collective representation and threat of strike does a management agree to listen to the grievances of the workers. We do not believe that any clear instructions issued to or by the employer in this respect will help in reducing the number of disputes, etc. The employers must be compelled to recognise the trade unions of the employees and to give the right to a worker to be represented by his trade union officials in regard to any complaint by him or any proceedings departmental or otherwise.

35. This category should be abolished, as it has not served and is not likely to serve any useful purpose. The Welfare Officers are merely a part of the managerial organisation, their special function being to disrupt trade unions, break strikes and advise the employers on these matters. In their spare time they serve as clerks, supervisors, timekeepers etc., in the managerial organisation.

XI—MULTIPLICITY OF AUTHORITIES

36. One of the complaints against the Labour Relations Bill is that it provides for far too many authorities. Which of the following authorities mentioned in clause 3 of the Labour Relations Bill would you retain or delete and for what reasons?

(1) Registering Officers.
(2) Works Committees.
(3) Conciliation Officers.

(4) Boards of Conciliation.
(5) Standing Conciliation Boards.
(6) Commissions of Enquiry.
(7) Labour Courts.
(8) Labour Tribunals.
(9) The Appellate Tribunal.

Have you any suggestions for adding to the list?

36. The complaint is genuine. We would like to retain (1) Elected Works Committees, and (2) Industrial Courts only. Our reason for the abolition of the other authorities is that they serve no useful purpose for the settlement of industrial disputes. We are particularly opposed to the authority of the Appellate Tribunal which during its two years' life has proved to be the main factor for creating industrial strife, where disputes could or were settled in the interests of the workers. In this connection we might refer to the memorandum signed by several unions and sent by the Anti-Appellate Tribunal Agitation Committee of Bombay demanding abolition of the said Appellate Tribunal. Industrial Courts should decide questions of interpretation and application of rules, agreements, etc., they can decide disputes submitted for arbitration, a certain amount of conciliation also can be attempted before an award is given. Where only an inquiry is needed, the Industrial Court can be entrusted with that task. It should be a Standing Court for all these functions.

XII—BIPARTITE AND TRIPARTITE MACHINERY

37. Do you consider that an adequate bipartite machinery should be established for all important industries so that a tradition of internal settlement of disputes might be built up and the intervention of Labour Courts and Tribunals kept to the minimum?

38. If you do, what sort of machinery do you visualise and for what industries?

39. Should there be only one bipartite committee for an industry for the whole country or should there be committees for each industry in each region?

40. Should there be a general bipartite committee at the Centre on the lines of the Joint Consultative Board for problems of all-India importance or interest?

41. Do you consider that the formation and functioning of the bipartite machinery should be made compulsory and that provision should be made to ensure that no dispute may be taken up

in conciliation or adjudication until it has been considered by the bipartite machinery?

42. In addition to bipartite committees, do you consider the machinery of tripartite committees necessary for consultation between Governments, employers and workers?

43. The more important of the existing tripartite committees are :—

(a) Indian Labour Conference,
(b) Standing Labour Committee, and
(c) Industrial Committees for the more important industries such as, textiles, jute, coal, cement, paper etc.

Which of these do you suggest for continuance and what should be their composition, periodicity of meetings and functions? Have you any suggestions for any other committees?

44. Do you consider that the tripartite machinery should be made statutory?

37. No. If compulsory recognition of Trade Unions by employer and negotiations with them are made statutory then no such machinery is necessary.

38, 39, 40 & 41. Do not arise.

42. Not in addition but Tripartite Committees at Central and State level.

43. The Indian Labour Conference and the Industrial Committees may be continued.

44. Yes.

XIII—WORKS COMMITTEES

45. Do you consider that Works Committees are useful for the settlement of differences on the spot?

46. Why is it that many establishments have not succeeded in setting up Works Committees?

47. Have Works Committees already set up been functioning properly? If not, what are the reasons?

48. Is there any truth in the statement that employers in some cases and trade unions in others have discouraged the formation or functioning of Works Committees?

49. What should be the composition, method of constitution and functions of Works Committees? Should workers' representatives in Works Committees be chosen by the representative trade

union having the backing of the majority of workers in the unit, and in the absence of such union should workers themselves elect their representatives?

50. Should Works Committees function also as production committees looking to such matters as increase of production and productivity, improvement of quality, reduction of costs, elimination of wastes, care of machinery etc.

45. In concerns where works committees were truly representative of the workers, and the employers adopted an attitude of cooperation, works committees have proved useful to a certain extent.

46. Where works committees could not be set up, the reasons are manifold. They may be listed as follows: absence of strong unions, hostility of managements and refusal or failure of managements to properly consult the trade unions of the employees.

47. It is our experience that a large number of works committees have been set up in an unsatisfactory manner. Elections have not been fair and free and proper functioning of the committees has consequently suffered. Attempts have been made by the managements to get their own proposals passed in the works committees by either pressure or temptation and get the entire body of the workers committed to these proposals. An example can be cited: In the year 1950, the Metal Box Co. of Bombay, a British monopoly concern, got the works committee pass the proposal of a certain quantum of bonus. In spite of the fact that a large number of the workers disagreed with the proposal the company forced it on the employees on the plea that the proposal was passed in the works committee. The claim made by the union of the workers for higher bonus was resisted by the Company on the ground that the works committee was more representative of its employees than the union which was an industrial union. Other reasons why the committees have not been functioning properly can be traced to the authoritarian behaviour and intransigent attitude of the management and their representatives nominated on these committees, besides the refusal of the management to allow adequate time during working hours to transact the business of the committees.

48. Our information on this point is that employers in many cases have discouraged the formation or functioning of works committees. Trade unions in some cases have felt reluctant to continue functioning of the works commit-

tees after meeting with continuous hostility from the employers and after bitter experience such as quoted above.

49. Workers' representatives in the works committees should be elected by the workers. The composition of the works committees may be as at present excepting that the maximum representation now restricted to 10 on either side should be relaxed where found necessary. Where agreements made by a works committee in a concern prejudice or cut across the interests of workers in the industry as a whole to which the workers belong, the trade union of the industry should have the right to veto the decisions of the works committee. The decisions of the works committee, if disapproved by a majority of the employees, should not be considered valid.

50. Not under present conditions.

XIV—NEGOTIATION

51. Do you consider that when either party wishes to make a change in the *status quo,* notice should be given to the other party? In what other cases of an actual or apprehended industrial dispute would you make the issue of a notice obligatory before the declaration of a strike or lockout? What should be the period of notice? Would you make it obligatory on the party receiving the notice to enter into negotiations with the party issuing it?

52. If an agreement is entered into between the parties through negotiation, would you seek to make the agreement legally binding or would you leave it to the voluntary acceptance and observance of the parties? Should such an agreement be registered with a prescribed authority?

51. We think that when either party wishes to make a change in the conditions of employment, a fortnight's notice should be given to the other party. It is our experience that lightning strikes take place only on a deliberate provocation on the part of the employers, where trade unions do not exist or are not strong enough to give protection to the workers by collective strength. We hold the opinion that no notice of a strike need and can be given by workers if the same has been provoked by unfair labour practice or an arbitrary change in the *status quo* by the employers. We believe that it should be obligatory on the party receiving the notice to enter into negotiations with the party issuing it.

52. An agreement entered into by trade unions does not require registration or a legal binding formally expressed. However, if the parties so desire, there should be no objection to the agreement being registered.

XV—COLLECTIVE BARGAINING

53. Do you think that elaborate statutory provisions such as those found in the laws of industrially-advanced countries on such matters as the certification of the bargaining agent, the rights and responsibilities of the bargaining agent, the binding nature of agreements entered into by the bargaining agent, the supersession of one bargaining agent by another, the enforcement and revocation of collective agreements, etc., are suited to the conditions obtaining in this country? or

54. Should collective bargaining be left to be conducted on the present informal basis?

55. Do you consider that there should be a single bargaining agent over as large an area of industry as possible and that uniform conditions should be secured in at least all the establishments in one centre? If so, what kind of a union should qualify as a representative union entitled to speak on behalf of the workers of the whole centre?

56. Would it be sufficient to provide that an agreement between a trade union and the employer should be binding on, and as between, the employer and the workers who are members of the trade union and that where a trade union proves that more than 50% of the workers of the employer are its members, the agreement should be binding also as regards the non-members of the establishment?

57. Similarly, would it be sufficient to lay down that a federation would be entitled to bargain on behalf of the members of such of its affiliated unions as have a majority of the workers of the establishment concerned as members?

58. Where there are no proper trade unions, should provision be made for the election of representatives who will take the place of the bargaining agent on behalf of all the workers of that establishment?

53 & 54. Elaborate statutory provisions on matters referred to in Question 53 would not be of much use and will themselves become a source of disputes and crop of litigation before Industrial Courts or source of oppression by corrupt agents, acting in league with the employers. What the law

must aim at is strong trade unionism, based on democratic and voluntary adherence of the workers.

55. Functioning trade unions should be considered as bargaining agent. The experience of such industries like Railways where the management has given recognition to more than one union has not created any difficulty in either conducting negotiations or arriving at settlement of disputes. Hence we consider that the entire approach towards collective agreement through certified agent is a retrograde step intended to favour such unions as will act as the agency of the employers in the ranks of the workers. We consider that for promoting collective bargaining the employer should be compelled to recognise all functioning unions in any establishment, industry or region as the case may be and enter into negotiations with them on demands put forward by these unions. Similarly any trade union should have the right to approach Industrial Courts for decisions. We certainly desire that uniform conditions should be secured in at least all the establishments in a centre or region.

56. This question raises a hypothetical difficulty. In practice if an agreement between a trade union and the employer is not to the liking of the majority of the workers, it is invariably thrown out and the union cannot get it implemented. It becomes a fruitful source of industrial unrest and discontent. Even if such an agreement is made binding on the workers, it would not lead to peace. We would, therefore, prefer to rely on a situation to which we have already answered in Question 52. In Cochin Port an industrial dispute arose between the Port authorities and the workers. An INTUC union succeeded in getting the dispute referred to a tribunal for adjudication. The Tribunal made an award in terms of the agreement arrived at between the Port Authorities and the Union. The Tribunal made its award binding on the members of the Union only. The award did give some minor benefits to the workers who were members of that particular union. The result has been acutest discontent among the whole body of workers. This is an example which is exactly in the opposite direction of the problem raised in Question 56. Supposing the agreement between the union and the employers is an agreement which places certain restrictions on the existing privileges of the workers and the agreement is made binding on the members of that union only, the only foreseeable result will be the immediate smashing of the union. The only democratic answer would be that if there are more

than one union and if there is disagreement among them the majority verdict of all workers in the establishment or industry should be sought.

57. We have answered this in our reply to Question 55.

58. Yes.

XVI—CONCILIATION

59. In what cases may a Conciliation Officer offer his services and in what cases must he do so?

60. What should be the period within which the Conciliation Officer should complete conciliation proceedings? What provision should be made for extension of that period by agreement between the parties? Should Government have power to extend the period of conciliation?

61. Should it be laid down that an agreement entered into between the parties in the course of conciliation will not be vitiated by reason of the non-observance of any provisions of the law?

62. In what circumstances should a dispute be referred to a Conciliation Board and what should be the composition and procedure of the Board?

63. Are Standing Conciliation Boards necessary?

64. What provisions would you recommend for registration and enforcement of agreements arrived at in the course of conciliation proceedings before—

(a) Conciliation Officers,
(b) Conciliation Boards?

65. What provisions should be made to ensure that proceedings do not pend at the same time before a Conciliation Officer, a Conciliation Board, a Labour Court or a Tribunal?

59 to 65. As we are opposed to the intermediate stage of conciliation by government agency, these questions do not survive.

XVII—ARBITRATION

66. Do you consider that it is necessary to provide for compulsory arbitration or adjudication in the law?

67. (a) If you do, what types of courts or tribunals would you recommend for the purpose? There is a suggestion that purely local disputes such as those relating to working conditions, health,

safety, welfare and kindred matters should go to the lowest category of courts which might be called Labour Courts, that crucial questions such as those relating to wages, hours of work, rationalisation schemes, bonus etc., should be referred to a higher category of courts which might be called Industrial Courts or Tribunals, and that where all-India uniformity is necessary the matter should be referred to a Central Industrial Tribunal. What do you think of it?

(b) If you agree with the suggestion above, what steps would you recommend for ensuring the parties do not have to go to more than one forum for the settlement of a series of disputes, some of which may be minor and some major?

(c) Should a party, or both the parties acting jointly, be entitled to approach any of these authorities direct or should the appropriate Government alone be competent to make a reference to the authority concerned in order to invest it with jurisdiction over a particular dispute?

68. What should be the qualifications of the Chairmen and Members of these Courts or Tribunals?

69. Do you think that legal technicalities and formalities of procedure should be reduced to the minimum before Labour Courts and Tribunals?

70. Should the State or a Court or Tribunal have the power to require any employer or employers generally to maintain and furnish data relating to the plant, manufacture, industrial transactions and dealings which might be needed for the settlement of industrial disputes?

71. Do you consider that the requisite measure of uniformity can be achieved by prescribing 'norms' and standards which may govern the mutual relations and dealings between employers and workers and settlement of industrial disputes? If you do, what procedure would you suggest for the evolution of 'norms' and standards and how should they be made binding on Courts and Tribunals?

72. Should provision be made for voluntary arbitration and if so, should the arbitrator be the one prescribed for compulsory adjudication or somebody chosen by the parties? If the latter, should any qualifications be prescribed for the arbitrators?

73. Should a reference to a Tribunal for adjudication pertain only to the units in which there are current unresolved disputes or, should it, in the event of the existence of widespread disputes in an industry, extend also to the units in which there are no actual disputes but which are bound to react unfavourably if they are not included in the reference?

74. Should there be any provision for appeals from the deci-

sions of any of these authorities? Are you in favour of the retention, or abolition, of the Appellate Tribunal?

75. If you are in favour of the retention of the Appellate Tribunal, what should be its jurisdiction?

76. Should the proceedings of Labour Courts and Tribunals be excluded from the jurisdiction of the Supreme Court and/or of the High Courts in the matter of appeals and applications for writs?

77. Should Government have power to set aside or modify awards? If so, in what cases and subject to what conditions?

66. So far in our answers we have not differentiated between arbitration and adjudication, neither do we propose to do so. They are things belonging to the same genus. Arbitration must be made applicable in a dispute when the workers demand it.

67 (a). We do not see the necessity of maintaining categories of industrial courts such as Labour Courts, Industrial Courts, etc. Every State should establish Industrial Courts. Members of the Court should severally and jointly act as Standing Tribunals of three members, for different areas and industries like in High Courts. Disputes relating to working conditions, health, safety, welfare, etc., should not be looked upon as matters of lesser urgency, significance and importance than those relating to wages, hours of work, bonus, rationalisation, etc. It would be erroneous to make such a distinction. There should be Central Industrial Courts and Standing Central Industrial Tribunals of not less than three members where the dispute is under the jurisdiction of the Central Government. The prospect of an all-India uniformity has in practice resulted in an attempt on the part of the Labour Appellate Tribunal in reducing and lowering of existing standards in the more highly industrialised States of India. This fact must always be remembered by the Government that if they aim at the uniformity of working conditions etc., the trend must be in the upward direction and not downward. Revisions from the awards of Standing Tribunals to the respective Industrial Courts should be allowed only when workers ask for it. But there should be no reference to a Central Industrial Tribunal in the name of a fictitious all-India uniformity.

The process of collective bargaining between the Union and the employers and of inquiry or arbitration before courts must be made subject to time limits, which in their totality must not exceed one month.

(b). Does not survive.

(c). As we visualise tribunals coming into the picture only at the instance of the workers, we hold that they should be entitled to approach the tribunals direct.

68. The chairman and the members of a court of enquiry or of a tribunal must have the following minimum qualifications: (i) they must be independent persons having no stake or interest in any industry, (ii) they must have knowledge of economics, industrial relations and technique.

Here we may repeat what we have already passingly observed that the court must approach the problems arising from industrial disputes not from a legalistic point of view but with a genuine concern for the exploited class, for a constant endeavour to help the worker to reach and then excel the living wage standard and help the industry to grow for serving social needs and not merely for profits.

69. Yes. The curtailment of these technicalities and formalities must be with the aim of expediting the settlement of the industrial dispute, and also of concentrating the attention on the real issues involved in the dispute. Many times it is our experience that arbitration proceedings have been shattered because of some technical or formal flaws in the procedure.

70. Yes. This power to a certain extent has been already given to a court or a tribunal by the provisions contained in Section II (3) of Industrial Disputes Act, 1947. The important point to be remembered in this connection is that the employers very rarely supply full necessary information to the workers. Even when the tribunals order the furnishing of some information to the workers the employers produce the same only during the actual hearing of the dispute. Necessary information demanded by the workers must be made available to them right from the time when negotiations start between the parties, i.e., the union and the employers. Employers should be made liable to punishment if they refuse to give any information asked for or give wrong information.

71. This is like asking if we can evolve ethical or philosophical laws of arbitration. We need not attempt any such thing. The oft-changing forces of capitalist economy and the relative strength of the contending parties provide the necessary 'norms' which never can remain so uniform or static as to be codified.

72. No provision is necessary.

73. This question aims at standardisation of working conditions. We do not see any reason for objecting to non-contending units being brought within the sphere of proceedings before a tribunal along with the contending units. But in such a case, where the dispute is made general the workers in the non-contending units must be consulted and the more advantageous conditions of work prevailing in any unit or units should not be prejudicially affected. The one advantage we see in making such disputes a general dispute in the industry is that it will avoid a multiplicity of disputes and set the pace of standardised conditions. Such a power to make a dispute general is provided in the Statutes of a number of countries. Both the Bombay Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1947 did and do contain such a power. The Industrial Disputes (Amendment) Act, 1952 has also provided for such a power of making a dispute general. (Section 3 (b) of the Amending Act.)

74. We are against multiplying the procedure of hearings in industrial disputes.

We want the Appellate Tribunal to be abolished at once. It has become an agency not for settlement of disputes but provoking disputes and strikes under the garb of settling them. This Tribunal has acted right from the beginning with an essentially wrong approach to the industrial problems and wrong understanding of their own responsibilities of maintaining or establishing industrial peace and good relations. By their short-sighted, formalistic, pro-employer and anti-worker attitude, they have been guilty of creating critical situation in the industry, and provoking in some cases thousands of workers to strike. For instance, the situation created by their decisions in the Air-India case. The decisions of this Tribunal in the cases of the Metal Box Co. of India, Army and Navy Stores, Larsen & Toubro, B. & C. Mills, Madras, etc., etc., are cases in point. The objection to the continuance of this Appellate Tribunal are legion and we cannot do better than refer to the Memorandum sent to the Honourable Minister for Labour, Government of India, by the Anti-Appellate Tribunal Agitation Committee of Bombay.

75. Does not survive.

76. We think that the jurisdiction of the Supreme Court and/or the High Courts should be excluded in the matter of appeals and applications for writs.

77. Government should not have power to set aside or modify any award or extend its period.

XVIII—DISMISSAL AND RETRENCHMENT

78. Should cases of dismissals of workers be deemed to be industrial disputes which could be referred to a Tribunal for adjudication?

79. Where a worker is proved to have been wrongfully dismissed, should the Industrial Tribunal have power—

(a) to order reinstatement, and/or
(b) to award compensation?

Would you give the employer the option to pay compensation in lieu of reinstatement?

80. Where a worker wrongfully dismissed is an office-bearer of a trade union of the workers of that establishment, should reinstatement be obligatory if demanded by the worker?

81. Would you allow the employer to effect retrenchment in his establishment in certain circumstances without having to submit that matter for adjudication?

82. In what circumstances would you make it obligatory on the part of an employer to send a notice to Government of an intended retrenchment and in what circumstances, if any, would you expect Government to refer that matter to a Tribunal for adjudication?

83. (a) In particular, should employers be required to give prior notice of retrenchment likely to result from rationalisation, standardisation or improvement of plant or technique?

(b) Is such a notice necessary where there is agreement between the employer and the workers regarding the scheme of rationalisation etc. and the consequent retrenchment?

84. Should the issue of a notice and the grant of gratuity to retrenched workers be made compulsory?

78. Yes. But we do not want the power of dismissal to be exercised by the employer without the consent of the Union.

79. The Industrial Tribunal should have the power to order reinstatement and compensation or compensation alone at the workers' option and not the employers'. For there are many cases where an employer would be quite willing to pay even a sizable sum to get rid of a leading trade union worker. The employer should not be given the option to pay compensation in lieu of reinstatment. The C. P. & Berar Industrial Disputes Settlement Act, 1947, Section 38, contains such a provision of an option and this option has very often been exercised by the employers of Madhya Pradesh. Very frequently the employers when

ordered to reinstate a victimised worker by-pass the order by re-employing him and paying him wages but keeping him away from the factory. This is in fact not reinstatement but only re-employment.

80. Yes.

81 In no case and under no circumstances.

82. There should be no retrenchment without guarantee of alternative employment. In all circumstances and in all cases of retrenchment, the employers must give notice to the workers as covered in our answer to Question 51. The Tribunal shall have power to grant all necessary and adequate relief in addition to not less than six-months' total wages as unemployment relief and compensation.

83 (a). We are opposed to all schemes of rationalisation, standardisation or improvement of plant or technique which result in the retrenchment of workers or deterioration of their working conditions. Such schemes are, under present conditions, schemes of increasing the exploitation of the workers. Improvement in technique that throw workers into unemployment and starvation is no improvement but deterioration of life. If technique saves labour power, then it must be used only on condition that the displaced worker is guaranteed a living and that he prospers by the technique.

(b). Yes. Our answers to Questions 80 to 83 (a) contain answer to this question.

84. Yes. Adequate compensation as stated in our answer to Question 82.

XIX—INDUSTRIAL RELATIONS (GENERAL)

85. Should legal practitioners be permitted to appear in any proceedings under the industrial relations law and if so, in what proceedings and subject to what conditions?

86. What restrictions, if any, should be placed on the right of the employer to alter the conditions of service of workers or to discharge, dismiss, or otherwise punish them during the pendency of conciliation or adjudication proceedings? Does the present law on the subject require any modification?

87. What penalties, if any, other than those imposable by criminal courts, may be imposed on parties for resorting to illegal strikes and lockouts?

88. What steps would you suggest for the prompt and effective implementation of settlements, collective agreements, and awards—

(a) in respect of money recoveries, and

(b) in respect of other action?

89. Should the law contain any special provisions for enabling the appropriate Government to exercise control over an industrial undertaking—

(a) where the employer has refused to comply with the terms of a settlement, collective agreement or award, or

(b) where the industrial undertaking is threatened with closure as a result of an actual or apprehended strike or lockout,

if such a course is considered necessary in the public interests?

90. Where an offence is committed by a company or body-corporate, who, as representing the company, should be liable to be prosecuted?

91. Should Labour Courts or Industrial Tribunals be empowered to try offences punishable under the industrial relations law as if they were criminal courts?

92. If so, to whom should appeals from the orders of such a Court or Tribunal lie?

93. What should be the range of penalties that may be imposed by criminal courts for violation of—

(a) the less important, and

(b) the more important

provisions of the Act?

94. Do you consider that no application made, proceeding held or order passed under the industrial relations law should be rejected or held invalid on the ground that there is a defect in procedure or some legal or technical flaw unless it be proved that such defect or flaw has adversely affected the interests of either party?

85. Trade Unions should be permitted to take the help of legal practitioners, if necessary.

86. Sections 33 and 33A of the Industrial Disputes Act require some modifications. The Labour Appellate Tribunal has taken the view that when an application by an employer is made to a tribunal for its permission to dismiss, discharge, etc., a worker during the pendency of adjudication proceedings the tribunal need not go into details. Its function is to give the permission or to refuse

it. The view held by the Appellate Tribunal as regards Section 33A is still more curious. While deciding such applications in appeal or under Section 23 of the Appellate Act, the Appellate Tribunal has held that if an employer contravenes the provisions of the Act by not seeking permission of the Tribunal before dismissing or discharging a worker or altering prejudicially the service conditions, *status quo* need not be maintained and the employer need not be asked to remove the illegality. In a considerable number of decisions the Appellate Tribunal has openly tolerated gross violation by the employers in this respect. During the pendency of the dispute before a tribunal or before a court of enquiry the employers must be bound to maintain *status quo* under a heavy penalty.

87. Nil for strikes; lockouts not permitted.

88. In respect of money recoveries, attachment of property of the employers — both in the assets of the Company and private property — and bringing the same to auction for payment of the dues to the workers would be the only prompt and effective method of the implementation of an award, etc. In respect of other actions, heavy penalty of fine and imprisonment commensurate with the gravity of the results of non-implementation.

87 (a). The law should provide for the seizure of the factory or undertaking by the government for forcing an employer to comply with the terms of settlement, etc.

(b). In the case of an actual or apprehended lockout, the undertaking should be seized by the government to enable the workers to continue to work. In cases where a lockout or cessation of factory working is forced on the employer by governmental policies in matters of taxation, foreign competitive imports, trade, etc., the workers' trade unions and employers' organisation should act jointly to obtain relief. In the case of a strike, actual or apprehended, Government should exercise such control over an industrial undertaking as would lead to an immediate redress of the workers' grievances.

90. The manager or proprietor of the company, other officers directly responsible for the offence and the director and managing agents who have encouraged the commission of the offence or have connived at it.

91. No.

92. Does not survive.

93. The range of penalties for violation of the less important and more important provisions of the Act cannot be dealt with in answering to such a questionnaire.

94. Yes. A defect in procedure on some legal or technical flaw should not invalidate proceedings or orders, etc., except in the case mentioned in the question itself. Please also refer to our answer to Question 69.

XX—TRADE UNIONS

95. Do you consider amendment of the Indian Trade Unions Act, 1926, necessary? If so, in what respects and for what reasons?

96. Should the trade unions law apply to persons employed in the armed forces or police forces of Government and fire brigade personnel?

97. Should the rules of a trade union provide for—

(a) the rate of subscription payable by members;

(b) the circumstances in which the name of a member may be struck off the list of members; and

(c) disciplinary action against members resorting to strike without the sanction of the executive of the union, or otherwise violating the rules of the trade union,

in addition to the matters already provided for by the existing law?

98. Do you consider that the rules of a trade union should provide for the procedure for the declaration of a strike?

99. Should a trade union consisting wholly or partly of civil servants be denied registration if it does not prohibit its members from participating directly or indirectly in political activities?

100. Should a registered trade union consisting wholly or partly of civil servants be liable to have its registration cancelled if a member takes part in political activities and the union refuses or fails to remove him from membership?

101. Should the order of a Registrar refusing to register a trade union be appealable to a civil court as in the existing Act or to a labour court under the labour laws?

102. Should trade unions consisting wholly of Government employees—civil servants or industrial employees—be permitted to maintain a separate fund for political purposes?

103. Should provision be made in the law for maintenance by registered trade unions of account books and vouchers, lists of members, particulars of subscriptions paid by members, records of proceedings by the executive etc.?

104. Is it necessary to exclude altogether outsiders from the executives of trade unions or is it enough to restrict their number? If the latter, what is the maximum number of outsiders who may be allowed to become office-bearers?

105. Should outsiders be allowed in unions composed wholly or partly of civil servants?

106. Should an employer have the right to recognise any number of unions in his establishment or should he be allowed to recognise only the most representative one?

107. Should provision be made for the compulsory recognition of trade unions through the order of a labour court?

108. What procedure would you suggest for the settlement of the claims of rival unions asking for recognition?

109. Should trade unions having civil servants as members be denied recognition if they do not consist wholly of civil servants or if such a trade union is affiliated to a federation of trade unions to which a trade union consisting of members other than civil servants is affiliated?

110. Should any such restrictions apply to trade unions of employees of hospitals or educational institutions, of supervisors or of watch and ward staff?

111. In what circumstances may recognition once granted be withdrawn?

112. What should be the rights of recognised trade unions?

113. Should the executive of a union have the right to visit the residence of an employee, whether the residence forms part of a labour colony or not, situated on the premises of the establishment or on land owned or controlled by the employer?

114. Should the executive of a union have the right to hold union meetings on the premises of the establishment or on land owned or controlled by the employer?

115. Do you consider that Inspectors should be appointed for checking compliance with the trade unions law and if so, what should be their functions?

95. In our opinion the Indian Trade Unions Act of 1926 must be suitably revised. Even such a simple provision as regards the registration of trade unions has not worked properly. It is our experience that unions have to wait for months and months together for getting a certificate of registration. The procedure provided for the amalgamation of trade unions is too cumbrous. Trade unions in different units of the same industry wanting to amalgamate into an

industrial union have many times found it an extremely difficult task.

96. Yes.

97 (a). Yes. The rules of a trade union should include the provision for the rate of subscription payable by members. Law should not put any minimum limit regarding the rate of subscription.

(b). No need to give all details, but rules should provide that no authority lower than that of the executive should be empowered to take any such action with the right conferred on the member to appeal to the General Body against such action.

(c). The matter of disciplinary action is a matter for the union itself and the State should not be allowed to dictate to and disturb the autonomy of the trade unions which are in essence democratic mass organisations of the working class formed on a voluntary basis.

98. Yes.

99. No. We hold the view that all citizens without exception have a right to participate directly or indirectly in political activities.

100. No.

101. Yes. The order of a Registrar refusing to register a trade union should be appealable. The appeal should lie to the Industrial Court.

102. As already stated, no distinction from the trade unions of other employees be made in the case of unions of Government employees.

103. Yes.

104. Outsiders should not be excluded and there should be no restrictions also. It should be left to the workers.

105. Yes.

106. All unions in an industry or concern, which are not company unions must be recognised. To recognise or not is not a right of the employer.

107. Provision must be made in the Act for compulsory recognition by the employer.

108. This question is answered in 106 above.

109. No.

110. No.

111. When the union ceases to function or ceases to have membership or becomes a company union or loses support and confidence of the workers to such an extent that it cannot get its agreements voluntarily observed even by its own members or workers in general, its recognition should be withdrawn.

112. We list here only a few of the most important rights of recognised trade unions: (i) right of negotiations, (ii) right of collection of subscription on premises, (iii) right of holding meetings on the premises, (iv) right of collective bargaining, (v) right of investigating the grievances within the establishment, (vi) putting up union's notices etc., on the notice board of the establishment, (vii) leave with pay to attend meetings, (viii) use of premises for union office, etc.

113. Yes.

114. Yes.

115. No.