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NATIONAL COMMISSION ON LABOUR

VISIT TO AUSTRALIA -- TOUR IMPRESSIONS

OF

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At the outset we have to thank the Australian Government for the opportunity given to us to see the working of their system and also to understand the assessment of it from different persons/ institutions which have lived with it and will live with it possibly with minor adjustments of detail to suit the changing times. This is what every person whom we had occasion to meet emphasised. That is why we record this impression in the opening paragraph itself.

2. We had the privilege to meet the Hon'ble Minister for Labour and National Service, Mr. L.H.E. Bury, with whom we had discussions over a wide range of problems of labour-management relations, coordination between the Commonwealth and State Labour policies, manning of superior positions in public undertakings, administrative problems arising out of Commonwealth/State relationships when political patterns are different; role of Reserve Bank and Commercial Banks in the development of the Commonwealth, areas of collective responsibility, changes in social structure, influence of judiciary in strengthening the Commonwealth powers in regard to labour-management relations and so on. This discussion and our talks with Judges of Industrial Commissions/Conciliation and Arbitration Commissioners, permanent Heads of Federal and State Labour Departments and other Departmental Officers, Industrial Registrars, Conciliation Commissioners/ Officers, representatives of labour and management and persons who create public opinion, leaders who take cudgels on behalf of labour in State legislatures, economists, lawyers etc., were marked with a great measure of cordiality and informality, which we believe have to be introduced in a larger measure in our system.

3. For reasons which we need not elaborate, in Australia a very substantial measure of recognition of dignity of work exists at every level. In the plants we visited, we were told that work was not held up because assistance normally available to an operative is not given to him on some occasions. Also a worker may take to a job leaving another which in terms of conventional social scale may be higher even in the Australian context. It is quite common, we were told, for a person to prefer a job as an operative to a clerical position; the former may bring him opportunities of earning over-award payments whereas the latter, a less taxing job, may, in a different scale of social values, be more rewarding. Status in the matter of work to a large extent becomes a secondary consideration. It is more a matter of what one likes to do. This is due partly to the ready availability of employment of one's choice. Many persons with whom we discussed the cause of this traced it to their ancestors who had come to develop the land and took on whatever work came their way. The attitudes of 'master craftsmen' were not in evidence here to the same degree as they appeared elsewhere.

4. The inhibitions which pose problems of social mobility operate less harshly in the Australian system than they do in ours. For instance we have to make an effort to call each other by the first name even when we are operating at the same level in our official work; there is no effort at all in the Australian system in a very

junior worker in a plant calling his manager by his first name and vice versa though one noticed some rare cases where the relations could be described as more formal. The bureaucracy also works in the same atmosphere of informality within itself and also in its relation with the public. It has its own advantages in the smooth working of any institutional arrangements; it gives a feeling of participation to those involved in it from top to bottom. It works, we are sure, without any special problems of discipline and better than the more formal arrangements for participation we sought to introduce in the Indian labour-management affairs some time back.

5. One does expect a more formal atmosphere in law courts as indeed in the judicial proceedings of the Commonwealth Conciliation and Arbitration Commission (CCAC). There are formal modes of appearance and modes of address but these do not prevent informal settlements between the parties with the help of the Commission. In many cases disputes are settled in this manner. The President, members of the CCAC/its counterparts in States and the Industrial Registrar are all available for informal discussions with parties willing to take advice from them. The President/s has/have followed the policy of meeting informally with representatives of employers and workersand officers of organisations even when no dispute is pending. Such meetings serve the purpose of knowing in advance the type of complaints/demands likely to come to the CCAC. On economic matters informal consultations with leading economists or persons in Government who have a hand in shaping economic policies is not uncommon. Such meetings are there despite the feeling of many experienced parties to the disputes coming before the Commission that such meetings are inadvisable and risky. There is a danger of the members of the CCAC being influenced by extraneous considerations. They have, however, an important function to perform; the Commission gets continuously educated on many basic problems of the economy. The members of the Commission make themselves informally available for a private arbitration. Also unofficial help or guidance, not necessarily amount/ing to mediation, has on many occasions helped in not precipitating the dispute and in settling it with expedition when formal proceedings are taken. Legal form and technicalities in the Commission are reduced to a bare minimum which may be necessary for orderly conduct of proceedings. In a fair number of cases parties can be called for discussion over the telephone; in many others issue of summons is dispensed with. The judges of the Commission gave up for past few years wearing the formal dress except on certain occasions when the dignity of the occasion requires such dress.

6. The Commissioners and Judges at the Full Bench have worked in co-operation. The contribution of the lay member commissioners is appreciated to the extent that in Employers' Total Wages Case 1964, the Full Bench had a Commissioner member on it, despite the provision in Section 33 of the Federal Act that matters relating to wages can be heard only by a Bench constituted of Presidential members. It cannot be denied, however that the judicial members enjoy a better prestige than others. This is due to the long tradition of the country to respect the judiciary. The informal and less rigid attitude of the Commission has helped in reducing legal delays - generally known to be proverbial - at least to the extent they get built into the procedure. However, the time taken in the analysis of bulky material in the form of evidence before the CCAC and the sifting of arguments of the parties based thereon do account for some delay in

proceedings. Constitution of Benches for reference of a dispute is expeditious; and yet the President of the Commission secured for himself discretionary powers to appoint a member of the Commission to take evidence to be used by the Full Bench constituted under Section 34(3) for dealing with the case, so that the hearings are not kept pending till the Bench is constituted. In fact in the Commonwealth system a Commissioner takes over a case from another at any stage to suit the convenience of parties. Nevertheless in a system dealing with over seventy-five groups of industries throughout the Commonwealth and over 300 awards and full bench appeals, delays difficult of rectification do occur at times. The following figures indicate considerable improvement in time taken in making judgement; the table has been drawn up on one of the main issues coming before the Commission viz., the determination of basic wage.

Table*

Year	Hearing commenced	Judgement	Days sitting
1949-50	22.2.1949	12.10.1950	125
1952-1953	5.8.1952	27.10.1953	102
1956	14.2.1956	25.5.1956	31
1956-1957	13.11.1956	29.4.1957	29
1958	18.2.1958	12.5.1958	23
1959	24.2.1959	5.6.1959	43
1960	16.2.1960	12.4.1960	17

The table is expressive enough and needs no comment.

7. In arbitration cases, members of the Commission endeavour to secure fullest possible information on a case which can be a process consuming in both funds and time. We had the privilege of watching the procedures before some Commissioners. In one or two formal procedures which we witnessed in one State we were over-awed by the way in which the evidence was being recorded. The procedures adopted in the CCAC or its State counterparts (except perhaps in the case of South Australia) of putting witnesses in the box and eliciting information from them through the processes of examination and cross-examination though they may have their merits in the civil and criminal matters, will not be in the best interest of a country like India. We were told that in one case the counsel for the parties took the Commissioner from place to place in order that he may understand the problems before the Commission in the manner in which the counsels of the two parties wanted him to understand. In all this process there must be elements

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*Tenth Annual Report. The President of the Commonwealth Conciliation and Arbitration Commission, year ended 13th August, 1966, 'Fourth Annual Report (1960), p. 68.

of cost involved which to a society less affluent than Australia may be prohibitive. In this connection we were told what one senior official in the Commonwealth not averse to the aspirations of labour and not averse either to the procedure for settlement of disputes obtaining in the country said. The remarks are somewhat on the lighter side but they have a meaning. He seems to have remarked that the cost of settling a very important dispute to all the parties put together may amount to that of two battleships. In the Indian context, if a decision has to be taken on spending public funds for the settlement of a dispute the Government may prefer to allow an industrial dispute to drag on and settle itself rather than securing for the parties justice that in terms of public resources in some important cases may cost as much as building of half a dozen schools or constructing a dozen tube wells. The South Australian system, however, is less formal in this matter and somewhat more akin to the system which we may like to recommend.

8. An important factor to be taken note of in the Australian situation is that over the last many years, perhaps even before the Second World War, immigration policies in Australia have been operated in a manner that has promoted near full or full employment in the system. The economic worries of the early thirties did not have their adverse impact on Australia with the same severity as they did in countries which had a rate of development or which had reached a stage of development equal to or higher than that in Australia. In saying this it is understood that even in the thirties economic inter-dependence as between countries must have caused ripples on the Australian shores as compared to waves elsewhere. The picture has completely changed in the last twenty years. Much of the improvement which labour-management relations have witnessed recently, leaving aside the somewhat difficult phase noticed currently, could be attributed to the weight that full employment conditions have brought on the economy. The legislation which was brought primarily for benefiting labour is now a useful handle to the employers. In contrast, the Indian scene presents, in spite of the comparatively rapid strides made in development in the last 10 years, an employment picture which is none too rewarding for planners. The difficulties on the price front have added to the strains which some good harvests done can help to relax. All these make the scene of labour-management relations somewhat more disturbed than is usual in India and introduce greater inhibitive considerations in workers in accepting changes in man/machine ratio in the course of gearing the economy for higher reaches of development. Problems of rationalisation or automation will create harsher reaction among Indian trade union leaders at present than they would have done fifteen years back; and harsher still in comparison with earnings which operate in an atmosphere of labour shortages. To cite just two example, not necessarily from the industrial scene as popularly understood, 10 to 12 acres in the Australian terminology is a farmlet, but in India few can afford to have a farm of that size. In fact the average holding in India is between two to three acres and the per capita availability of land is even below an acre. Secondly, we add to our population nearly $\frac{3}{4}$th of the Australian total population every year. And what is true of land resources in relation to requirements at levels of technology in use is equally true in regard to other resources prospected so far.

9. In generating a healthy climate for industrial relations, the favourable economic conditions do not seem to be always an unmixed blessing. Within the framework of the adjudication system accepted in Australia sixty years back the awards given are now taken asthe

minimum below which it will be illegal to get work. Over-award payments mostly secured through bargaining have been quite common in recent years. For policy makers they cause anxiety under conditions of full employment and skilled labour shortage, with their likely adverse repercussions on industrial peace and economy. But even in such cases the Australian Arbitral system had devised its solutions for peaceful evolution. The parties are urged to agree in advance on a procedure for settling such disputes without disrupting work. Part X of the Federal Act (Sections 172 to 180) provides for industrial agreements under which such a procedure can be agreed with a provision for compulsory conciliation by the Commonwealth Commission in case of a dead-lock between the parties. Such agreements, though they have been very few in the earlier years of the termination of the Second World War, are reported to be more common in recent years. They have however not yet upset the economy, nor are likely to, because of other factors. A very large section of the Australian population owns its residential accommodation. House owners once they feel settled with their neighbourhood do not like to change their residence. Same is the case with workers. They like to earn their living in the environments they are familiar with. The argument, therefore, is "I like to work here but would struggle for being paid more."

10. We would, then, like to refer to the sense of discipline which exists in the men and women of Australia. To bring out the point more vividly we should be allowed to cite an instance. During our stay in Melbourne the city was experiencing a drought, the severity of which had no parallel in the recorded history of this large metropolis. This resulted in imposing restrictions on the use of water. To persons like us in the metropolitan India who are used to thinking in terms of an enforcement inspectorate for such purposes, it was a revelation to hear a housewife saying that inspectors are redundant when the community is vigilant in protecting the privileges of its constituents. A frown from neighbours at the wrong doer has in it adequate sanction against the recurrence of violation of even sophisticated restrictions as Melbourne operated on the cleaning of a car or using a hose to water the ever thirsty lawns of every house owner who is accustomed to see a green patch surrounding his residence. In the field of labour-management relations where the parties are more organised on either side, not many cases of indiscipline are reported though in a labour shortage situation there is an in-built temptation on the side of labour to get away with less of discipline. And such as there are, will attract usual penalties, social and statutory. A cause of the ineffectiveness of the voluntary code that we have evolved for this purpose. - the code of discipline may be more deep-seated in that the imposition of a code on one section of the community when a major portion of it is not adequately tuned to advantages of self-discipline, so to say, may prove infructuous. There has to be a desire to work the instrumentalities provided in any system to one's best advantage consistent with the good of the society, and this desire appears to exist in a greater measure in Australia than in our country.

11. Another part of discipline can be illustrated with reference to the attitude of employers. It is claimed that implementation of awards has improved over years and legal proceedings in courts are less frequently required now to secure compliance with awards. This may be again due to the law abiding nature of the population but could even be attributed to the nature of the economy they are operating. An employer who acquires a reputation for not implementing the spirit of the agreement/award may, in course of time, find it difficult to

attract labour to run his business. On the formal side of penalties for non-compliance it is understood that though the 1956 Amendment entrusted arbitral and judicial functions to two independent bodies, the Commission having only the former function, does not entirely detach itself from supervision over observance of its decisions. A word from the Commission, though it may be in the form of an 'obiter' helps persuade the defaulting party to fall in line.

12. One more test of the Commission's acceptability to the parties can be the extent of appeals against single Commissioner's awards. During the first ten years of the Commission's existence (after the 1956 Amendment Act) only 117 appeals against awards of single members of the Commission which themselves run in thousands, were filed to a Full Bench of the Commission. This, by no means, is a bad record of the Commission's work. This does not necessarily mean that every award is necessarily good; it means more the desire of the parties to allow the award to run its course.

13. Here again we may draw a distinction between the Australian and Indian experience. In the early forties when State intervention started under the Defence of India Rules there appeared to be a reasonable amount of acceptance of the system, even respect for it on both sides. As it got written into the Act and operated on a more extensive scale, it brought with it some of its own disadvantages. Its novelty also gradually receded to the background in the mind of its users. The change in the political set up and aspirations aroused in the working class and, to some extent, the alleged but in many cases unsubstantiated charges of political interference in the working of the machinery introduced difficulties in its working.

14. Then there is the political aspect and this should take in the constitutional angle too. Dominant shades of political opinion in Australia are fewer than those currently found in India. Major political parties have been able to distribute amongst themselves the seats in legislative bodies in Australia in sufficient numbers to make their voice felt. This perhaps leaves less room for frustration. The knowledge that any party can take or share political power in the Commonwealth or in the constituent States helps them to adopt attitudes towards problems which they do not have to revise drastically. Governments in the Centre and in States for a long time have known the value of working together, though the labels they carry may be different at different points of time and in different areas. The Australian Constitution worked in its early stages with sovereign States and a somewhat weak Centre i.e. the Commonwealth. Over the years judicial pronouncements have helped to inject in the Commonwealth doses of power that made the system more balanced. The effect of this strengthening is seen most in the field of labour. Since many industries cut across State boundaries the CCAC has acquired jurisdiction over them in the matter of industrial relations. Estimates vary in different States about the percentage of workers who will be governed by Commonwealth awards. But in no State we visited was it less than 45% .

15. The Indian political set up is more varied; it presents a variety of shades, a variety of alternatives to achieve the main objective of improving the living standards of people. Over the last 20 years, barring some occasions in two States of the country, the Centre and the States were held by the same political party. It is only a year since this picture has undergone a change. We have now in some States stable Governments formed by

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parties which have different political persuasions as compared with the Centre. The Constitution is now put to test in many of its facets and matters may take some time to settle down. In the labour field political considerations are not unknown in either country but in India trade unions have shown a division on the basis of different ideologies much more than in Australia. The experience of the working of labour policy during the last year is too short to assess how labour will be dealt with in the new political configuration i.e. whether there will be basic uniformity or not in different areas in dealing with labour matters. From the evidence which is being collected by the National Commission on Labour there is reason to expect that some broad pattern may not be difficult to evolve.

16. We have sought to bring out these major differences in the two countries in the process of our assessment of the Australian system because they have an important bearing on the area of our study or for that matter any comparative analysis of this type. For us, to benefit from the Australian experience and to consider developing instrumentalities on the Australian pattern for improving labour-management relations, each one of the above factors is important. We were told by several persons whom we met and by people in authority with whom we had the privilege to discuss the points we had drawn up in advance, that our visit to their country could not have been timed better. During our stay there, the famous Metal Trades Award (dated 11th December, 1967) was being debated. A decision was given by a Commissioner about the merger of some margins in the basic wage. The employers appealed against the award and succeeded in getting the award altered in their favour to the extent that payment of certain percentage of wage increase granted by the award was deferred. In the State of Victoria the employees of the State Electricity Commission were intending to go on strike. One of the internal Airlines actually struck work and all these events evolved mixed reactions in the public and the press. It is true that in the history of the CCAC ranging over a period of sixty years, the system must have faced much criticism and held its own against even more severe jerks to its suitability. In some cases the criticism led to an amendment of the legislation, the most important being the separation of the award giving functions and those which involved administering sanctions in case of nonimplementation. On many other occasions, however, the CCAC itself has adjusted its attitude to looking at the problems as a result of such public comment as much as the public itself had second thoughts on its initial reaction. Such criticism in papers about the working of the Australian system as we could scan showed that the public only wanted some improvement in the operations of the CCAC, some guide-lines about the composition of Benches. The present arrangement is that the President has full discretion in deciding how the bench should be formed, and even about the relative strength of the Presidential members and lay members of the Commission. But the answer was a firm 'no' if the question put was "can labour and management do without arbitration" or "can labour-management relations be left to be governed solely by collective bargaining?" It seems as if CCAC has become a part of the Australian ethos in dealing with settlement of labour disputes.

17. The origin of this ethos could be seen in the closing decade of the last century when conditions created by low wages raised disputes between employers and workers and the State had to come to the help of the weaker side and determine conditions of work. (In India also the legislation on conditions of work had that distant origin but fixing of minimum wage by the State came much later). From this situation it was not difficult to switch on to a machinery

independent of Government for the settlement of claims of respective parties without fear or favour. In such cases 'independence' denotes that the appointments will be made by Government but once the appointments are made, and prior to 1956 Amendment Act some of these were life appointments, Government had no control over the appointees. Over all these years, the basic principles have remained the same; only changes have been introduced to facilitate working as experience was gained.

18. The Indian system has developed likewise in the last twenty years; it had its origin earlier for another fifteen years. It was in one of our important textile centres where the system of an independent agency to determine the points of disputes was being evolved with some advantage. The Second World War, along with the countries mostly affected by it, brought to India a more widespread use of the system of conciliation and adjudication/ arbitration. After the war exigencies were over, many countries parted with the system, we in India found it convenient to retain it because labour was a weak partner in our system. The system acquired a statutory basis at the same time as we became independent. Over the last 20 years the Indian system has attracted criticism of the type which is not unknown to observers of the Australian scene while it has made a fair contribution to the development of the economy by arrangements for an orderly settlement of industrial disputes. One authority which has had a major share in the evolution of this system thinks that India has developed industrial jurisprudence with ideas of social justice inter-woven in it over the last 20 years for which she can appropriately take credit. There have been trials and tribulations in establishing principles of minimum wage fixation, circumscribing the right of employer to hire and fire, right of organisation by workers and so on but these are nothing as compared with violent outbursts which were attendant on the evolution of these principles in other countries. The evidence coming before the National Commission on Labour shows that the State Governments irrespective of their political persuasion want the system to continue. Employers have shown in some areas preference for collective bargaining but with an important proviso that the ultimate trial of strength should be avoided; i.e. they want collective bargaining in an atmosphere of adjudication. Large sections of workers want the current arrangements to continue with some modifications deemed desirable in the light of experience gained so far. These, therefore, are common experiences of the arrangements in the two countries from which we propose to raise issues for consideration of the National Commission on Labour in India.

i) The first issue we would like to raise is, should there be an option to the employer or his worker to use the industrial relations machinery provided by Government? Under the Australian Federal System, it seems, unions and employers' organisations can, if they so choose, stay outside the system and deny to themselves the privileges or escape penalties which accrue by staying within it. After some early attempts at playing truant both parties have found it useful to accept benefits/penalties because, in the long run, the umbrella which the arbitration system provides has often protected the parties. Since the unions have been organised on a craft basis and jurisdiction of each such union is kept flexible to permit a fair number of workers in allied crafts to join the union, trade unions as a whole have found themselves in a position where their

members are reluctant to keep away from the umbrella. It is always possible for a rival union to stake its claim for seeking membership from workers belonging to a union which refuses jurisdiction of CCAC. Cases of unions coming to grief on this account were mentioned to us. For the unions, therefore, to stay within the protection available is practical politics. But the theoretical possibility still remains: since the law can offer benefits or punish institutions which seek its coverage what happens if a registered employer has to deal with strong unregistered union, when workers refuse to get registered and possibly may not be attracted to another union and are in a position to bring an industrial unit to a grinding halt because of the key positions they hold? To this question there can be no direct answer. But a situation of this type perhaps comes up rarely in the system. One, however, cannot be oblivious to the fact that with increased mechanisation some really key sectors may develop in each industry. Workers belonging to them, because of their solidarity, may insist on collective bargaining in its pure form. Unless the law permits the authorities to bring-in parties who refuse their jurisdiction, a feeling of helplessness will arise. A salutary provision to this effect, we were told, existed in the Act at the time when it was passed in 1904. This was considered redundant later and perhaps dropped. In the present context however, public opinion in such cases of recalcitrance can be so strong that the need for reintroducing the provision may not arise. In the Indian situation problems have arisen recently where a small group of key workers hold up operations. This has happened even when the law was against them.

ii) 'Craft unions' or 'Industry unions' is another area where the Commission is seeking to analyse international experience. We reckon that in this connection the Australian experience will be of limited utility to us. Craft unions in Australia have worked for long and have derived commensurate benefits to their members. It seems, however, that 'industry unions' are now being thought of. While craft unions have their difficulties to face, industry unions can bring in-their-train their own peculiarities. Mere industry-wise classification of workers is not enough. For securing operational efficiency one union for the whole country may find difficulties in a varied industrial situation as we have in India. The feeling in India, therefore, seems to be that one need not deliberately enforce a uniform pattern for this purpose throughout the country. There should be enough room for experimentation in different aspects of industrial relations as well as in deciding whether unions should be craft-wise. The same, we take it, must have been the attitude in Australia.

iii) Connected with craft unions is the question of jurisdiction of unions which we find had raised a variety of questions for consideration of the CCAC. These may be such inter-union disputes as are not settled within the Australian Council of Trade Unions (ACTU) and have been taken to a formal forum for decision. They are decided on the basis of the arguments marshalled before the Court by one union or the other. But once the award is handed down in such

disputes to the disputing unions, the matter ends there and the disputants are prepared to live with it. This is a part of the discipline in the Australian system to which we have made a reference earlier. The Indian experience is that in recent years such disputes have affected the industrial relations in a large measure. We devised the Code of Discipline - a voluntary instrument to get over these difficulties - and this Code contained a procedure for recognition of unions. The procedure though accepted at one stage by all trade union federations has now become a major area of debate. In view of the Australian system of not registering another union when one exists and to which workers can conveniently belong, their experience seems to be of limited utility. As a point of interest we debated in Australia the question whether such restriction could not be considered as restriction on workers' right of association but without a firm conclusion.

iv) Intra-union disputes about the group within a union, to which should be handed over the authority on behalf of the union, have occurred on some occasions in Australia. Intra-union disputes in some form or other do exist in India. Under the Indian Trade Unions Act, 1926, the Registrar of Trade Unions has no authority to decide such disputes. Cases have therefore gone to civil courts with delays in decisions attendant thereon. Of late however intra-union rivalries have become more frequent. The secret ballot system evolved in Australia for dealing with such disputes has appealed to us; there is already something similar to go by in our own country since one of the States in India has already legislated on these lines.

v) We have been able to watch the working of the conciliation and arbitration system in Australia in some detail. Points which have struck us and which are reported to have accounted for the success of the former are (a) the maturity of officers who man conciliation offices; (b) the firm link established in the work of conciliation officers within the framework of the Conciliation and Arbitration Commission and its independence from the Labour Department which even in Australian system is alleged not to be free from political influence; (c)the preference shown in many States to clothe conciliators with powers of arbitration where the tripartite Conciliation Committees operating in those States, are not able to reach unanimity; (d) the system of appeal in case of (c) above; (e) allotment of industries to a Conciliation Officer on the basis of his experience and (f) the working of the Wage Board in one of the States which we had the privilege of visiting. These points are developed below.

(a) This is an obvious point. The evidence reaching the Commission so far has stressed, with illustrations, how lack of patience in some cases and lack of understanding and tact in others have resulted in lack of success though, in terms of statistics, conciliators have to their credit a fair measure of success. The Australian

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system enables them to recruit to these offices persons who have established their reputation in diverse fields of labour-management relations. For persons working with a trade union or employers' organisation or in certain plants, it is considered a privilege to be invited to occupy these positions. In terms of emoluments many have taken a cut from what they earned in the service of an employer to accept positions in the CCAC or its State equivalents. Drawing personnel for conciliation work from a wider field and even varied disciplines makes for a cross-fertilisation of ideas which is reported to be useful in conciliation work.

A point which is linked with (e) below and which is equally important is the choice exercised by the CCAC in sending cases to the Conciliator. The senior Commissioner who is in charge of distributing this work or, for that matter, any other Commissioner decides by looking into the nature of disputes, the normal attitudes of the parties to the dispute as experienced in the past, the traditions which have been set up by the parties in mutual settlement of differences and so on, whether there is room for further conciliation e.g. where unions are strong they take considerable pains to settle the dispute by discussion with the employer. If they fail it is known that conciliation is not likely to succeed. Once a dispute comes to a Conciliator he is not bound by any time limit. The officer himself decides how much time he should give to the parties to lodge their claims and complete other formalities. If, after some hearings, he finds that there is no meeting ground he simply returns the file with a bold statement of his failure because the terms in which even a failure has to be reported has to be agreed to by both sides. The same holds good in the case of settlement. He need not ask the parties to sign an agreement in his presence. In the Australian system it is in the spirit of conciliation for the officer to report orally or in writing about the attitude of parties.

As regards (c) it is to be noted that despite the strong feeling in the official circles - that it would be a 'sorry day' were the two functions, conciliation and arbitration separated in two different entities-a careful distinction necessary for the effectiveness of the two functions is maintained between conciliation and arbitration personnel. This is secured through appointment of non-member conciliators in the Commission who are exclusively meant for conciliation with no powers to arbitrate like Commissioners or even to report to the Commission unless the parties to the case agree. The Commonwealth system thus provides for both conciliators whose only job in the Commission is conciliation* and conciliators armed with arbitration authority. The non-member conciliators in practice are made available to the parties with the least of formal procedure, on just a telephonic request to the Senior Commissioner. They function without any specific instructions or advice in the matter of a particular dispute

*Conciliators also undertake responsibilities outside the Commission but of a similar nature. Experience has shown that their involvement in extra curricular public duties adds to their stature and makes their recommendations more acceptable.

from the Commission or any of its members. They meet the latter and the Senior Commissioner for discussions of a general nature unconnected with a specific dispute. The system thus provides for conciliation free of any extraneous influence. Some of the States, however, provide only one type of conciliation agency i.e. the one armed with powers to award. The awards are, however, appealable.

The Conciliator can call the parties separately or together as he deems fit. In some areas there is a provision that all parties have to be willing to try out conciliation, not only the parties themselves, which indeed is important, but even the Conciliator also has to show his willingness to take up the matter. No wonder therefore that with all these provisions the conciliation machinery seems to have succeeded better in Australia than in India. Also what makes the task of the conciliator easier is the complete informality of relations: All parties know one another, have a tradition of working together and so on. In many cases, we were told, a fair amount of agreement takes place in advance and for sorting out the rest and even for 'face saving' at times, without being uncharitable, the efforts are put on all sides.

(b) More important in the current Indian context is the insulation of the office of conciliator from direct influence of the Labour Department, its permanent and the political wings. The conciliation machinery has to face a lot of criticism about its working on the ground that political influences operate to the disadvantage of one party or the other. Such allegations which were not made in the earlier stages of the functioning of the machinery are more common now. No political party which is in opposition has failed to exploit this arrangement. In the process efforts made by the conciliation officer, however efficient he may be, unfortunately become suspect and even ridden with alleged motives. The evidence before the Commission shows that the officer who is, by and large, free from such influence is not made to appear to the parties to be so free. If this is secured by some means the officer can conciliate better. Allegations of political interference are not restricted to the office of conciliator. They take in their sweep even the officers which register trade unions. And when unions are to be given a representative status on the basis of membership verification, the machinery seems to have lost confidence of many trade union federations. In many cases the allegations against the prevalent practice of union recognition have not been substantiated but here again it seems important that if verification is done by an agency which is impartial and which appears to the parties to be impartial a positive gain will accrue. The arrangements in Australia for union registration under the aegis of the Industrial Commission or the Conciliation and Arbitration Commission can therefore be less objectionable because of the independence which the Commission enjoys.

(d) The Boards/Committees of Conciliation are again a common arrangement between the Indian and the Australian system. The Australian Boards are tripartite. Under the

Indian system, the Boards are not a normal rule but are appointed by the Government in special cases. However, the decisions of these Boards are not as authoritative as those of the Boards/Committees in some of the States in Australia where in case the Board fails to reach unanimity, the Chairman of the Board/Committee can hand down an award which understandably is appealable by the dissatisfied party/parties. This is a variation which we would suggest for consideration of the National Commission. The main reason for making this suggestion is that the dispute would terminate at the conciliation stage though, in some cases, one party or another may go in appeal. It is possible that with the working of such a system, conventions may evolve rendering appeals redundant. The Conciliation Boards/Committees which operate in one of the Australian States are a model that may find some favour in our country.

(f) The system of wage boards prevailing in Victoria - the working of which was explained to us in some detail - is also one that is likely to find favour with us. We have in the Indian system, wage boards which are mostly non-statutory (in some States for a certain number of industries there is a system of statutory wage boards). The two hundred and odd Wage Boards working with the help of two Commissioners who act as Chairmen of the Wage Boards and a centralised secretariat for all of them as found in Victoria may be a pattern worth recommending, particularly when not many complaints were heard about delays; nor were there many appeals against the decisions. Their effectiveness seems to be the result of settled precedents and wage boards themselves not going out of step with awards given by Commonwealth agencies. In a way their task appears to be less complicated than that of wage boards under the Indian system. One of the groups appointed by the National Commission and which deals with the wage boards has recommended continuance of the system but with suggestions for expediting the final determination of wage questions through such boards. The information given to us about the working of the Victorian Wage Boards will be of assistance to the National Commission in reaching its final recommendations.

vi) The other major area of criticism in our system is the absence of direct approach by the party to a tribunal. In the Australian system right is given to the parties themselves to approach the CCAC/Industrial Commissions without Government being brought in. The Indian system rests as it is, on the parties having to approach the Government for making a reference to a tribunal and after the tribunal has given its award again making the appropriate Government responsible for declaring the award binding on both sides, has in it the seeds of possible interference. There is also another type of interference which, to the affected party, appears annoying. A charter of demands is presented, negotiations take place on this charter, no settlement is reached and Government decides to refer the dispute to a tribunal; but in this process it picks out demands which in its opinion are not worth adjudicating rather than allowing the tribunal to do it. The Government's decision on deleting some demands may be out of genuine consideration of not taxing the adjudication system beyond what is absolutely essential. In a system where unions are alleged to be politically oriented motives get

attributed even when the decision is fair. As pointed out earlier this alone is not enough, the decision should appear to be fair to the public. The evidence which is reaching the Commission from all sides - some States Governments, employers', workers' and independent organisations - points to the desirability of removing Government interference in this regard, an interference of the type that would be perhaps unthinkable in the Australian system. But this again gets linked up with the steps which require to be taken in settling the issue of union recognition.

vii) Equally important in the Indian context is the question of implementation. In the Australian system where an average worker is more educated, more conscious of his rights and responsibilities and the employer also conscious of the consequences of full employment economy, cases of non-implementation are somewhat difficult to locate. Such as there are, are taken care of by the established machinery of bipartite consultation. Comparison of implementation arrangements, therefore, has to be made against this background. The factory inspectors in Australia, we were told, carry a bigger load of factories to be inspected. However, in terms of the work he has to do - inspections he has to carry out in an average factory - the details he is required to look into are far less. In New South Wales, for instance, a factory inspector has to carry a load of inspecting over more than seven to eight hundred factories in addition to supervision of shops and commercial establishments. But with vigilant unions, conscious workers and educated public which is not indifferent to what happens in factories, the task becomes manageable. Also, in the Australian system, the guarding of machines and the more hazardous areas of work are amenable to inspection by a small inspectorate because of the greater penalties by way of compensation that an employer may have to pay and also because of the nature of machinery, the guards provided for preventing accidents and so on. In our system because of the different nature of the inspection in shops and factories, the qualifications prescribed for personnel for the two sets of the inspectorate are understandably different. In view of the inadequacy of the inspectorate, which in the Indian system is likely to be chronic, one idea which the National Commission has been considering is to make trade unions take more interest in the physical conditions of work. On this point, our discussions revealed that the Australian situation is more or less akin to ours in that their trade union organisations also are less interested in helping workers on this account than in matters where monetary claims are involved. It does appear that in regard to the supervision of awards, agreements etc. it is really the collective conscience in the community which has the ultimate say. Efforts are, therefore, in the direction of educating all concerned about the need for better working conditions rather than in 'policing' establishments. The impossibility of this approach was brought home to us in another context when in South Australia we were told that if an implementation machinery has to be evolved in order to supervise the awards, particularly in rural areas, an inspector may not be able to offer protection in a year to more than 1,200 persons.

This only indicates the possible magnitude of the problem of manning the inspectorates.

We consider it important to record a significant observation made by one of the senior officials we had the privilege of meeting. He said that a system however perfect, has to be operated by men andwonen in the society as much as it has to be accepted by men and wonen who are the beneficiaries thereof. Taking into account the fallibility of human nature, there will be deficiencies on either side of the system; the best which the persons who operate the system are capable of giving, will fall short of the expectation which the beneficiaries may be having. Even with the greatest of care which could be exercised in appointing officers who at the time of appointment appear to be reasonably meeting the fair, it is always possible that, after their appointment, they may develop attitudes which to persons who have to live with their pronouncements appear to be more as matters of expediency rather than considerations of depth which is required for understanding the implications of the decision. And this depth, again, has so much of subjective element in it! This has happened in every perfect system. Part of the difficulties which come up from time to time in the working of the system is reported to be due to certain rigid attitudes on the part of persons in authority (these attitudes may not be rigid in themselves but to the society or to the public opinion as expressed by the society they seem to be rigid). The answer, therefore, would lie in both sides, the persons who hand down awards and the society which receives it, adequately understanding the deep human problems involved in every industrial relation situation, and this in many cases may not be possible.

viii) In the same area of staffing the organisations like the CCAC, apart from the general considerations earlier mentioned, a feeling seems to be growing in Australia that mere emphasis on legal discipline in the top personnel of instrumentalities created for settling industrial disputes is not sufficient. Steps have been taken for some time in the past to inject into the system non-legal talent for the work of the Commission. There is a feeling that parameters of law have been fairly well established in deciding labour-management problems. If, therefore, persons other than lawyers are introduced as Presidential members, occasions when miscarriage of justice on the legal side requiring interference from higher seats of justice, may not be frequent. On the other hand, the Commission has to operate in an area of what may be broadly called social justice and where parameters are difficult to establish in view of the ever-changing concept of social justice. Though the system has worked well, according to all sections including independent observers, and such changes as are needed are only marginal and not of principle, there is a feeling in some quarters that considerations of national economy get lost of the personnel of the Commission. It has often been the task of Government departments to place before the Commission the possible

approaches which the Commission may adopt towards wage problems, taking into account the interest of the economy. In doing so, any Government which owes its existence to a popular vote has to do a fair amount of tight-rope walking. Placing facts before the Commission in camera is against the tradition of any judiciary and not all the pangs of any economic situation can be made public. There is some thinking going on in Australia that not only economists but respected laymen drawn from other educational and professional disciplines will help in improving the current acceptability of the Australian system. Mixed benches for deciding heavy industrial claims is a reform which may be well on its way.

ix) The last question is the attitude of youth towards the system. When we were appointed on the Commission, some of us felt, because of our age group, whether it will be possible for us to judge the feelings of persons who will have to live with recommendations, the Commission will be making. For us to ignore their fears and aspirations would be to shorten the life of the recommendations themselves. That is why in our discussions in Australia we asked the leaders one question that may appear outside the scope of our formal inquiry but still of special significance to us - 'What is the attitude of youth towards the system, towards the trade unions and towards the society generally ?' To this query we received varying responses, but the one which appeared dominant was the inadequate enthusiasm in the younger generation to the benefits that a trade union can give them. To the younger worker who did not see the difficulties of the thirties, trade unions do not seem to have the special appeal. The time when the trade unions had to 'right the wrongs' done to workers is a matter of the past. For the younger generation attractions of car and television at home are getting stronger. Attendance by the middle-age group is somewhat better and it is this group from which the future leadership gets built up. Trade-union meetings are well represented except when workers have their own special problems to bring to unions. To experienced leaders, attendance at a meeting indicates the areas where the trouble is brewing. Special attempts have to be made by unions for interesting juniors in organising them through cultural/welfare programmes. The danger of overdoing this is also recognised. This lack of interest in unions has led to the situations which not long ago could have been effectively frowned upon by the trade unions. In a recent postal strike, it is reported, that while a fair number of workers had gone on strike, many black legs could also be noticed. In the affluence which the common man is enjoying in Australia, a worker's decision to strike militant postures will be dependent on the holidays he may have promised to his wife and children rather than the dictates of his union. This has set in motion some rethinking in trade union circles. A new force is now emerging on the Australian scene, as indeed on the Indian horizon, of white collar unions more militant in their attitude and more alive to the benefits of organisation.

With the struggle for existence getting keener in Australian trade unions it is being increasingly realised that (i)an effective leadership in trade union is not possible if leaders are left in want, (ii) unions must have a wider canvass to work on than the normally recognised and restricted functions of looking after the interest of their members, and (iii) unions should reveal more and more the wrongs in society than confining themselves to the problems of a specific section thereof. There is in the Indian conditions also a thinking on these problems though of a tentative nature than what may be prevailing in Australia. And this brings us back to the question of political action by unions; a wider interest in the problems of society requires the operation of political levers !

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