NATIONAL COMMISSION ON LABOUR

TOPIC NOTES

ON

INDUSTRIAL RELATIONS

(Section IV of the Questionnaire)

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NATIONAL COMMISSION ON LABOUR

TABLE OF CONTENTS

29,164

29,164

- : 0 : -

NATIONAL COMMISSION ON LABOUR

PLAN FOR DISCUSSION

INDUSTRIAL RELATIONS

To facilitate discussion of notes included in this volume and to assist Members in the consideration of the topics covered under the subject, the Secretariat has arranged the notes in what it considers to be a logical sequence. As was decided earlier in the Commission the set of issues were circulated to Members and such suggestions for modification and addition as were received from them were taken into account in drawing up the list. It is expected that between them, they will cover most of the controversial topics in the area on which the Commission will have to take a decision. As was advised by the Commission earlier, each note contains four sections - (1) the present position in India, (2) analysis of the evidence, (3) a brief summary of foreign practices ; and (4) an examination of the alternatives available and suggestions as to the most suitable course of action.

2. Our industrial relations system as it exists today has come in for a fair amount of criticism, some well founded, but more of it is ill-conceived. On the whole there could be satisfaction about the way it has worked but just the same, deeper probing is certainly called for. The system was evolved with the twin objectives: (i) the prevention of disputes (through the adoption of a suitable institutional framework for joint consultation, redress of grievances etc.) and

..2

(ii) settlement of disputes and avoidance of work-stoppages by collective bargaining where possible and through third party intervention where necessary. Public criticism has been directed more against the latter objective than the former; it concerns itself with the relative emphasis on the two methods. The system of adjudication for settlement of disputes which was justified on grounds of the absence of strong trade unions, need for maintaining uninterrupted production and requirements of national economic planning, it is claimed, has resulted in inhibiting the growth of responsible trade unions; weak trade unionism has in turn affected the growth of joint consultation, and collective bargaining, which should normally be the basis of good labour - management relations in a democratic system.

3. Suggestions have been received about the possible ways in which the present system of industrial relations could be modified or remodelled. These have ranged from an outright replacement of the present system by one of pure collective bargaining, to a continuance of the present system of adjudication with further restrictions on the right to strike/lockout. Each of these will have its logic and its infirmities in the Indian context. The Commission's choice will have to be one which appeals to it as the most workable.

4. In any consideration of the future industrial

relations policy and procedure, one has to be clear about certain fundamental issues such as:

(A) the role which the State should assume and the functions it should have in the field of industrial relations.

(B) whether emphasis has to shift to the aspects of prevention of disputes through promotion of arrangements at the enterprise level -(cf. machinery for joint consultation, redress of grievances,etc.).

(C) the relative importance to be given to collective bargaining and other methods of settlement of industrial disputes.

(D) whether the right to strike/lockout is to be unrestricted, or whether it has to be regulated and restricted; if the latter, in what circumstances?

5. The notes have therefore been arranged in this order. The attempt has been to evolve a consistent system, keeping in view the need for strengthening the good points in the present system and weeding out the bad. In the process the attempt has been to evolve a more rational, democratic and effective system of labour-management relations. The main suggestions made in the notes are briefly as follows:

A

6. The compulsions of modern economic planning and the need to safeguard the interest of the community make some measure of State intervention in industrial relations unavoidable. However, such intervention should be limited to laying down broad policies and procedures and setting up the institutions necessary for their implementation.The State

should not concern itself with the day-to-day administration of the procedures and policies or deal with the substantive matters arising out of labour management relations. The possible interference of the political arm of administration against which there has been criticism has been reduced to the minimum in the suggestions made.(Ref:- Note on State and Industrial Relations, para 19).

7. As has been claimed in the Third Five Year Plan major decisions on policy have been taken after consulting the main interests. In a sense, State intervention in framing labbur policy and implementation of it, has a different meaning in India. The tripartite consultative machinery, which has been evolved in the last twenty years has served a useful function. The present arrangements, however, need to be improved. The Indian Labour Conference should deal with major policy matters of national importance. It should meet less frequently but for a longer period every time it meets. Industrial Committees have been able to reach workers more concrete benefits. There should be more of them and they should meet more frequently and deal with specific problems. Standing Labour Committee should meet more often but on a specific agenda. General debates on the whole area have been useful in pinpointing the problem areas but specific conclusions do not emerge out of them.(Ref:-Note on Role of Indian Labour Conference, Standing Labour Committee and Industrial Committees on Industrial Relations, para 32).

8. An attempt may also be made to gradually reduce the number of central labour federations represented at the tripartite forums. This might help achieve greater unity in trade union ranks. This does not mean that there could be less of discussion or consultation with them. The only idea is that a formal consultative status should be limited to few organisations. (Ref:- Note on Role of Indian Labour Conference, Standing Labour Committee and Industrial Committees on Industrial Relations , para 33).

9. The decisions taken by the tripartite should be in two stages: (i) First discussion should frame some conclusions and parties should be allowed to think over the conclusions andreact on them, (ii) The Second discussion should be to evolve a formal conclusion on the basis of such comments as are received.(Ref:- Note Ibid , para 30).

10. As an example of the tripartite instrument which has been in existence in the last ten years we have discussed the working of the Code of Discipline. Our conclusion is that the provisions in the Code relating to recognition of unions, notice of strike, setting up of grievance machinery etc. should be given a legal shape while the part of the Code which enjoins stricter observance of obligations and responsibilities under the various labour laws may be left to the normal process of implementation by the labour administrative machinery.(Ref:- Note on Code of Discipline, para 15).

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B

11. As a means for prevention of disputes, it is important to have a machinery for the settlement of grievances. It is such grievances which ultimately cause major disputes; they even make parties strike rigid postures in the settlement of all disputes.

12. In recognition of the need for settling grievances at the appropriate stage, a grievance procedure is suggested as a statutory obligation, for undertakings of a certain size. The procedure should have limited steps and should provide for speedy disposal of grievances at the appropriate level with a grievance committee as the last step with provision for reference to voluntary arbitration in case of disagreement. (Ref:- Note on Grievance Procedure, para 29). A point which should be considered, and which has not been discussed in the note, is whether there should be a classification of grievances according to the level beyond which they should not be considered.

13. There is need to have some standing consultative machinery at the level of the undertaking to promote mutual understanding and goodwill between the management and the workers. Works committees should exist but only to the extent they are required by the recognised union. The precise functions of the committee will be a matter of agreement between the employer and the union. Representation of workers on the works committee should be only

on the basis of nomination by the recognised union. It is clear from experience that where a works committee has been used to avoid recognition of a union or to by-pass a recognised union, the committee has not succeeded and obviously cannot succeed. (Ref:- Note on Joint Consultation at the level of the undertaking, para 24).

14. Joint management councils were tried as a voluntary experiment to supplement the statutory works committees. The basic idea was to try out whether in the atmosphere of good industrial relations workers could be given a greater sense of belonging. Beyond the agreement at the highest policy level about the need for such councils, there was not much enthusiasm among employers and workers about the experiment. Also the experiment itself should have recognised the need for avoidance of multiplicity of bodies with similar functions. The main suggestion in this regard is that the formation of such a body should be left to agreement between the management and the recognised union. (Ref:- Note on Joint Management Councils, para 17).

15. There is other related matter: the procedure regarding dismissal and discharges. On this subject there seems to be an agreement that the procedure envisaged in the Bill presently before Parliament is satisfactory; at least it is less objectionable than the various formulae which have been suggested to the Commission.(Ref:-Note on Disciplinary

action. This authority will combine within itself conciliatory and adjudicatory functions. It should be the responsibility of this machinery to say that the parties should settle the matter between themselves and for reasons to be recorded refuse to intervene and so on.(Ref:- Note on Procedure for Settlement of Industrial Disputes, Collective Bargaining vs Adjudication, para 33).

18. Conciliation machinery has a very important role to play in the disputes settlement procedure whether compulsory adjudication continues to hold the field or whether collective bargaining assumes greater importance and replaces adjudication. Conciliation should be a function of authority envisaged above. Suggestions have also been made for making conciliation effective, efficient and expeditious. The expectation is that once the machinery is allowed to function under an independent authority, many allegations about its working will find a proper remedy. Though the machinery works impartially, and there is no strong evidence to suggest to the contrary, it does not appear to the public to be functioning in that matter. (Ref:- Note on Conciliation , para 20).

19. Voluntary arbitration can have a chance of wider acceptance only when collective bargaining becomes the principal method of settling industrial disputes. Voluntary arbitration would be the right method for settling unresolved interpretational and other disputes in collective agreements

Procedures -Dismissal & Discharge, para 28).

C

16. In the complex economic and political situation we are in today, it may not be possible to rely exclusively either on collective bargaining or on compulsory adjudication as the basis of our industrial relations policy. Any violent change replacing the machinery by a system of collective bargaining would be neither practicable nor desirable. At the same time, the emphasis should shift to collective bargaining giving it greater scope. The first step is to create the conditions necessary for its success, and simultaneously to adjust the functioning of the adjudication system in such a way as to supplement rather than suppliant collective bargaining. During the period of transition, adjudication should be restricted to certain specified industries or services. In the areas where collective bargaining may normally prevail, it should be only in exceptional cases that the State may step in and refer the matter to adjudication.

17. We envisage a system in which there is an Independent Central authority and a similar authority in each State which will be entrusted with work in connection with bringing about harmony of interest between employers and workers. If the parties do not agree in collective bargaining, either is free to approach this authority before resort to direct

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of

and for settlement/local and individual grievances. There is need for preparing and building up suitable panels of arbitrators and generally making voluntary arbitration more popular and acceptable - a function of the National Arbitration Promotion Board. (Ref:- Note on Voluntary Arbitration, para 19-20).

D

20. While the right to strike/lockout is basic to trade union philosophy, it has to be conceded that this right may be subjected to certain limitations necessitated by requirements of the welfare of the community as a whole. The policy recommended is that in non-essential Services one could give a free play for strike/lockout and in others (i.e. essential services) right to strike/lockout should be made redundant. However if restrictions are to be placed on strike/lockout they must necessarily be accompanied by alternative arrangements for settlement of disputes. For this purpose, a distinction may be made between:

(a) essential services (strikes are prohibited);

(b) basic industries (strikes may be permitted, but with restrictions), and

(c) all other industries/services (no restrictions on strikes). (Ref: Note on Strikes and Lockouts, para 32).

State and Industrial Relations

I

The concern of the State in industrial relations emanates from its obligation to safeguard the interests of the community which is the consumer of the joint product of labour and management. The extent of its involvement in industrial relations is determined by the level of social and economic advancement of the country; the mode of its intervention is patterned in conformity with the social, cultural and political traditions of the people. Thus the role of a totalitarian State in industrial relations will be different from that of a democratic State. Similarly, the degree of State's intervention is determined by the stage of economic development. An affluent society can afford leaving the parties free to pattern their relations by collective bargaining and undergoing a trial of strength which in a less developed society can be considered luxury to be dispensed with in the interest of the community. Nevertheless in all societies, developed or developing, State has assumed some minimum powers to regulate industrial relations. In industrially advanced countries these are restricted to a minimum of procedures and laying down the rules whereas in less developed countries substantive issues of industrial relations can in addition be a subject matter of a State's interest.

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2. In India, the State has assumed legislative and executive powers in industrial relations. The State has enacted procedural as well as substantive laws to regulate industrial relations. Though payment of bonus, wages, dearness allowance, etc. and the rules governing such payments all affect industrial relations, the scope of this note is limited to the State's authority and powers in regard to those rules and procedures which directly affect and govern trade unions and industrial disputes. The merits and demerits of these rules and procedures and the necessary modifications are discussed separately in the notes that follow.

3. State's concern for regulating industrial relations to promote industrial peace is discernible in labour legislation all through. The right to direct action was curtailed by the State as early as in 1929 by enacting the Indian Trade Disputes Act. During the Second World War period Rule 81-A of the Defence of India Rules further widened the State's powers for curtailing work-stoppages and forcing on the parties compulsory determination of their disputes with the help of the industrial relations machinery set up for the purpose. In the post-war period, the economic expediency justified the regulatory powers of the State in regard to industrial disputes. Under the Industrial Disputes Act, 1947 (I.D. Act) restrictions

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on strikes and lock-outs continued and the appropriate Government was empowered to refer any dispute to conciliation/adjudication and prohibit during pendency of a reference before a Board/Court/Tribunal continuance of a strike/lock-out on a dispute which might already have been in existence. In regard to disputes settlement the I.D. Act conferred on the appropriate Government authority in regard to (i) appointing conciliation officer, constituting a Board/Court/Tribunal for conciliation and adjudication of a dispute; (ii) making a reference either on its own initiative or on the request of one or both the parties with discretionary powers to accept or reject the request; (iii) enforcing adjudication award; (iv) rejecting of modifying an award in public interest in accordance with the prescribed procedure; (v) securing compliance with an award; and (vi) declaring any industry to be a public utility industry from out of the industries enlisted in the Schedule. Labour being a concurrent subject under the Indian Constitution, whatever has been said above in regard to the Centre also applies mutatis mutandis to States.

4. In regard to trade unions, State has assumed regulatory powers to protect the registered trade unions against certain liabilities under civil or criminal law and to promote growth of healthy trade unionism. The

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Registrar of Trade Unions to be appointed by the appropriate Government receives applications for registration of trade unions and ensures compliance with the prescribed qualifications and conditions relating to trade union objectives, membership, utilisation of funds, etc. Though statutory recognition has not been secured for unions so far, under the procedure voluntarily agreed for trade union recognition under the Central law, membership of trade unions is verified by the appropriate Government officials - Chief Labour Commissioner (in the Central sphere) and State Implementation Officer/the State Labour Commissioner in the State sphere for purposes of union recognition.

5. Experience with State intervention in industrial relations so far has not been universally popular, particularly its lack of success in minimising industrial conflict and promoting trade union growth. While it has been conceded that State intervention has justification in view of the requirements of a planned economy and the goal of socialist society, dissatisfaction has arisen over the involvement of the Government in administering the statutory provisions relating to trade unions and industrial disputes.* The discretionary powers enjoyed

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* See notes on Collective Bargaining Vs Adjudication; Strikes/Lock-outs; Trade Union Legislation; Trade Union Recognition.

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by the appropriate Governments and susceptibility of the concerned Government to political influence have particularly invoked criticism from unions as well as employers.

6. Among the main issues which need a thorough re-examination with regard to role of the State in industrial relations are: (i) at what stage and under which circumstances the State should intervene in industrial disputes; (ii) whether this intervention should be exercised directly by the Government or through appropriate authorities set up for the purpose and empowered to act independently of the Government; (iii) should the parties be given direct access to disputes settlement authorities; (iv) should the discretionary powers of the Government be minimised; (v) should the Government officials or an independent authority set up by the Government be vested with powers to ascertain representative character of a union by membership verification or ballot as considered desirable by it, and so on.

II

Evidence before the Commission.

7. The evidence before the Commission appears to favour the retention of the State's right to regulate industrial relations procedures and the right of direct intervention in certain circumstances. Opinion

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is also in favour of determination of sole representative union by an independent authority; increasing freedom to parties for settling their disputes by collective bargaining and gradual replacement of adjudication. The Ministry of Labour and Employment is of the view that State cannot be completely shut out from industrial disputes. As the custodian of public interest the State is obliged to get involved in disputes settlement in certain circumstances. It should retain the right to refer disputes to adjudication and should give reasons for not referring certain cases to adjudication when asked for by any of the parties. The power of appointing industrial tribunals/courts should also rest with the Government which should make the selection out of the panel suggested by the High Courts. Determination of representative union for purposes of recognition can be entrusted to an independent authority which should in certain cases have discretionary power to conduct a secret ballot.

8. Majority of the State Governments are of the view that State must reserve to itself the ultimate power for making a reference to adjudication. In regard to union recognition they have preferred the present procedure and machinery but have no objection to setting up an independent agency for the purpose and constituting Labour Courts/ Industrial Tribunals.

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9. Majority of the employers are of the opinion that State should refrain from interfering in cases where bipartite relationship has been developed and a dispute settlement procedure agreed to between a union and an employer. However, parties should have direct approach to the adjudication machinery and reference screening should be entrusted to a judicial officer of the rank of a district judge. The public sector employers are in favour of the present system of reference making subject to certain improvements. Some, however, are of the opinion that Government should not have absolute discretion in making a reference and this should be vested in an impartial Commission. Though in favour of continuation of present procedure and machinery for trade union recognition, they are not opposed to setting up of an independent authority for the purpose.

10. Majority of the unions are in favour of determination of sole representative union by an independent agency though they are divided on the method to be used for this purpose. They have suggested giving the right of referring a dispute for adjudication to a recognised union; Government should have powers of making a reference to adjudication within a specified period, say one week. The Government should refer all grievances made by workers rather than picking and choosing some. Some workers' organisations are of the view that adjudication should be allowed only on request

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of the parties and some others that a registered trade union should have direct approach to labour court/tribunal who should be authorised to admit or reject a reference. They have opposed any restrictions on their right to direct action except where public health and safety is to be jeopardised.

11. The Industrial Relations Study Groups are all in favour of the State playing a less and less important role in disputes settlement. Many other Study Groups have favoured setting up of an independent quasi-judicial authority to deal with matters relating to determination of sole bargaining agent, bargaining unit and decide unfair labour practices complaints. The Western Region Study Group on Industrial Relations has suggested that Government should restrict its role to prescribing rules and regulations for promoting collective bargaining, preventing unfair labour practices and refrain from interfering in substantive matters of industrial relations. The administration of all these rules should be entrusted to a quasi-judicial body on the lines of National Labour Relations Board in the U.S.A. The Northern Region Study Group is of the view that State regulation of Industrial relations may have to continue in the economic interest of the country, even if collective bargaining is accepted as the primary method of disputes settlement. The Southern Region Study Group is of the view that trade unions have higher

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expectations from Government intervention and as such are unwilling to negotiate with employers. For promotion of collective bargaining Government intervention must be restricted to certain special circumstances only. The Study Group for Banking has recommended that Government should encourage the two parties to formulate procedures for collective bargaining and dispute settlement and such agreements should be legally enforceable like awards of tribunals and that adjudication should be sparingly resorted to.

III

International Practices.

12. State intervention in industrial relations in some form or other is a common phenomenon in all countries. In the U.S.A., State's role is largely confined to enacting elaborate legislation for ensuring workers' right to organise and bargain collectively and constituting an independent quasi-judicial authority to administer and interpret various provisions made in the legislation relating to determination of sole bargaining agent, bargaining unit, etc. and decide complaints relating to unfair labour practices. Industrial disputes are largely settled by collective bargaining, rules for which are statutorily prescribed by the State. State intervention in industrial disputes is limited to actual or threatened strikes/lock-outs which imperil national health, safety or economy.

13. In the U.K., the State has limited its intervention to a minimum. Trade union recognition is on a voluntary basis. (The Donovan Commission has recommended that all disputes relating to trade union recognition be dealt by an Industrial Relations Commission.) Collective bargaining plays the pivotal role in industrial relations and the Government has refrained even from prescribing rules for promotion of collective bargaining. It has only reserved powers to intervene through tripartite wage councils appointed by it in areas where collective bargaining is not developed. The State intervenes in dispute settlement only in the last resort though it is empowered by the Industrial Courts Act, 1919 to refer a dispute to conciliation. The State has provided machinery for arbitration - the Industrial Court and can move it if considered proper and consented to by the parties. Though appointed by the Government the Court is independent of the governmental influence and its decisions though not binding on the parties are generally accepted by them.

14. More recently the Government has assumed increased authority in industrial relations though collective bargaining is still the accepted method of disputes settlement. Under the latest statute viz. Prices and Incomes Act, 1966-67, the trade unions and employers are required to notify pay claims and awards to the Government

contd.... P/11.

which is empowered by the Act to withhold pay increases under certain conditions for a maximum period of sever years.

15. In the political and economic setting prevailing in the U.S.S.R., state intervention in industrial relations, though all pervasive is given effect to in association with trade unions. Some of the decrees issued are signed jointly by the trade union federation and the State. The State appoints industrial authorities for disputes settlement and has retained powers to cancel an award if it is not in public interest. Collective disputes are mostly settled jointly by higher trade unions and administrative bodies. In case of disagreement decision of the administrative body prevails. Right to direct action though not curtailed by the State is considered to be inconceivable as the interests of workers and management are non-antagonistic and the State against whom a strike would be ultimately aimed is identical with the working class.

16. In Australia, though industrial relations are subjected to State regulation, the Commonwealth intervenes through the Commonwealth Conciliation Arbitration Commission and has no powers to directly legislate on terms and conditions of service in private industry. The State has confined its role to laying down rules and procedure for disputes settlement and appointing two autonomous authorities - Commonwealth

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Conciliation and Arbitration Commission and Industrial Court. The Commission is empowered to take cognizance of a dispute either at the instance of any of the parties or on its own initiative and make binding awards without any intervention of the Government. Similarly, enforcement of awards and interpretation of an award, determination of trade union disputes is directly done by the Industrial Court. The Commonwealth does not assume any intermediary role in moving any of the two authorities. The right to direct action is curtailed through the functioning of compulsory conciliation and arbitration provisions.

17. In most of the industrially advanced countries, direct State intervention in industrial disputes is not accepted by the parties. Many countries, however, agree to intervention of judicial authorities for determining disputes over rights. The State assumes responsibility for providing labour judiciary to deal with such disputes leaving the other type of disputes relating to interest to be resolved between the parties by collective bargaining. France, Germany, Australia, Norway, Switzerland and Latin American countries have set up labour courts to deal with disputes relating to rights.

18. In the less developed countries such as Burma, Philippines, Malaysia, etc. State concern in industrial relations is more marked. Besides laying down rules and

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procedure for disputes settlement, the State has provided arbitration machinery for disputes settlement in the last resort. The Government has reserved to itself the right of making a reference to such machinery in cases where public interest is involved or where a joint request is made by the parties. In Phillipines and Malaysia, trade union recognition disputes are dealt by the Industrial Court. In Philippines an election is conducted by the Labour Department on the order of the Court and in accordance with the rules and regulations prescribed by the Court.

IV

Suggestions.

19. Considering the State's obligation to promote industrial peace, to generate increasing employment in an economy suffering from labour surpluses and facilitate attainment of planned production targets and growth rate, it is indisputable that the State cannot divest itself of the right to regulate and even directly intervene in industrial relations matters. Community interests often demand that the two parties cannot be left free to indulge in a trial of strength. The State has to prescribe rules and procedure by enacting legislation to regulate trade union organisation and facilitate collective bargaining by conferring statutory recognition right to the majority

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union, and to provide a disputes settlement machinery for determining unresolved industrial disputes.* Having regard to political affiliations of trade unions and allegations regarding Government's own susceptibility to political influences, it may be desirable to restrict the powers of the State to rule-making and appointing independent industrial relations authorities, to administer and enforce those rules and procedures. Following suggestions may be considered for this purpose:

(i) The State should appoint two independent industrial relations authorities which may be named as National Industrial Relations Commission and National Labour Court to perform arbitral (award making) and judicial (interpretation and enforcement) functions. The Industrial Relations Commission should be constituted of judicial as well as lay members and presided by a person having prescribed judicial qualifications and experience and should be empowered to conciliate and adjudicate over industrial disputes either on its own initiative or at the request of one or both the parties. The President of the Commission be authorised to allocate work among the members.

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*See the note on Collective Bargaining Vs Adjudication.

(ii) The Industrial Relations Commission should be empowered to accept or reject a reference on the basis of screening done by the Screening Cell headed by a judicial officer and attached to the Commission.

(iii) The Industrial Relations Commission should be authorised to modify or cancel an award in certain circumstances.

(iv) Government should cease to have the intermediary role in making a reference for conciliation or adjudication.

(v) The National Labour Court should be constituted of all judicial members and be empowered to decide disputes relating to interpretation of awards, enforcement of various provisions of disputes and trade union legislation, and implementation of awards. The parties should have direct access to this authority. Ascertainment of representative character of a union for purposes of statutory union recognition should be entrusted to this authority. Complaints regarding unfair labour practices should also be dealt with by the Labour Courts.

(vi) The awards should be enforced directly by the Labour Court instead of through the Government.

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contd.... P/16

(vii) Essential services and basic industries be separately defined and listed under the Act instead of being left to the discretion of the appropriate Government.

(viii) Right to strikes/lock-outs be curtailed as under conditions enumerated in the note on Strikes and Lock-outs. During the pendency of a reference before the Commission, the Labour Court instead of the Government as at present should be empowered to prohibit continuance of a strike on any dispute already in existence if deemed to be necessary.

(ix) In regard to collective bargaining the role of the State should be to prescribe rules and procedures for trade union registration, certification of sole bargaining agent and determination of bargaining units as suggested in the notes on Trade Union Legislation, Trade Union Recognition and entrust the administration of these rules and procedures to the Labour Court which would also decide disputes relating to trade unions and unfair labour practices. The State should refrain from assuming any direct role in trade union registration and recognition.

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The Role of Indian Labour Conference, Standing Labour Committee and Industrial Committees in Industrial Relations.

I

The Indian Labour Conference and the Standing Labour Committee Constitution.

1. Tripartite consultation on labour matters on the pattern set by the International Labour Organisation (ILO) and the need of its implementation was recommended by the Royal Commission on Labour, 1931. Subsequent events, the Government of India Act, 1935, and the outbreak of the Second World War in 1939 lent strength to the recommendations. However, it was only in 1942 that two tripartite bodies, viz. Plenary Labour Conference (later named as Indian Labour Conference: ILC) and the Standing Labour Advisory Committee (which subsequently dropped the word 'advisory' from its Title: SLC) were instituted. These two bodies were constituted of 44 and 20 members from Government, employers and workers on the I.L.O. pattern viz:

(i) Equality of representation between the Government and non-Government representatives

(ii) Equality of representation between employers and employees;

(iii) Nomination of the representatives of organised employers and labour to be left to the organisation concerned (In India the practice is the same though the rule differs);

(iv) Representation of certain interests (unorganised employees and employers) when necessary on an ad hoc basis through nomination by Government.

2. The composition of these two bodies has undergone changes over years. Representation of unorganised workers and employers was given up in 1952-53 in response to the demands of the organisations represented at the ILC-SLC. Other changes were necessitated by the reorganisation of States from time to time. The parity between the Government and non-Government groups at the ILC is now disturbed due to the increased number of States, and the expanding interests of the Union Ministries. This disparity between the Government and non-Government groups has not caused difficulties in tripartite deliberations since the conclusions are not arrived at by voting.

3. The ILC was instituted to advise the Government of India on matters brought to it by the participants. In the earlier phase of the tripartite the S.L.C. used to deliberate over matters sent to it by the I.L.C. or reaching it on their own and the I.L.C. made the final recommendations. In due course both ILC and SLC have become deliberative bodies, the former being more representative.

4. The objectives set before these two tripartite bodies at the time of their inception in 1942 were: "(i) promotion of uniformity in labour legislation; (ii) laying down of a procedure for the settlement of industrial disputes; and (iii) the discussion of all matters of all-India importance as between employers and employees".

5. The ILC-SLC work with minimum procedural rules to facilitate free and fuller discussions among the members. The ILC was expected to meet once in a year while the SLC as and when considered necessary. The Union Labour

Minister presides over the meetings. The delegates are free to bring one official and one non-official adviser with them. The advisers do not participate in the discussions except when required by their principals to do so and permitted by the Chairman. No qualifications are prescribed to entitle a central organisation for representation at these forums though a convention has grown over years that a central organisation having a minimum membership of 100,000 spread over the country and over a large number of industries should be entitled to send representatives in proportion to its strength. A provision exists in its rules for taking decision by a two-thirds majority votes, but in practice decisions are taken on the basis of a consensus among members.

6. The agenda of meetings is settled by the Labour Ministry after taking into consideration suggestions sent to it by member organisations. The demand for the conference framing its own agenda has not been accepted by Government and/so is the demand for an independent secretariat for the ILC/SLC. Though the recommendations of the tripartite cannot bind any of its constituents, by convention, the parties do feel morally bound to act upon these recommendations. The Government on its part has assured the workers' and employers' representatives at the very inception of these bodies that the Central Government would consider every suggestion made by the tripartite. When the issue came up specifically for discussion at the ILC-SLC it was decided that "unanimous conclusions" and "agreed recommendations" of the ILC/SLC need alone

be accepted by the parties as commitments for implementation.

7. For matters which lie entirely in the State sphere similar arrangements for consultation exist. The State Labour Advisory Boards, as these tripartite bodies are rightly called function more or less in the same manner.

Contribution of the ILC-SLC.

8. The Tripartite provide a useful forum of communications among the representatives of labour, employers and the Government and help narrowing the differences among them. Their contribution can be assessed in terms of the objectives set before them and other functions performed by them in the process of achieving these objectives. The ILC-SLC have facilitated enactment of central legislation on various subjects to be made applicable to all the States of the Indian Union in order to promote uniformity in labour legislation, which was an important objective to be served by these tripartite bodies. Tripartite deliberations helped reaching a consensus inter-alia on statutory minimum wage fixation (1944), introduction of health insurance scheme (1945), and provident fund scheme (1950), leading to the passing of three important central labour laws, namely, the Minimum Wages Act, 1948, Employees' State Insurance Act, 1948, and Employees' Provident Fund Act, 1952.

9. The tripartite deliberations during 1942-46 on the revision of the Trade Disputes Act, 1929 helped the Union Government in enacting the Industrial Disputes Act, 1947 which laid down a comprehensive disputes settlement procedure to be applicable to all States. However, a few

States e.g. Maharashtra (formerly Bombay), Madhya Pradesh and Uttar Pradesh enacted their own disputes legislation which was made applicable along with the Central legislation. This duality of labour administration could not be mitigated by the ILC due to obvious limitations set before it by the inclusion of the subject 'labour' in the 'Concurrent' list of the Constitution.

10. The second objective, namely, formulation of a dispute settlement procedure was of special significance to the Government, since the ILC-SLC were instituted during the Second World War period, when the Government's prime interest was peaceful settlement of industrial disputes. As mentioned above, the tripartite deliberations facilitated the formulation of a comprehensive disputes settlement procedure under the Industrial Disputes Act, 1947. Both the inception and abolition of the Labour Appellate Tribunal in 1950 and 1956 respectively were in the light of the tripartite deliberations at the ILC-SLC. The popular criticism against third party intervention came up for pointed discussion in the tripartite but consensus could not be reached in parting with adjudication.

11. The third objective of discussion on all matters of national importance has been well covered by ILC-SLC. The range of subjects discussed at these forums bear testimony to this. The various social, economic and administrative matters concerning labour policy are brought before this forum. In fact on many occasions these discussions acquired so much

significance that the main items on the agenda could not even be reached. Since the Government started taking initiative for planning, and labour was a part of over all planning, many of the plan proposals came up for discussion before the I.L.C. The persons consulted by the Planning Commission for labour are again those who take a leading part in the Tripartite; on occasions the I.L.C., with some outsiders added and under a different label, was made the agency to advise on plans for labour.

12. It could thus be said that ILC/SLC have been better equipped for settling procedural matters and they have made contributions in this area. It is generally accepted, however, the ILC contribution on some labour matters has suffered because of certain far reaching decisions taken by it without adequate internal consultation within the groups forming the tripartite. While the recommendation on 'need based minimum' could be cited as an instance of insufficient discussion within Government as a group. The distance between the spokesmen of workers and employers and their constituents and even the lack of control of the former over the latter could illustrate the failure on the part of other constituents of the tripartite.

13. To sum up the ILC/SLC bring together interested persons under the Chairmanship of the Union Labour Minister

(i) to discuss matters of common interest with a view to reach policy conclusions;

(ii) to seek maximum degree of acceptance for measures which Government has to pursue in legislation or their implementation;

(iii) to debate freely matters which affect the interest of any party so as to provide to Government the lines of policy along which it should proceed;

(iv) to avoid unilateral action which is likely to affect industrial relations;

(v) to attempt on some occasions collective bargaining at high level at a time when formal collective bargaining does not take place in the country, or rather where it takes place, it is not adequately appreciated.

Industrial Committees.

14. The decision to constitute industrial committees was the outcome of tripartite deliberations at the ILC in 1944 over demarcation of general subjects discussed at the IIC. A Labour Welfare Committee was proposed but ultimately it was decided to set up tripartite industrial committees on the pattern of the I.L.O. to consider the special problems of the industry concerned. The first industrial committee was constituted in 1947 for the plantation industry composed of representatives of Central and State Governments besides equal representatives of workers and employers.

15. The Industrial Committees have so far been set up for the following industries:

Plantations, Coal Mining, Cotton Textiles, Jute, Mines other than Coal, Cement, Tanneries and Leather Goods Manufactories, Iron and Steel, Building and Construction Industry, Chemical Industries, Road Transport, Engineering Industries, Metal Trade, Electricity Gas Power, and Banking.

These industrial committees do not meet regularly and meetings are convened as and when required. Composition

of these Committees is considered afresh, each time a session is called. The Industrial Committees discuss the labour problems of the industry concerned to suitably advise the Government.

Evidence before the Commission.

16. The evidence before the Commission reveals an agreement among the different States, workers' and employers' organisations over the useful role played by the ILC-SLC. A general dissatisfaction has however been shown by the workers' and employers' organisations over the nature of consensus arrived at these bodies and the manner of implementation.

17. While all the States have commended the role played by the tripartite bodies in industrial relations, some have none-the-less drawn attention to the absence of unanimity in tripartite decisions in the recent past.

18. Some workers' organisations have criticised the procedure in reaching consensus as an exercise in semantic leaving the basic contradictions unresolved. According to them the consensus is forgotten and implementation is made more difficult; tripartite decision have made not appreciable impact on the workers life.

19. The suggestions made by workers' organisations are (i) tripartite conclusions be given the force of law or at least be treated as conventions; (ii) tripartite decisions or recommendations should be well publicised; (iii) special secretariat be set up to look after the implementation of tripartite recommendations and collect and publish relevant data; (iv) tripartite machinery be

set up in States where non-existent so far; (v) a committee be set up to co-ordinate the work of the Central and State tripartite machinery.

20. The majority of employers organisations are of the opinion that the tripartite bodies have a useful role to play particularly with the formation of State Governments of different political shades. They feel that the utility of these bodies could be enhanced if: (i) the forums are not used by labour to pressurise employers or Government for claims which the economy cannot sustain; (ii) officials conclusions are not based merely on the views expressed by the Chairman ignoring the views put forward by parties. (iii) Each of the groups represented at the tripartite has a better system of internal communication; (iv) acrimonious debates which have characterised some of the recent sessions of the tripartite are avoided ;(v)discussions are held in good faith.

21. The public sector employers have likewise agreed on the useful role played by the tripartite bodies. They have, however, pointed out the failure of these bodies in promoting industrial peace owing to voluntary implementation of tripartite norms particularly when these norms are agreed to half-heartedly. According to them, tripartite discussions have become increasingly acrimonious in the changing political context of the country.

22. The Study Group on Sociological Aspects of Industrial Relations has commended the contribution made by the ILC-SLC, particularly their role in narrowing down differences between opposite camps

and help them reaching consensus over matters of common interest, providing a forum of communication among the three parties - States, labour and employers and in sharing the responsibility of the Government in deferring action on too ambitious proposals. The Study Group has pointed out cases where proposals are endorsed by labour and management representatives without being committed to them. During the last few years it has pointed out ILC-SLC have grown increasingly ineffective. The Study Group has recommended reconstitution of ILC-SLC to provide adequate representation to all important organisations of workers, employers and professional groups and to give due consideration to changed Central-State relationship with the formation of State Governments of varying political ideologies.

23. At a seminar on Labour Policy organised by the Shri Ram Centre for Industrial Relations, New Delhi, under the sponsorship of the National Commission on Labour, a suggestion was made to give representation at the ILC-SLC to wider community, professional managers and unorganised labour and employers*.

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* As mentioned in paragraph 2 representation of unorganised labour and employers at the ILC-SLC was discontinued in 1952-53 in response to the demand of organisations represented at these forums.

III

International Practices.

24. The ILO has made the following Recommendation (No. 113) in 1960, concerning consultation and co-operation between public authorities and employers and workers' organisations

'Measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations as well as between these organisations' for certain specified purposes and on predetermined matters of mutual concern.

25. The purposes indicated are promotion of 'mutual understanding and good relations between public authorities and employers' and workers' organisations as well as between these organisations with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living'. In addition such consultation and co-operation should ensure that employers' and workers' organisations are consulted by the public authorities in formulation and implementation of laws affecting their interests, establishment and working of suitable national bodies, and 'elaboration and implementation' of social and economic plans.

26. As regards methods and practices of this consultation and co-operation the I.L.O. Committee on Consultation and Co-operation recommended inter-alia (i) use of flexible procedures (ii) calling meetings only when necessary with adequate notice of meeting and agenda; (iii) reference of certain items to working

parties if necessary; (iv) dispensing with voting procedures in arriving at conclusions to facilitate consultation; (v) maintaining records of discussions in appropriate details and circulation of conclusions reached to all participants; (vi) documentation for reference (vii) provision of an effective secretariat and a small and representative steering group in case of a more formal consultative machinery.

27. A tripartite system parallel to the Indian tripartite organisation is not found elsewhere except in Pakistan, Ceylon, Malaya and Burma where they originated because of the Indian experience. Tripartite advisory bodies in countries such as Netherlands, France and Canada are functioning in the wider social and economic sphere. Some of these bodies have on them other social groups besides labour and management. Experts are invariably represented on these committees.

IV

Suggestions.

28. The ILC-SLC along with other tripartite consultative bodies would continue to play an important role in industrial relations in India so long as industrial relations are patterned by a third party intervention. Tripartite consultation has its value for setting uniform norms to govern industrial relations. In countries where terms and conditions of service are laid down under collective agreements negotiated between labour and management at the unit or industry level, tripartite consultation has little to achieve.

29. The IIC/SLC may continue to be advisory in character. The conclusions reached by them are to be treated as recommendations deserving all consideration for implementation as hitherto. To give this recommendation a statutory force will have serious difficulties apart from marring the spirit of tripartite deliberations.

30. While the Government's desire to operate through a tripartite consensus is logical, to make the process of reaching consensus more consultative, the Government should restrict its influence on tripartite deliberations where it is likely to be considered as over persuasive. It will certainly have valid reason for reserving to itself as Government, decisions on strategic matters. Similarly, the workers' and employers' representatives have to continue their caution in reaching agreements. In this context it is suggested that tripartite decisions could be taken in two stages. There should be a preliminary but detailed discussion on any subject brought to the forum. The conclusions recorded at this preliminary discussion should be widely publicised and free comment on them encouraged. On the basis of these comments, the tripartite in the second round of discussions, should frame its recommendation. What applies to the International Labour Conference can well have a parallel here.

31. It would be fair to concede that over the last 15 years, agreements in the more active Industrial Committees have reached more benefits to workers of that industry than the decisions of the ILC. It is also true that discussions at the ILC/SLC are more influenced by what is happening in traditional industries and that too of a limited range. On this assessment of the achievements of the ILC/SLC and industrial committees it would be

appropriate to suggest that Industrial Committees should meet more often to sort out their problems. Such general decisions as are taken in the I.L.C./S.L.C. should be tested for their applicability in industrial committees and difficulties in implementation taken to the general forums.

32. The present arrangement by which over hundred representatives gather for two days at a time for discussion of labour problems seems to be wasteful particularly when a major portion of the time is spent on a general discussion. The discussions should last longer and should be supported by work in the Committees of the Conference. If long stays at a stretch are not possible, the frequency of the Conference should be reduced; specifically the SLC should meet more often and the ILC once in two years but for longer duration.

33. Over the last 10 years, the tripartite has become less representative particularly in regard to the labour representation on it. This inadequacy is sought to be met by giving special representation to groups which normally do not form part of the tripartite but are brought in for discussion of specific issues. Even otherwise, the federations having the basic qualifications for entry into the tripartite are increasing in number. Some trade union groups which will become important like unions in banks, railways, air-transport, ports and docks have no representation now but in due course they will have to be heard. So is the case of some all-India Federations which operate on the whole of labour field. If the ILC/SLC have to function as advisory bodies to Government and

their advice is to be confined to labour matters only, the following suggestion comes in for consideration:

It is presumed that the trade unions in the country have to be unified. If this presumption is correct, giving representation to a large number of unions having different ideologies is likely to come in the way of attempts at unification. This means that even the present representation of four Central Organisations on the labour side will have to be reviewed. After all, representation at the ILC does give prestige to a trade union and this prestige itself in effect may keep the federation away from reconciling its views with other groups represented in the tripartite. If a conscious attempt has to be made on all sides for a united trade union movement, the first step in the process would be a reduction in the number of federations. In any case, the ILC as it is presently constituted represents only about half of the total organised labour. And no one outside the ILC has suggested that the labour wing of the tripartite has not effectively brought to the forum the live problems of labour in the country as a whole. Reduction in the number of federations to be represented in the labour wing of the tripartite may raise eyebrows but will not undermine the efficacy of decisions. This reduction can be achieved by progressively raising the minimum membership required to give representation to a federation at the ILC-SLC say every three years. The membership of each of the federations can be scrutinised at the end

of every three years in a manner acceptable to the federations and the representation renewed/cancelled as permitted by the minimum membership condition. This procedure is likely to make a dent on the present factionalism within the trade union organisation and promote organisational solidarity.

34. If, however, the role of these bodies is to be enlarged in the wider economic and social spheres, the entire structure and objectives of the tripartite in its present form will have to be recast and the authority to constitute these bodies may have to be shifted away from the Union Labour Ministry. Representation in that case will have to be given to various other social groups including experts, besides labour management and the government.

Code of Discipline in Industry.

The first two years after the First Five Year Plan witnessed increasing industrial unrest and labour disputes. While workers complained of non-implementation of awards and agreements by employers, employers complained of acts of indiscipline, and lawlessness on the part of the workers and their unions. There was an atmosphere of mutual distrust, and accusation of non-compliance with legal obligations. The new Government which was formed was conscious of criticism of over legislation and going slow in that direction. There was clearly a need for bringing home to parties, an awareness of their obligations under labour laws, as also to create in them an attitude of willing acceptance of their responsibilities and readiness to discharge them. Legal sanctions had to be avoided but satisfaction had to be given to parties. The answer was moral obligations. It was in this context that the question of discipline in industry was discussed at the 15th and 16th Sessions of the Indian Labour Conference and the Code of Discipline (Code) containing obligations was accepted by the central organisations of employers and workers. It was formally announced on June 1,1958.

2. Apart from the promotional responsibilities which the Central and State Governments are required to shoulder the Code seeks to define the duties and obligations of employers and workers. It enjoins on parties to refrain from taking any unilateral action in connection-with any industrial matter, to utilise the existing machinery for settlement of disputes with the utmost expedition, to abjure strikes and lockouts without notice and without exploring all avenues of settlement and so on. The Code also discourages recourse to litigation and

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recommends that disputes not mutually settled should be resolved through voluntary arbitration. The employers' obligations under the Code require recognition of the majority union in an establishment or industry and the acceptance of a mutually agreed grievance procedure. The workers are not to resort to go slow, coercion and intimidation etc. Unfair labour practices such as negligence of duty, careless operation, damage to property, interference with or disturbance of normal work and insubordination were to be discouraged. The management should take prompt action for the settlement of grievances, implementation of awards and agreements and avoid unfair practices. Both employers and unions are required to take appropriate action against officers and members for indulging in action against the spirit of the Code. The message of the Code gradually spread to organisations outside the discipline of the signatories of the Code, and in the early years of its operation it was considered worth giving a serious trial. One of the State Government was inclined to write the Code into the Law but was dissuaded from doing so by the Tripartite. It became an instrument to which credit/discredit was given for industrial peace/conflict and was conveniently used by one group or the other to point out the short-comings/of others.

3. In the words of the Third Plan, "the Code lays down specific obligations for the management and workers, with the object of promoting cooperation between their representatives at all levels, avoiding stoppages as well as litigation .... and eliminating all forms of coercion and violence in industrial relations". The Plan also cautioned that a new concept of this type will require a considerable period of earnest endeavour before it

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gets firmly established in practice.

4. The Code has been accepted by all industries in the private sector, (except banks and Newspaper industry), and companies and corporations in the public sector except Ports and Docks, defence undertakings and Railways. Implementation machinery consisting of special units in Labour Departments and tripartite Implementation Committees have been set up at the centre and in all the States, to secure the implementation of the Code to secure out of court settlement of cases pending in High Courts and the Supreme Court, and to ensure that appeals against awards are screened by committees set up by the central organisations of workers and employers before they are taken to courts. The Code was further strengthened by the Industrial Truce Resolution adopted by all the central organisations of employers and workers on November 3, 1962. The Resolution reiterated among others, the desirability of getting disputes resolved through voluntary arbitration.

5. To measure the success or otherwise of the Code merely with reference to industrial peace, as has been attempted in certain circles, appears to be inappropriate. Peace or conflict is a complex of various factors. To state only one of them would be enough to put the success of the Code in its proper perspective. Simultaneously with the operation of the Code Governments policy of settling industry-wise wage disputes through wage boards started operating. A major cause of conflict was removed at least temporarily from the arena of industrial relations. The salutary effect of this on industrial peace got inextricably mixed with that of the Code. To give credit for favourable trends in 'man days lost' to the

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Code or Wage Boards or to both is not warranted. It is factors like more frequent tripartite discussions, occasional sanctions of withdrawal of affiliation granted by federations, withdrawal of case, in Court to give expeditious relief to workers, voluntary recognition of unions setting up grievance procedure and indeed the creation of atmosphere for 'voluntaryism' etc. which require to be looked into, in addition to judge the effectiveness of the Code. Talking purely in terms of 'man days lost', the first five years of the Code 1958-63 did show in all less of time lost than the five subsequent years 1963-1968 and the reasons for it are really outside the scope of the Code.

6. The position regarding setting up of grievance procedure, acceptance of voluntary arbitration and recognition of unions has not been quite satisfactory, and has been the cause of complaint by the parties. Complaints that the employers, both in the public sector and the private sector, have been refusing to recognise trade unions under the Code and to accept voluntary arbitration have often come up before the Implementation machinery and even before tripartite conferences. While the central workers organisations have accused the employers of not fulfilling their part of the obligations, employers feel that the workers' organisations use the Code of Discipline and accept it only to the extent that it suits their requirements.

7. The attitudes of the parties to the Code have also undergone a change over the years starting with a measure of scepticism as the Code was being shaped and since enthusiastic support in the early stages, it changed into a qualified approval for some time,

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ending in the current phase of virtual indifference. In recent years a feeling seems to have grown that the voluntary approach in industrial relations, as embodied in the Code etc. has failed in its purposes and that if the purpose of the Code is to be achieved, the Code or at least some of its basic provisions such as those relating to recognition of unions, grievance procedure, etc. will have to be given a legal shape.

II. Evidence before the Commission.

8. The consensus of the evidence before the Commission appears to be that the Code has had a limited success. Although in the beginning it created an awareness among the parties to their respective obligations, it gradually acquired a cloak of indifference which could not be shaken off. Among the factors mentioned as responsible for this result are: the absence of a gennuine desire and limited support to self imposed voluntary restraints on the part of employers' and workers' organisations, the worsening economic situation and the inflationary price rise and its effect on the real wage of workers, the inability of employers to implement wage awards etc. Inter/intra union rivalries are also reported to have added their bit to discredit the Code.

9. Many State Governments have expressed the view that the Code has not served the purpose for which it was intended, although it has been useful to some extent in creating good-will and understanding between the parties. State Governments generally favour giving a legal shape to the provisions of the Code.

10. The employers' organisations including some public sector undertakings, feel that the Code has served its purpose to a limited extent only. For this

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failure, the employers blame the trade unions - the multiplicity and inter-union rivalries among them. They do not favour giving a legal shape to the Code as such a course would defeat the very purpose of a voluntary code. Some of them, however, have suggested that the provisions relating to recognition of unions, grievance procedure, and obligations of the parties should be given a legal shape.

11. Workers' organisations have expressed the view that the Code has failed in its performance as it has not worked to the benefit of the workers or in the interests of smooth industrial relations, employers have failed to implement its provisions in true spirit; in fact, it has become one more source of mutual complaints and recrimination. They are in favour of giving legal shape to some of the provisions of the Code particularly those relating to recognition, unfair labour practices, etc.

12. The Study Groups which had gone into the working of the Code have also expressed the view that in spite of its obvious weaknesses and failures, it has succeeded in creating an awareness among employers and workers, of the need to observe certain elementary rules of conduct. The Industrial Relations Study Groups (Northern Region and Southern Region) have suggested giving a legal shape to some of the provisions of the Code. The Study Group on Plantation has opposed such a course as in its view, voluntary agreement is the very foundation of the Code and any attempt to legalise it will only undermine its strength.

III. International experience.

13. International experience in this regard is scanty as may be expected. In some countries voluntary

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arrangements are the rule. Collective Bargaining agreements are themselves an instance of voluntary restraints after the settlement is reached. Some clauses provide for voluntary arbitration in interpretational disputes. and so on. But the more appropriate example would be the arrangement which was evolved in 1964 in the U.K. between Employers and Workers, with Government in the wings, which was known as the 'Joint statement of intent on Productivity Prices and Incomes'. There have been similar examples of voluntary approach on specific issues in Sweeden, Yugoslavia and in a very limited way in U.S. There, however, are examples of peace time approach. In emergencies, almost every country has shown considerable measure of voluntary restraints in matter affecting industrial relations.

IV. Suggestions.

14. The Code had admittedly played a useful role in the early years by focusing the attention of the tripartite prominently on their obligations under the various labour laws and by enjoining on them a stricter observance of these obligations. Although there was nothing new in such exortations the fact that the parties were brought together and openly accepted the need for stricter adherence to the statutory requirements was in itself an achievement. When breaches are enquired into and openly discussed at tripartite committees or reported upon publicly the very process of discussions produced a restraining and sobering effect on the parties and instances of gross violation of laws and repudiation of responsibilities decline. The provisions in the Code regarding recognition of unions and acceptance of voluntary arbitration also helped to some extent in

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popularising these concepts. The attitudes to the Code have changed and no special attention is now being paid to it. It is on its way to 'Archives'.

15. In the context of the future while the part of the Code which enjoins stricter observance of obligations and responsibilities under the various labour laws may be left to the normal process as of implementation by the labour administration machinery, provisions like recognition of unions, notice of strike, setting up of grievance machinery, reference to voluntary arbitration in certain specific types of cases, etc. need to be formalised under law. With the removal of these provisions from the Code and giving them a legal form, the Code will have lost much of its justification for continuance.

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GRIEVANCE PROCEDURE

Prompt redressal of individual grievances is a must in order for creating good labour management relations, and promoting efficiency at the plant level. If day-to-day grievances of workers do not receive timely and proper attention, they will develop into situations/ disputes causing indiscipline and loss of production. The type of grievances in view are those arising out of 'complaints affecting one or more individual workers in respect of their wage payments, over-time, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissals and discharges' and not disputes which are of general applicability.

2. The settlement of day to day grievances of the workers has not received adequate attention/of our laws. Two labour enactments viz. the Industrial Employment (Standing Orders) Act 1946 and the Factories Act 1948, carry provisions regarding redressal of workers' grievances. Matters to be taken care of vide clause 10 of the Schedule to the Industrial Employment (Standing Orders) Act 1946, include 'means of redress for workmen against unfair treatment or wrongful eviction by the employer or his agent'. Clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946 specifies that 'all complaints arising

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out of employment including those relating to unfair treatment or wrongful eviction on the part of the employer or his agents, shall be submitted to the manager or the other person specified in this behalf with the right to appeal to the employers'. However, this Act has a limited applicability confined to only those establishments employing 100 or more workers and also does not provide for bipartite discussion and prompt redressal of grievances. This does not mean that bipartite arrangements are lacking. Under the Factories Act, 1948, the State Governments have framed rules requiring labour welfare officers to ensure settlement of grievances but this provision has not been very help-ful because of the dual role of these officers.

3. The Code of Discipline among other things lays down that the management and unions 'will establish upon a mutually agreed basis, a grievance procedure which will ensure speedy and full investigation leading to settlement'. The guiding principles, need to be taken note of in evolving a grievance procedure are in conformity with existing legislation; need to make the machinery simple and expeditious; and designation of authorities, to be contacted by the workers at various levels, by the management. Based thereon the Sub-Committee of the Indian Labour Conference, in September, 1958, evolved a Model Grievance Procedure for adoption by parties.

4. The Model Grievance Procedure has successive time bound steps each leading to the next in case of failure. Under this an aggrieved employee would first present his grievance verbally in person to the designated officer who would give an answer within 48 hours. In case the worker is dissatisfied with the decision or fails to get an answer within the stipulated time, he would personally or accompanied by his departmental representative present his grievance to the Head of Department. If the departmental head fails to give a decision within three days or his decision is unsatisfactory, the aggrieved worker could request for forwarding of his grievance to the 'Grievance Committee' which would communicate its recommendations to the manager within 7 days of the request, for implementation. If the recommendation is not made within the stipulated time, reasons therefor would be recorded and in case the unanimous recommendations are not possible, the relevant papers would be placed before the manager for decision; the manager would communicate his decision to the worker within three days. The worker would have a right to appeal to the Management for revision of Manager's decision who would, in turn, communicate its decision within a week of the worker's petition. The worker could take a union official with him for discussion with the management, if desired. In case of failure to settle the grievance even at this stage, the union and the management may refer it to voluntary

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arbitration within a week of the receipt of management's decision.

5. All the steps in the above procedure may not be used if the complaint isagainst the designated officer at the lowest level or in case of any grievance arising out of dismissal or discharge of a worker. In the former case, the worker may skip the first step and approach the next authority; in the latter, the appeal may be made to the dismissing authority or any higher authority designated by the management, within a week from the date of dismissal or discharge. Though the grievance machinery, could be availed of by an aggrieved worker on receipt of order causing a grievance, it would not stand in the way of implementation of the order by the management.

6. Though many progressive units have had arrangements for settlement of grievances even prior to the acceptance of the Code and some others have set it up as a part of their obligation under the Code, grievance procedure voluntarily agreed in the tripartite meeting is not adopted in many industrial establishment. By and large channels of communication between labour and management are not kept open to facilitate settlement of individual grievances.

II. Evidence before the Commission.

7. The State Governments have expressed divergent views on the purpose served by the Model Grievance Procedure. Some feel that it has failed to serve its purpose whereas others have opted that wherever it has been adopted it has served

a useful purpose. There is unanimity on the need of a statutory backing for the formulation of an effective grievance procedure which should be simple, less cumbrous, flexible and more or less on the lines of the present Model Grievance Procedure. It should be time-bound; have three steps viz. worker and/supervisor, worker and departmental head, and thereafter a reference to the 'grievance committee' consisting of management and union representatives; it should not affect the bi-partite arrangements; and be made applicable to only those units which employ more than 100 workers. One State Government has observed that 'incorporation of the procedure in the Statute Book will not improve matters to any appreciable extent'.

8. In regard to the system of Grievance Arbitration, most States feel that arbitration, voluntary or statutory, is not likely to find favour with the employers who desire to have an appeal against arbitration awards. Some are of the view that precise reaction of employers and employees to such a system could not be anticipated at this stage. But there is almost unanimity that such a system, if accepted, would definitely improve industrial relations. One State has suggested that that it could be used for limited purpose such as for individual cases.

9. Most of the employers-both in the Private Sector and the Public Sector - hold the view that the 'grievance procedure' has by and large served its purpose. Some feel that the grievance procedure has failed to serve its purpose because unions tend to bypass the grievance machinery and

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take up even minor individual grievances of their members directly with top management and with the conciliation machinery, if necessary. They also feel that it does not need any statutory provision as a procedure resulting from bilateral relations can be best suited to the requirements of the industries at the plant level. A suggestion has been made that Industrial Disputes Act should have provision to the effect that all steps of the grievance procedure formulated by the company be exhausted before an individual grievance is taken to conciliation.

10. The employers are generally not keen to adopt the system of Grievance Arbitration; some feel that it would not improve relations because the views of arbitrators are biased as they are neither independent nor sufficiently qualified, and there may also be a tendency on the part of unions to make frequent references to arbitration as they don't lose any-thing in case of an adverse award. The other view is that the arbitration would promote industrial harmony only when it is voluntary in nature.

11. The Workers' Organisations, by and large, are not satisfied with the present methods of settlement of individual grievances and have a general feeling that even statutory provision will be ineffective. One central organisation feels that what counts is not the machinery but the attitude of the persons who man it. Another central is of the opinion that the statutory provision will not make the procedure effective unless the time and steps of redressal involved are reduced. It has suggested that first mediation be on the spot, immediately

after the cause of grievances; second mediation be a quasi-enquiry at the managerial level associating the top union leader on equal footing, thus, infusing the existing bipartite arrangements into the procedure.

12. The system of Grievance Arbitration is favoured by almost all the workers' organisation and they feel that it would improve industrial relations. One central organisation, though conscious of the difficulty of getting impartial arbitrators, feels that the system would improve labour-management relations provided management accept it and impartial arbitrators- chosen before hand and mutually acceptable - are available. The State Unit of another central organisation, however, feels that it may result in weekening the bipartite consultations and encouraging a technical attitude towards finding solutions.

13. The Study Groups reporting on the subject have generally agreed that there should be a provision for the settlement of individual grievances. Though there is a provision for the settlement of grievances, by and large, the 'Model Grievance Procedure' has not been adopted. It is particularly true of the Cotton Textiles, Coal, Jute Industry and Ports and Docks. Of the four Regional Study Groups on Industrial Relations, the Northern Region has desired that there should be expeditious redress of grievances; the time limits for the consideration of the grievance application at each stage should be reasonably short and should be strictly adhered to. The provisions in the Model Grievance Procedure adopted by

the 16th Session of the Indian Labour Conference can perhaps form the basis, with suitable modifications'. However, a single grievance procedure may not be suitable for big and small units and also establishments should frame rules in respect of recruitment, promotion, etc. in order to eliminate industrial grievances. Most of the members of the Western Region Study Group have taken the view 'that issues dealing with individual personnel questions such as dismissals, discharge, etc. should be altogether removed from the scope of statutory systems for treatment. As an alternative to the statutory system of resolving these issues, a bi-partite grievance procedure should be set up with its procedures statutorily fixed but not the substantive issues. The substantive issues should be treated by the grievance machinery. This can be done in all industries covered by the Industrial Employment (Standing Orders) Act. The present statutory facilities may be made available only in case of sweated industries where organisation is not possible. Procedures in the existing system must however be simplified in regard to unorganised industries and labour'. The procedures should prescribe levels, time limits at each level and finally if there is no solution, provide for the issue to go before arbitration jointly between representative workers or unions and management.

14. In Ports and Docks already there is a grievance procedure which gives right to an aggrieved worker to go in appeal up to the Chairman. The Study Group feels that issues which do not have substantial financial implications should be treated at local levels and with that end in view powers should be delegated to senior officers. The grievances relating to wages, dearness allowance, etc. should not form the part of a grievance machinery; arbitration has also not found favour. Study Group on Iron and Steel has recommended that no third party should be inducted in the settlement of any dispute; the Study Group for Coal has expressed the opinion that setting up of grievance machinery should be a statutorily binding and 'only the operational details may be left to mutual agreement'.

III. International Experience

15. The I.L.O. Recommendation (No. 130) adopted in June 1967 on internal grievance settlement laid down the methods of implementation, guiding principles and rules for a grievance procedure. A grievance procedure can be framed under national laws, collective agreements, awards or work rules. A worker should have right to submit his grievance and get it examined without prejudicing any of his interests.

16. The Recommendation excluded from its purview any collective claim of the workers. It provided for association of workers' organisations or representatives of workers in the grievance procedure on par with employers and their organisations; conferred on the concerned worker and employer the right to directly participate in the procedure; seek assistance of or representation by their respective organisations in the examination of the grievance. Emphasis was laid on internal settlement of grievances without prejudicing a worker's right to take recourse to the appropriate labour authority provided for the purpose. It was urged that the grievance procedure should be simple, rapid (if necessary the different steps of the procedure be made time-bound), flexible and be brought to the knowledge of the workers. There should be a responsibility of reaching a settlement at any of the hierarchical steps of the procedure. The

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aggrieved worker should be kept informed of progress made in the grievance processing. Failing settlement of a grievance within an undertaking a grievance procedure should provide for its final settlement by arbitration/adjudication.

17. Grievance procedures consisting of hierarchical steps are provided under collective agreements in certain countries. While in others, though these steps are not elaborately laid down, grievances are handled in the initial stages between the concerned workman and the foreman, failing which shop steward, trade union leaders are associated on the worker's side while higher management takes up the matter on the other side. In certain countries grievances are handled by joint committees of workers and management constituted either under law or under collective agreements. Due to prevailing social ideology in some countries, individual grievances are not encouraged and they are presented only in the form of group grievances. Brief illustrations of these different types of procedures are given below.

18. Grievance procedure in the U.S.A., generally provided under a collective agreement, has normally the following successive time-bound steps each leading to the next in case of failure: (a) the departmental foreman and the aggrieved employee who may be accompanied by a union steward; (b) general foreman and the chairman of the

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union grievance committee; (c) local union president and plant superintendent, sometimes accompanied with other union and company representatives; (d) director of industrial relations in the company with other management representatives and a representative of the international union and key representatives of the local union. Provision exists for arbitration on request of either party if a grievance is not satisfactorily resolved internally.

19. In Canada, France and Malaysia also a grievance procedure consisting of hierarchical steps is generally provided under collective agreements. Association of trade union leaders and company level management is provided at the higher steps of the procedure. Binding arbitration by an agreed Arbitrator or court is agreed to be the final step in settling an interpretation grievance. In France and Malaysia each of the step is made time-bound. Time limit is also prescribed for making an appeal to the higher authority in the procedure.

20. In the United Kingdom, generally a grievance is first discussed between the worker concerned and his foreman. Failing this, it is taken to the shop steward by the worker who takes it up with the concerned foreman and other higher management officials. If the management decision is not acceptable to the workman, the issues can

be settled by collective bargaining if the workers' representatives so desired. Interpretation of grievances in some units is dealt by the internal joint consultation machinery.

21. In Sweden, the worker takes up his grievance with the foreman first and, failing redressal, approaches his shop manager. Generally, the worker seeks the help of his union only when he fails to get satisfaction by this method. Both the labour and management strive to keep the grievances within the undertaking and to avoid reference to higher authorities.

22. In the U.S.S.R., only after discussing his grievance with the management, the aggrieved workman can, through the trade union committee, refer it to 'labour disputes committee', constituted of equal representatives of trade union committee and management, in each undertaking, workshop or department. The Committee has to take a unanimous decision within five days, failing which or in case of a worker being dissatisfied with its decision the matter can be decided by the local trade union committee within seven days of submission of the grievance to it. An appeal against its decision can be filed with the People's Court within 10 days of the decision of the trade union committee. Management can also appeal but only on point of law.

23. In the East European countries such as Poland,

statutory bipartite bodies are set up in the undertakings to arbitrate over grievances - individual disputes. In case of their failure to give a unanimous decision the dispute can be taken to the courts by the worker concerned.

24. In Japan, grievance processing is not well developed due to the system of life-time employment in industry, general orientation of enterprise union towards collective rather than individual interests of members and patriarchal role played by the management. Individual grievances are generally unknown. The union officers present them in the form of group or department grievances in collective bargaining agenda to be discussed between top union and management representatives or resolve them before they cause conflict. Consequently the full time union officers act like grievance committee men readily available to discuss grievances with workers or stewards at any time in order to bring these to the notice of the central executive committee of the unit concerned as a preliminary for discussion at the negotiations sessions of collective contracts where they are informally resolved. Such sessions are held as and when required during the tenure of a collective contract.

IV. Suggestions:

25. A grievance procedure - whether formal or informal, statutory or voluntary - has to ensure that

it gives a sense of (i) satisfaction to an individual worker, (ii) reasonable exercise of authority to the manager and (iii) participation to unions. The introduction of unions in any procedure is necessary because ultimately the union will be answerable to members. It is also necessary that any procedure to be effective, should be simple and have a provision for appeal.

26. Settlement of an individual grievance should be prompt and quick in giving relief to the worker as it is natural that in the suspense of getting decision, a worker cannot wholeheartedly devote his energies to work. The first question that arises in tackling the problem, therefore, is whether such a procedure should be formal or informal. It is made out by some that a rigid procedure sometimes stifles the informal touch which is equally important for building up mutual trust and confidence between management and workers. There are many instances where grievances of a worker may be of a trifling nature and if a grievance has to pass through a number of steps (through a formal procedure), it is possible that the results are not worth the time and effort involved. On the other hand, if things are left entirely on an informal plane, workers by and large, remain ignorant as to whom to approach in case of a grievance and on whom to pin their faith for redressal. This is particularly true of large establishments. As

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such, some amount of formality may be necessary so that a worker could know how and to whom to represent his grievances. It would, therefore, be desirable to make any procedure introduced, simple enough so that even workers may be able to understand it.

27. In view of the varying size and nature of units, it may not be desirable to be rigid about a single procedure. Some informality in the approach may be required in case of small units, say the units employing less than 100 workers because in them it is easier both for the management and workers to have close contacts and personal approach. It would, therefore, be more appropriate to confine introduction of a more formal grievance procedure to units employing 100 or more workers.

28. The experience so far in leaving the issue of introduction of a formal grievance procedure to units has not been very happy. No doubt, there are a number of units which have well defined procedures which are working satisfactorily. There are others in which in the absence of any written procedure arbitrariness prevails. Such cases point to the need for making it a statutory obligation. The Employment (Standing Orders) Act should have provision to this effect indicating the procedure for grievance settlement and the type of grievances covered.

29. An essential of the procedure should be that total number of steps involved should be limited, not more than 4 even in the largest units. Generally, a procedure with three steps should be adequate. Any model grievance procedure should provide three steps viz. (a) when a worker feels aggrieved and the informal approach has not given him satisfaction, he should in writing take up the grievances to the immediate superior and an answer from him should be available to the worker within 48 hours; (b) in case a worker is not satisfied, he should go in appeal to the departmental head. The final decision of the departmental head should be communicated to the worker within 7 days of the representation of the representation. (The departmental head should be given a free hand to adopt any procedure he likes in ascertaining the facts. He may consult the head of the department concerned, labour officer, and hear the aggrieved worker. In case an aggrieved worker is called for an interview by the departmental head, he should have the option to take along with him for advice any office bearer of the union of which he is a member or a co-worker). (c) At the apex, there should be a grievance committee with equal representation to workers and employer. The representative union should be given the right to nominate workers representatives. The Chairman of such a committee should

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normally be the highest officer in the unit; in case there is an agreement on the nomination of a Chairman other than the one contemplated above, it should be allowed. The constitution of the committee should have a provision that in case the decision by two third majority is not possible, the case will automatically go to an arbitrator. The committee should not normally take more than a week to give its decision.

30. Difficulty may be experienced by the establishments in the availability and the choice of an arbitrator. And all considerations which apply to grievance arbitration in the paper on voluntary arbitration will be relevant in this case also.

31. At every step a worker should be free to be represented by a co-worker or an office bearer of the union to which he belongs.

32. Another point that needs examination is whether departmentally run undertakings where workers are covered under the Industrial Disputes Act but for matters of discipline they are governed by separate conduct rules, be exempted from the operation of such a provision. It would indeed be appropriate to apply common standards to all workers in an establishment. However, such undertakings may have certain compelling reasons in seeking exemption. The appropriate authority may be empowered to exempt such undertakings but before granting the exemption, it

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should satisfy that the procedure adopted is adequate. Similarly establishments which have or agree in future on a bipartite basis, to a grievance procedure not exactly in conformity with the contemplated procedure, be exempted from adopting the suggested procedure. In these cases also the authority should satisfy that the circumstances prevailing in any unit seeking exemption, justify the departure.

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Joint Consultation at the level of the undertaking.

Joint consultation developed mainly in response to two basic objectives: the social and psychological objective, aiming at full recognition of the human factor in production so as to promote mutual understanding and cooperation and enable the workers to take an active interest in the problems of the undertakings and the economic objective of increasing production and raising productivity. There is obviously a close link between the two: recognition of human factor improves production/ productivity; efficient working provides scope for a better human understanding. The importance attached to either of these individually has varied considerably from country to country. The former factor at times has manifested itself into recognition of an individual's right to organise. The effectiveness of joint consultation, the need for it and the attitude of parties towards it have been conditioned by this factor but which is a separate item of discussion. One could say that in India, the former objective has received greater emphasis in the institutional arrangements devised to secure joint consultation at the unit level; greater even than union recognition so far as the Central Law is concerned. These arrangements may conveniently be divided into (a) Statutory arrangements i.e. Works Committees, Joint Committees etc. and (b) Voluntary arrangements such as Joint Management Councils, Joint Production Councils and the like. The present note deals with the former.

2. Early beginnings of joint consultation could be seen in the informal consultations started by certain employers in the cotton textile industry with mill committees in the twenties. It acquired a formal status with the setting up of joint committees by the Government of India in some of their

printing presses, for mutual consultation on specific issues of common interest. Similar committees were set up in some of the Railways Workshops and Tata Iron and Steel Company. The support given by the Committee appointed by the Government of Bengal (1921) to consider the causes and remedies for industrial unrest, for the setting up of Works Committees as a remedial measure for existing industrial unrest evoked keen interest, even outside Bengal. As a result, works committees were set up in a number of industrial units. There is, however, no assessment of the experience of this period.

3. The Royal Commission on Labour in India (1929) which reviewed the functioning of the Works Committees felt that certain factors, such as mistrust of employers and suspicion of trade unions, had militated against the effective functioning of these committees. In its view, Works Committees could play a useful role in the Indian industrial system and deserved encouragement and support both from employers and trade unions.*

4. With the enactment of the Industrial Disputes Act of 1947, Works Committees were given a legal status. Similar provision find a place in the B.I.R. Act, 1946 but with a difference which is explained later. Section 3 of the I.D. Act provides for the setting up of works committee consisting of representatives of management and employees, in every undertaking employing 100 or more workmen, "to promote measures for securing and preserving amity and good relations between the employer and the workmen and to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters." The representatives

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* Report of Royal Commission on Labour in India (1931), pp. 342-43.

of the workmen whose number shall not be less than the number of representatives of the employer are to be chosen from among the workmen engaged in the establishment and in consultation with their registered trade union, if any. Under the Bombay Act there were joint committees but the Act also provided for recognition of a representative union. Units which had recognised unions could alone form joint committees.

5. The usefulness of Works Committees as a means for joint consultation and the need for strengthening and promoting this institution was stressed by the labour policy statements in the successive 5 year plans. The legal requirement and the encouragement given by the Government led to the setting up of Works Committees in a number of undertakings: the pace of progress was, however, slow and uneven in different parts of the country. The number of Works Committees set up was 1142 in 1951. It rose to 2574 in 1959-60 (out of 4730 required to set up such committees) and 3133 in 1965-66 (out of 5091 required). But mere numbers, though important, do not count.

6. General feeling among knowledgeable people in the country is that the committees have not proved effective. Part of the feeling is due to the fact that they are statutory; but their failure is because there is a lack of interest in them by the parties who have to live with them. Several diagnoses were attempted but the remedies suggested on that basis as also those emerging out of tripartite discussions have been partial. Doses of policy statements have not helped in vitalising works committees. Sentiments expressed in the Draft Outline of the Fourth Plan are also on similar lines.*

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* Fourth Five Year Plan - Draft Outline, p. 388.

7. Debate continued for some time on the premise that vagueness in the definition of the scope and functions of the Committees under the law was the 'villain of the piece'; logically it was a fundamental point. No institutional arrangement can hope to work without knowing its charter. Therefore, the I.L.C. (1959) drew up, inter-alia, an illustrative list of items which Works Committees will normally deal with and a list of items which would be beyond their scope. The former included (i) conditions of work such as ventilation, lighting, temperature and sanitation including latrines and urinals, (ii) amenities such as drinking water, canteens, dining rooms, rest rooms, medical and health services, (iii) safety and accident prevention, occupational diseases and protective equipment, (iv) adjustment of festival and national holidays, (v) administration of welfare and fine funds, (vi) educational and recreational activities, (vii) promotion of thrift and savings; and (viii) implementation and review of decisions arrived at meetings of Works Committees. The latter i.e. items specifically excluded were (i) wages and allowances, (ii) bonus and profit sharing bonus, (iii) rationalisation and matters connected with the fixation of work load, (iv) matters connected with fixation of standard labour force, (v) programmes of planning and development, (vi) matters connected with retrenchment and lay off, (vii) victimisation for trade union activities, (viii) provident fund, gratuity schemes and other retiring benefits, (ix) quantum of leave and national and festival holidays, (x) incentive schemes, and (xi) housing and transport services.

8. For some time, the clarification of the scope of the functions of the works committees helped. But as with all remedies

where the basic weakness is not sorted out, the controversy for a new line started with the assumption that the logic of the last paragraph was only partial. Continuous surveys prior to and after the remedies were tried have shown that improvements in the efficacy of the works committees are possible with (a) a more responsive attitude on the part of management (a regular holding of meetings, supplying of information called for and generally giving the facilities required and not merely looking upon them as a legal obligation to be fulfilled), (b) adequate support from trade unions (the committees are not their rivals; underrating the capacity of members of the works committee to settle shop matters. In many cases existence of rival unions complicates the situation). This point is tied up with union recognition. (c) proper appreciation of the scope and functions of the Works Committees (no further elaboration necessary); (d) the implementation of the decisions of the works committees (though essentially advisory a continuous flouting of the recommendations without any further debate as to why in the first case the contracting group accepts a position in negotiations and then retraces it makes later working impossible.) Non-implementation and tardy implementation should be treated on the same footing.
(e) multiplicity of bipartite institutions without any attempt to coordinate their functions (Reference is to J.M.C., Joint Production Committees, Emergency Production Committees and the like.)

II

Evidence before the Commission

9. The evidence before the Commission indicates that the general feeling among the State Governments, employers and trade unions is that the institution of Works Committees has failed to achieve its objectives; or at best it has been a partial success. With minor variations others sing the same tune. On the factors generally responsible for lack of success there is agreement but emphasis on individual factors varies according to taste.

10. The State Governments seem to be of the view that the advisory nature of the recommendations, vagueness regarding the exact scope and functions, inter-union rivalries, trade union opposition, and reluctance of employers to utilise such forums have rendered works committees ineffective. Their suggestions for improvement are on this basis.

11. The Employers' Associations have laid stress on factors like inter-union rivalries, trade union antipathy to works committees, and the attitude of works committee members (workers' wing) in trying to raise discussion on extraneous issues. They suggest recognition of majority union and its right to nominate workers representatives on these Committees, the exclusion of outsiders and selection of competent educated and responsible workers as members of the works committees, as measures to improve the effectiveness of these committees. A clearer demarcation of functions, and the development of right attitudes on the part of both employers and workers have also been referred to by some employers.

12. Conflict between union jurisdiction and that of works committees, the unhelpful attitude of the employers have led to the failure of works committees according to workers. They favour the right of the recognised union to nominate worker representatives, fairly senior representation on the management wing and speedy implementation as remedies.

13. The Study Groups on Industrial Relations have expressed divergent views. One has suggested two functions for them: fact finding and problem solving; their role should be advisory and should not impinge either on the power of management to take decisions or on the union-management area of negotiations. Another feels that there should be no legal compulsion to set up the Committee but even when it is voluntary nomination of workers' representatives has to be by the recognised union. According to the third, in order to make these Committees effective, nomination of workers' representatives (50 per cent to begin with) should be by the recognised union; demarcation of functions and binding character of decisions are equally important. It has also suggested giving certain administrative powers/functions in regard to welfare schemes to these Committees. The Study Group on Air Transport Industry would like to see that the Committees are not burdened with the functions of redress of grievances or negotiations with the employer - functions which fall in the sphere of the grievance machinery and the trade unions respectively. Among the Industry Study Groups, two have felt that these Committees proved very useful, while in the view of another their role was ineffective. All of them, however, emphasised the need for making them more effective. One Study Group suggested that as an alternative to Works

Committees, there should be periodical Joint Consultations with union leaders at different levels of administration.

14. On the whole, therefore, none is interested in allowing the Committees to die a natural death though some of the conditions stipulated for their better efficacy amount to providing an alibi to keeping them moribund.

III

Foreign Practices.

15. The I.L.O. Convention No. 94 concerning consultation and cooperation between employers and workers at the level of the undertaking adopted in 1952, provides for the setting up of machinery for joint consultation at the unit level. In most industrialised countries of Europe some system of joint consultation based on national laws or agreement has been established since the war. Acts establishing Works Committees or Councils are in operation in Belgium, Germany, Netherlands and Spain while national agreements on the subject have been adopted in Italy and the Scandinavian countries. The Committees are known by different names : Works Councils in Germany, Belgium, Netherlands and Sweden; Works Committees in France; Internal Committees in Italy; Production Committees in Norway; Joint Boards in Spain and Joint Works Committees in Denmark. Pakistan law on the subject is similar to the Indian law on the subject.

16. The scope of the legislation on Works Councils covers all branches of economy in Germany and France, but only industrial and commercial undertakings in Belgium and Netherlands.

In Denmark and Norway, national agreements are directly applicable only to the industry and the handicrafts whereas Swedish collective agreements also cover important tertiary sectors. It is common to stipulate minimum employment for the unit where joint consultation is to be tried out.

17. In the Federal Republic of Germany and in Italy, membership of these councils is confined to workers only. On the other hand, the national agreements in the three Scandinavian countries and also the practice adopted in the United Kingdom are based on the principles of equal representation of management and workers. In most countries, separate representation for manual workers and salaried employees seems to be the rule and generally representation is proportional to the numerical strength of each category.

18. Where Works Councils are established by legislation, there is no distinction between union members and non-members, as regards participation in the designation of staff representatives. In Belgium , Netherlands and France, only the representative unions can submit lists of candidates for election to these councils. The representatives of workers on these councils are generally elected by a direct secret ballot although in certain British undertakings, workers representatives are appointed by the trade union delegates.

19. The task of the Joint Consultative bodies is to promote good relations between the management and the

workers. To this end they can usually discuss all questions and common interests, exchange ideas, information and suggestions and make recommendations. To avoid any conflict of competence with the trade unions, it is specified in some countries (Denmark, U.K.) that Works Committees must not deal with questions normally settled by collective bargaining and agreements, in particular wages and working conditions. Apart from this reservation, these councils deal with staff questions, social questions, working conditions, welfare etc. In the Federal Republic of Germany, participation of the works council is required in a whole series of important management acts affecting the general interests of the workers or working conditions in the undertaking and also security of employment (dismissal). In France, the works committees have a real management function in connection with welfare schemes for the workers employed in the undertaking; they collect the statutory and voluntary contributions paid for these purposes by the employer. In Spain, the opinion of the works council must be submitted to the responsible authorities when the latter are required to approve acts of the management (promulgation of works rules, staff reductions). In Belgium, the council has sole power to adopt undertaking rules.

20. In most countries, works councils or committees are also responsible for checking on the application of the legislation in force on industrial protection, health and safety and of the corresponding provisions of collective agreements, undertaking rules, etc. In Swiss undertakings, these form the main activities of the workers' committees.

IV

Suggestions:

21. The need to have some standing consultative machinery at the level of the undertaking, to promote mutual understanding and goodwill between the management and the workers is recognised. The differences arise mainly on the scope of its functions and the other institutional arrangements. The problem, therefore, is no longer whether there is need for works committees, but to bring about changes to make the committees effective.

22. A vital point which requires to be recognised is that an atmosphere of trust has to be built up on both sides. Workers should feel that management is not, through the Work Committee, side tracking the effective union. Management should equally strongly feel some of their known prerogatives are meant for being parted with. Equally important is the issue of union recognition. We cannot create an atmosphere for effective joint consultation without solving this knotty problem. Where a recognised union exists, as under the B.I.R. Act, statutory joint consultation had a better showing. We should take this as a pointer to the solution.

23. Other hurdles such as (a) apathy of the management, (b) opposition of the trade unions and (c) vagueness regarding the exact scope of its functions (d) adequate implementation of unanimous conclusions will all fall in their proper place. The suggestions of the I.L.C. (17th Session) (already referred to) can also be worked into the recommendations as also workers' and management education.

24. We should thus think of two situations: (a) where there is a recognised union. In this case the nomination of workers' side, the functions to be entrusted, the manner of functioning should all form a part of collective agreement and (b) where no recognised union exists, there should be either (i) no Works Committee or (ii) if it is formed, the election of workers, the choice of functions etc. should be such that they contain the seeds of flourishing into an effective union - (the workers wing of it, obviously).

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178

Joint Management Councils

The Joint Management Councils (J.M.C.) of the present description owe their origin to the following observations made in the Second Five Year Plan:

> "For the successful implementation of the plan increased association of labour with management is necessary. Such a measure would help in (a) promoting increased productivity for the general benefit of the enterprise, the employees and the community, (b) giving employees a better understanding of their role in the working of industry and of the process of production and (c) satisfying the workers' urge for self expression, thus leading to industrial peace, better relations and increased co-operation. This could be achieved by providing for councils of management consisting of representatives of management, technicians and workers. It should be the responsibility of the management to supply such a council of manageme t fair and correct statement of all relevant information which would enable the council to function effectively. A council of management should be entitled to discuss various matters pertaining to the establishment and to recommend steps for its better working. Matters which fall within the purview of collective bargaining should, however, be excluded from the scope of discussion in the council. To begin with the proposal should be tried out in large establishments in organised industries. The pace of advance should be regulated and any extension of the scheme should be in the light of the experience gained."

2. The Government's Industrial Policy Resolution of 1956 also stated, "In a socialist democracy labour is a partner in the common cause of development and should participate in it with enthusiasm. There should be joint consultation and workers and technicians should, wherever possible be associated progressively in management."

3. The wording in the industrial policy resolution gave the experimental J.M.Cs., according to many critics, the character of 'workers' participation in management . This view of the critics gained strength in view of what is stated in the next paragraph.

4. When the Second Plan recommendations were made, there was neither adequate experience within this country of schemes of J.M.Cs. nor adequate data about the working

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of similar schemes elsewhere. An influential Study Group on Workers' Participation in Management was, therefore, deputed to some European countries to study the working of similar schemes and to make suitable recommendations. The Report of the Study Group which underlined a non-statutory approach to the recommendations in the Plan as also warned against the dangers of copying from more advanced industrial communities recommended a cautious approach and that too on an experimental basis. The 15th Session of the ILC in accepting the recommendation appointed a tripartite committee to work out details of the experimental scheme. The present scheme of J.M.Cs. is based on the draft prepared by this Committee and subsequently modified by two tripartite national seminars on the subject held in 1958 and 1960*. The main objectives of the scheme are the establishment of cordial relations between management and workers and the building up of understanding and trust between them, substantial increase in productivity, securing better welfare and other facilities for workers and the training of workers to understand and share the responsibilities of management.

5. The essential features of the scheme are that Joint Management Councils are entitled to be consulted on certain specified matters, to share information on certain other aspects and to assume administrative responsibilities in a Third set of matters. Subjects in regard to which the Council should be consulted and those about which it is entitled to receive information, etc. are emunerated in the Draft Model Agreement suggested by the Committee of the Indian Labour Conference and modified by the Seminar on Labour

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*The first of these seminars was attended by representatives of labour and management from units which had agreed to introduce J.M.C. The seminar worked out the various steps for giving a right start to the J.M.Cs. The second reviewed the experience of the working of the J.M.Cs. and reiterated their usefulness.

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Management Co-operation. The conclusions of that seminar on this point are annexed. All matters such as wages, bonus, etc. which are subjects for collective bargaining were excluded from the scope of the J.M.C. There was no rigid or doctrinnaire approach regarding the cheme; industrial establishment were free to modify in consultation with their employees/union the provisions in the draft model agreement to suit thier special requirements.

6. The Third Plan in its approach to the problem of Industrial Relations elaborated this policy of associating labour more and more with management and accepted the progressive extension of the scheme of J.M.Cs. as a major programme. It recommended the setting up of J.M.C.'s in all industrial undertakings found suitable for the purpose so that "progressively, in the course of a few years it may become a normal feature of the industrial system." The (draft) Fourth Plan also strongly recommended that "J.M.C.'s have to be developed into an essential functional link in the structure of industrial relations."

7. The Government of India have set up a tripartite committee on labour management co-operation to advise on all matters connected with the implementation of the scheme. A special cell has also been set up in the Department of Labour and Employment. Most State Governments have designated special officers to promote the scheme. In spite of all the promotional efforts so far made, the progress of the scheme appears to be quite unsatisfactory. So far J.M.C.'s have been set up only in about 150 undertakings - both public and private sectors. None of the important public undertakings has set up a JMC nor is a JMC functioning in many important undertakings in the private sector. Even where the Councils exist, they are reported to be ineffective and their functioning unsatisfactory in

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many cases. Attempts to promote wider acceptance of the idea of J.M.C. appear to have met with little success over the years.

8. Some of the factors which have made these councils unattractive to most employers and unworkable in others have been:

(a) Although representatives of central organisations of employers and workers support the scheme at national conferences and committees, they have shown in-adequate interest in making their affiliates enthusiastic about it;

(b) Progressive employers who already have a system of consultation with their workers, through a recognised union, works committee, etc. find the J.M.C. in its present form superfluous; managements are generally averse to having a multiplicity of joint bodies and so are unions;

(c) In undertakings in which industrial relations are not quite cordial, and even arrangements like works committee, grievance procedure, recognised union, etc. are absent, J.M.C.'s cannot be expected to function satisfactorily;

(d) The fact seems to be that the J.M.Cs. have not been a resounding success at any place either from the point of view of employers or labour. If they had been, one or the other party would have worked for popularising it further;

(e) Many employers did not like the name of the experiment 'workers' participation in management, it has not been possible to convince them that it is really consultation or labour management cooperation.

II

Evidence before the Commission

9. There does not appear to be much support for the institution of J.M.C.'s in their present form and in the present context of labour management relations. While almost

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everyone seems to agree that the J.M.C.'s have not been a success, that they have not been functioning effectively, only few have suggested a continuation of the experiment.

10. Most State Governments seem to feel that the J.M.Cs. have not been successful in achieving their objectives of better industrial relations, increasing productivity and creating a climate of mutual trust between employers and employees. In their view, the failure is due to absence of a proper climate, multiplicity of bodies with similar functions, inter union rivalries, etc. They have not made any special suggestion to improve the working of the J.M.Cs.

11. The employers' organisations generally are against workers' participation in management. The reasons put forward are: that the workers because of their socio-economic background are ill-equipped for taking over such responsibilities; (2) the present stage of the economy is not congenial for such an experiment and (3) past experience with similar ventures has been thoroughly discouraging. They also point out that J.M.Cs. have little chance of success so long as outsiders are not excluded from trade unions. The conclusion at a seminar arranged by the Council of Indian Employers (December 1966) was that the best service which Government could render to the cause of Joint Management Councils is to keep out of the picture.* Most public sector undertakings have no J.M.Cs. nor do they seem enthusiastic about the introduction of such Councils.

12. The workers organisations have also not been enthusiastic about the JMCs. Most of them have stated that the present experiment of JMCs has not been a success and that these councils have hardly achieved any purpose.

* This comment of employers seems to be unfounded.

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In their view such councils should be set up where already a climate of mutual trust between employers and employees existed over a number of years.* Unless the JMCs become the natural outcome of the acceptance of the philosphy of co-trusteeship merely creating them in physical form will not advance the objectives.

13. The Industrial Relations Study Group (Northern Region) after reviewing the causes which were responsible for the councils not functioning effectively recommended that it is a matter which should be left to mutual agreement between an employer and the union of his employees. Such institution can function effectively only in an atmosphere of good labour management relations and mutual trust and good will. The Eastern Region Study Group suggested the setting up of joint consultation bodies but did not recommend the institution of JMCs. The Southern Region Group found that the JMCs had failed and it expressed the feeling that nothing was likely to be achieved by forcing employers to form these councils. The Study Group on Labour Problems in the public sector has also came to the same conclusion. It has added, 'instead of a plethora of committees with over-lapping functions, it is better to statutorily provide for a single JMC which in its turn will set up functional sub-committees to be truly effective.'

III

Foreign practice

14. The I.L.O. convention (No.94) concerning consultation and cooperation between employers and workers at the level of the undertaking, adopted in 1952, provides for the setting

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* This is in fact one of the condition as laid down by the Committee of the T.L.C. for setting up a J.M.C.

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up of machinery for joint consultation at the unit level. In most industrialised countries of Europe some system of joint consultation or cooperation based on national law or agreement has been established since the War. The systems developed range from those providing for joint consultation in an advisory capacity, to those providing for co-determination and participation in the management of the undertakings. The systems of workers' participation in various countries differs not only in form but also in the degree of participation practiced. In U.K. and Sweden participation is practiced through joint bodies which have only an advisory status and have been set by agreement, generally without any legal compulsion. In Belgium, France and Germany, on the other hand, the machinery for participation is based on legal sanction, and in the last two countries, workers are represented also on the Boards of management. At the other end is Yugoslavia where undertakings are run by the employees themselves through an elected council and a management Board. The Donovan Commission while acknowledging the importance of workers' participation in management for industrial relations, felt that any changes to encourage such participation should be subsidiary to reforms in collective bargaining.

IV

Suggestions

15. Industrial efficiency depends as much on human factors as upon mechanical and technical resources; and high productivity and adoptability demand the active cooperation of employees at all levels. This is best achieved where workers understand the aims and plans of management and are confident that their interests are being safeguarded. As we have stated elsewhere, there is no longer any doubt about the need and the feasibility of

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having some standing consultative machinery at the level of the undertaking to promote mutual understanding and goodwill between the management and the workers. The point for consideration is the form that such machinery should take. We can draw some useful lessons from our experience with the Works Committees and the voluntary scheme of J.M.C.'s. Briefly stated these are: joint consultation/participation can thrive only in an atmosphere of a satisfactory system of collective bargaining and settlement of disputes; where both management and workers realise the benefits of mutual cooperation; where there is a strong trade union movement and fairly stable industrial relations; multiplicity of institutions with similar or overlapping functions can only lead to the ineffectiveness of all of them.

16. There should be no attempt to force J.M.Cs. on parties who are not ready for it. In fairness it must be mentioned that there is no evidence to suggest the forcing of pace. If in a large country like ours, over the last ten years only 150 J.M.Cs. have been set up (and their functioning too has been by and large indifferent) it cannot be suggested that pressure is put on either side. However, because the J.M.Cs. has been mentioned as an item of plan policy inquiries about the progress of their being set up as also their functioning cannot be ruled out.

17. When the system of collective bargaining gets well established, and union recognition becomes an accepted practice, both managements and unions will themselves gravitate towards greater cooperation to mutual advantage. In the meanwhile wherever the management and the recognised trade union so desire, they can by agreement enhance the powers and scope of the works committee to ensure some degree of participation.

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(i)

A N N E X U R E

Draft Model Agreement

regarding

Establishment of Councils of Management

As Modified by the First Seminar on

LABOUR - MANAGEMENT CO-OPERATION.

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3. The constitution of this Council/these Councils and the procedure to be followed by it/them would be as follows:

4. It would be the endeavour of the Council/Councils (i) to improve the working and living conditions of the employees, (ii) to improve productivity, (iii) to encourage suggestions from the employees, (iv) to assist in the administration of laws and agreements, (v) to serve generally as an authentic channel of communication between the Management and the employees and (vi) to create in the employees a live sense of participation.

5. The Council/Councils would be consulted by the management on matters like:

(i) administration of Standing Orders and their amendment, when needed;

(ii) retrenchment;

(iii) rationalisation;

(iv) closure, reduction in or cessation of operations.

6. The Council/Councils would also have the right to receive information, to discuss and to give suggestions on:-

(i) general economic situation of the concern;

(ii) the state of the market, production and sales programmes;

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(iii) organisation and general running of the undertaking;

(iv) circumstances affecting the economic position of the undertaking,

(v) methods of manufacture and work,

(vi) the annual balance sheet and profit and loss statement and connected documents and explanation;

(vii) long term plans for expansion, re-deployment etc. and

(viii) such other matters as may be agreed to.

7. The Council/Councils would be entrusted with administrative responsibility in respect of —

(i) administration of welfare measures;

(ii) supervision of safety measures;

(iii) operation of vocational training and apprenticeship schemes;

(iv) preparation of schedules of working hours and breaks and of holidays;

(v) payment of rewards for valuable suggestions received from the employees;

(vi) any other matter.

8. All matters, e.g. wages, bonus etc. which are subjects for collective bargaining are excluded from the scope of the Council/Councils. Individual grievances are also excluded from its/their scope. In short, creation of new rights as between employers and workers should be outside the jurisdiction of the Management Council.

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29

Disciplinary Procedures - Dismissals & Discharges

A point often mentioned on behalf of the employers in regard to tightening of discipline is the acceptance of their right of 'hire and fire'. The main burden of their complaint is that while they have already accepted several checks on this right, they should not be forced to take back a dismissed worker. They should have the option to pay compensation instead. Workers, on the other hand, contend that the privilege to hire is always with the employer; the claim for the other privilege is made to get rid of inconvenient workers, workers who have a following in their struggle for better terms from the employer.

2. At the level of the undertaking the legal frame work provides for (i) a procedure to be followed in investigating cases which lead to disciplinary action (the Industrial Employment (Standing Orders) Act, 1946) and (ii) the substantive restraint which protects only the union officials under the Industrial Disputes Act, 1947. The present controversy covers both the aspects.

3. It is not necessary to discuss minor punishments, and the procedure relating to them, upto and including the employer's right to suspend a worker for a specified period. It is only when punishment for an alleged misconduct leads to dismissal that difficulties arise. The procedure to be followed in such cases is (i) the workman concerned is given an opportunity to explain the charges alleged against him. There can be an immediate suspension pending an enquiry, (ii) The order given to him shall elaborately

state the charges against him (iii) The worker shall get an opportunity to explain his conduct in an enquiry to be conducted by the employer, (iv) The punishment order is to be finally approved by the employer/manager who is required to take into consideration the gravity of misconduct and workers' previous record in making his decision.

4. The enquiry officer is an appointee of the employer,/ either an insider to the establishment or outsider. If the charges are proved to be correct, the workman is not to be paid wages during the suspension period to which he will be otherwise entitled.

5. Section 33 of the Industrial Disputes Act in regard to matters connected with the disputes requires maintenance of status quo by the employer and restrains him from discharging or punishing a worker by dismissal or otherwise, during pendency of conciliation or adjudication proceedings in an industrial dispute, save with permission of the authority holding such proceedings. In matters unconnected with the dispute, the employers' freedom to act is not curtailed, except that he is required to pay one month's wages to a workman before discharge or dismissal and seek the approval of his action by the concerned authority. While Section 2(k) of the Industrial Disputes Act gave jurisdication to Labour Courts and Tribunals over such disputes, the controversy whether an individual dispute was an industrial dispute was set at rest by the incorporation of Section 2-A in the Industrial Disputes Act, which clearly includes individual disputes over discharge, dismissal or retrenchment within the meaning of the term 'industrial dispute'

even if the case of the individual retrenched is not taken up by other workmen or their union.

6. Considerable volume of case law has been built around these provisions. To safeguard the interests of workmen against victimisation, the tribunals have gone into the reasons of discharge even when the procedure laid down under the Standing Orders was followed. Tribunals are not to sit in appeal over management's decision, but where (i) want of bonafides; (ii) victimisation or unfair labour practices; (iii) a basic error of facts or violation of a principle of natural justice; or (iv) a completely baseless or perverse finding on the material available is established, tribunals have intervened. In such cases, redress to a worker has been reinstatement or compensation. Employers, for the sake of discipline, have insisted on the latter and workers on the former.

7. According to a recent Supreme Court ruling, the tribunal does not have jurisdication to substitute its own judgement for that of management. This decision has led to a bill amending the I.D. Act, 1947, to remove the limitations on tribunals' jurisdiction in such cases. The Bill already passed by the Rajya Sabha provides that tribunals should have the power to set aside the order of discharge or dismissal and direct reinstatement of the workmen, including the award of any lesser punishment in lieu of discharge or dismissal. This is how the matter stood when the Commission started collecting evidence.

II

Evidence before the Commission.

8. The evidence before the Commission reveals that publicly stated positions by employers' and workers' groups stand. Academic groups favour employers' stand. The State Governments more or less support the present arrangements.

9. The State Governments have been of the opinion that enquiries by managements leading to discharge/dismissal do not always meet the requirements of natural justice. The enquiry officer is under management's influence. Provision for suspension pending domestic enquiry is in effect, used to demoralise the worker. On the other side, labour has shown a tendency to question every disciplinary action of the management including minor punishments. Employers' and workers' representatives have contested this view. Statistical information, and this is scarce, does not show that dismissals or discharges have been frequent nor that discipline gets affected in case reinstatement is made effective. Victimisation has also been found difficult to establish to the satisfaction of tribunals.

10. Among the suggestions made are (i) a time bound domestic enquiry; (ii) statutory provision for payment of subsistence allowance during suspension period at a progressively higher scales to act as a deterrent against delays; and (iii) widening of tribunals' powers to go into both the procedure observed in dismissing a worker and justifi-ability of punishment ordered and award

personality involved. The strong argument in their favour has been that the present combining of functions of a prosecutor and judge in the same agency viz. employer cannot meet the ends of natural justice. Tribunals find it difficult to redress workers' real grievances because through trial and error employers have learnt to make the inquiry appear fair to the tribunal. The suggestions are: (i) standardisation of punishment for different types of misconducts (ii) inclusion of a workers' representative in the domestic enquiry committee with right to dissent (iii) having an arbitrator to give decision in a domestic enquiry (iv) an adequate show cause opportunity to a workman (v) presence of trade union official to represent the case of a workman in the enquiry proceedings (vi) supply of the record of proceedings to the aggrieved workman (vii) payment of subsistence allowance during suspension period (viii) right of appeal to administrative tribunals set up for the purpose, fixing time limit for tribunal proceedings and giving unfettered powers to tribunals to examine the case denovo, modify or cancel a punishment ordered by the employer.

13. There is also the suggestion that all disciplinary cases involving dismissal or discharge should be referred to an arbitrator for a decision. The way the suggestion will operate is that the current procedure departmental enquiry should continue upto a point where the management feels that dismissal/discharge alone will meet the ends of justice. If that is the finding, before the punishment is awarded the management should permit an arbitrator

to examine the record, call for fresh evidence and give his award which will be binding on the parties. This suggestion has had a mixed reception.

III

Foreign Practices

14. This is one area where foreign experience appears to be of no relevance. Industrialised countries are operating in a labour shortage situation and those which are not so industrialised have little to offer to India. However, for whatever it is worth some indications are given below.

15. The I.L.O. recommendation (No. 119) concerning Termination of Employment at the initiative of the Employer adopted in 1963, lays down certain standards of general application concerning individual dismissals such as grounds of dismissal, remedies for unjustified dismissals, period of notice, certificate of service, severance allowance, reduction of work force, etc. It lays down that "termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking ...." and goes on to specify what should not constitute valid reasons for termination of employment. The recommendation provides inter-alia, that an aggrieved worker should be entitled to appeal against termination

to a neutral body such as an arbitrator, a court or an arbitration committee which should be empowered to examine the reasons given for termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The appellate authority should be empowered to order that the worker should, unless reinstated, be paid adequate compensation in case of a wrongful dismissal.

16. In the United States, it is considered to be the management's prerogative to discipline or discharge a worker for 'just cause'. The procedure for discharge requires the management to give prior notice of discharge detailing reasons for such action. A hearing of the case is to be attended by the employee as well as a union representative. No dismissal pay is given to workers discharged for a 'just cause'. The National Labour Relations Board is empowered to order reinstatement with or without back wages of a worker discharged for a cause which is not just. In practice cases going upto the N.L.R.B. are rare.

17. In the United Kingdom, the employer has the right to dismiss or discharge an employee. The Contract of Employment Act, 1963 lays down a minimum period of notice for discharge. The common law right of the employer is not curtailed. Internal procedures have been developed by firms for consideration of a dismissal case at a higher level. The Donnovan Commission (1968) has recommended statutory procedures and machinery for dealing with dismissal cases. The main departure in the Donnovan recommendation is that labour tribunal would award

reinstatement if both parties agree. Compensation payable may be upto an amount equal to 2 years' wages or salary.

18. In France, dismissals can be effected with the prior approval of the State Manpower Service, but dismissal without the approval of the Service is not invalid; it only makes the employer liable to a penalty. The employees get full protection under the terms of the collective agreements and the legal concept of 'abuse of right'. The latter, when proved can be penalised by payment of compensation, but the courts do not order reinstatement. French Legislation provides for suspension and not dismissal in certain circumstances. Dismissal disputes are decided by Counseils de prud' hommes - bodies made up of equal number of elected representatives of employees and employers. They play a conciliatory role, failing which they give their judgement, the remedy awarded being compensation and not reinstatement. In Sweden a variation of this arrangement operates.

19. The Italian arrangements are the same as above except that the court can order reinstatement. If the employer refuses to implement the order, there is a special penalty on the employer in addition to compensation.

20. In Australia, the right to 'hire and fire' if properly exercised is regarded as an employer's prerogative. The arbitration awards lay down the notice period for discharge of an employee. If an employer discharges an employee after giving him

due notice, his motive generally cannot be questioned unless the discharge is prompted by anti-union reasons in which case it would be a legal offence.

21. In West Germany, the Works Constitution Act, 1952 obligates an employer to consult the Works councils in staff matters including dismissals. The Act provides that a dismissal to be effective must be based on social considerations. Summary dismissal is permissible only for urgent and important reasons such as embezzlement or inability to continue work. An employee can appeal to a Labour Court against an unjustified and illegal dismissal. In wrongful dismissal, the court can order reinstatement or compensation upto a maximum of 12 months' remuneration at the request of either party.

22. In the U.S.S.R., the Labour Code provides for the termination of contract of employment of a worker after giving a day's notice in certain circumstances including closure, unfitness of an employee to work, persistent failure to fulfil his duties, etc. In case of persistent neglect of duties, while an employer in a State undertaking cooperative or other public organisation is free to take an independent decision, employers in other undertakings have to act in accordance with the decisions of an assessment and disputes committee.

IV

Suggestions:

23. Irrespective of statistical evidence it is undeniable that the attitudes developed on this issue, a feeling of deprivation of prerogative on one side, and fear of victimisation on the other, have been responsible for a measure of unrest. There is general acceptance of the need to change existing practices and procedures although both employers and employees would like to see in these changes accommodation of their respective views. The employers would like to choose between reinstatement and compensation. The unions are apprehensive that this right will be used to cut at the root of union activity. Neither view appears to be justified.

24. The following alternative disciplinary procedures deserve consideration:

(a) An independent arbitrator should be interposed after the domestic enquiry. If after the domestic enquiry management decides to dismiss a workman, a mutually agreed arbitrator should be brought in to examine the case and decide the punishment. The dismissal order should be issued only if so decided by the arbitrator. If the misconduct does not merit dismissal, choice of a milder punishment should be with the employer.

(b) An appeal against the decision of the management to dismiss a worker on the basis

of the domestic enquiry should go to a mutually agreed arbitrator.

(c) Labour court should be given appellate authority over the findings of the domestic enquiry. It should take cognisance of the case at the instance of the dismissed employees. Fresh evidence should not be permitted to be adduced before the tribunal. The appellate authority should be empowered to order reinstatement or other suitable relief or a milder punishment. The decision of such authority should have the force of an arbitral award.

25. The merit of the first proposition is said to be, that it brings an independent element into decision making which may be more satisfying to the aggrieved workman and would also save the employer from the embarrassment of reinstating a workman ordered to be dismissed by him. But the latter may not be a reality in-as-much as, short of dismissal order, his decision to dismiss would become known to the aggrieved workmen as soon as he decides to take the issue to the arbitrator. If the decision of the arbitrator goes against employer, the latter will not be free from the embarassment of continuing with the workman whom he had decided to dismiss/discharge. Besides, the difficulty in getting adequate number of arbitrators cannot be wished away.

26. The second alternative does not touch the management's right to dismiss, but only provides for an appeal to the arbitrator against an unjustified dismissal.

The advantage of arbitration is that it is quicker and final and saves delays and expenses involved in appeals to higher courts. However, arbitration is generally a part of collective agreements in other countries and has shown little progress in India mainly because of the absence of an organised collective bargaining to any large extent. Nevertheless the parties at present are free to go in for arbitration and the practice can be continued.

28. The third alternative gives to the aggrieved worker right to appeal against the findings of the domestic inquiry and empowers the tribunals to sit in judgment over management's decision and order reinstatement of a wrongfully dismissed workman. It recognises management's right to hold the domestic enquiry and provides for deciding the dispute on the basis of material on record and prevents the tribunal to admit fresh evidence. The risk involved is only of delays in adjudication proceedings and further in appeals. This can be minimised by adoption of small causes court procedure and abolition of further appeals to higher courts. This proposal may enjoy a better support. To make it more effective, the following provisions may be necessary:

(a) In the domestic enquiry the aggrieved worker should have right to be represented by an executive of the representative union or of any other union in the company or a workman of his choice.

(b) Record of the domestic enquiry should be made in the local language and a copy be supplied to the aggrieved workman.

(c) Domestic enquiry should be completed within a prescribed period.

(d) Appeal against management's order of dismissal should be filed within a prescribed period.

(e) Worker should be entitled to subsistence allowance.

reinstatement or compensation for a wrongful dismissal i.e. in substance the provisions in the Bill before the Parliament. Some have favoured original jurisdiction to tribunals but the majority would prefer appellate powers over the findings of the domestic enquiry and reasonableness of punishment.

11. Employers have expressed considerable dissatisfaction over the law as currently interpreted as also over the Bill. The causes are: (a) the delay and dilatoriness of the proceedings (b) frequent references to tribunals even in cases where the preceding domestic enquiry has been in order, and (c) the attitude of the tribunals which have been liberal in awarding reinstatement instead of compensation resulting in embarrassment to management and indiscipline among workers. They have pleaded for a procedure involving minimum third party intervention and have suggested: (i) formulation of more comprehensive model standing orders classifying major and minor misconducts and specifying elaborate punishment to suit each type; (ii) inclusion of 'gheraos' in misconduct; (iii) longer suspension to provide a milder punishment in lieu of dismissal; (iv) curtailment of tribunals' powers to sit in judgement over management's order; (v) payment of compensation for wrongful dismissal.

12. The workers organisations on the other hand have been critical about the arbitrary nature of punishment for misconduct awarded by the employer. Punishment for the same misconduct has ranged from four days' suspension to dismissal according to the

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Procedure for Settlement of Industrial Disputes

Collective Bargaining VS Adjudication.

The relative merits and demerits of collective bargaining and compulsory adjudication as alternative methods of regulating industrial relations have been debated for long. Our own industrial relations system is based on the acceptance of adjudication as the final means of settlement of disputes, although the desirability of promoting collective bargaining has been recognised and stressed. In practice, however, the system has weighed heavily in favour of compulsory adjudication. The availability of compulsory adjudication has also inhibited the development of collective bargaining.

2. The legal machinery for the settlement of industrial disputes is provided by the Industrial Disputes Act, 1947 and some of the State enactments, like the Bombay Industrial Relations Act, 1946, U.P. Industrial Disputes Act 1947, etc. These Acts lay down the procedure for reference of disputes (actual or apprehended) to adjudication by Tribunals or Industrial/Labour Courts, the functions and powers of these tribunals etc.. The Trade Disputes Act 1929, which was the first attempt to provide under law a machinery for the investigation and settlement of trade disputes, provided for the setting up of courts of Enquiry and Boards of Conciliation. But there was no provision to make the proceedings of these Boards and

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Courts conclusive and binding on the parties to the dispute. During War time, the central Government, was empowered under Rule 81A of the Defence of India Rules to refer disputes to adjudication and enforce their awards. The provision was later incorporated in the Industrial Disputes Act, 1947.

3. The Industrial Disputes Act, 1947 (I.D. Act) empowers the appropriate Government where it is of the opinion that any industrial dispute exists or is apprehended, to refer the dispute to a Board of Conciliation for promoting a settlement, or to a Court of Enquiry or refer the dispute or any matter connected with it or relevant to it to a Labour Court or tribunal for adjudication; where the dispute relates to a public utility service and a notice of strike or lockout has been given, the appropriate Government is required to make a reference, unless it considers that it would be inexpedient to do so. The Act also provides for the setting up of a Labour Court/ Industrial Tribunal/National Tribunal to adjudicate a dispute referred either by the Government on its own or on request of one or both the parties. A Tribunal can appoint one or more assessors having special knowledge to advise it on any matter. No time limit is fixed for completion of adjudication proceedings. The jurisdiction of the different adjudication authorities is demarcated under the I.D. Act on the basis of issues involved in a dispute. Disputes relating to strikes, lockouts,

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dismissal, discharge, legality of any order of employer etc. are referred to Labour Courts; other types of disputes such as on wages, allowances, hours of work, leave, classification by grades etc are to be dealt by the Tribunals. An award of a Court/Tribunal is binding on the parties to the dispute. It is to be published by the Government within 30 days of its receipt and comes into operation after the expiry of 30 days from the date of its publication and remains in force for a period of one year which can be extended by the Government to a further period of two years. The Act also empowers the appropriate Government not to enforce an award or part thereof in public interest and modify the award according to the procedure prescribed under the Act. An award of a Court/ Tribunal is final and there is no provision for an appeal.* An appeal against an award lies to the Supreme Court under Article 136 of the Constitution. A petition for Writ of Certiorari can be filed in the High Court under Article 226 of the Constitution.

4. In the absence of statutory promotional measures and strong labour organisations, collective bargaining has not made much headway in India so far. In the few cases in which collective bargaining has been tried,

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

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it is done voluntarily by the parties; there is neither a certified bargaining agent nor any compulsion for bargaining in good faith on the part of the employers and trade unions. Collective agreements are implemented voluntarily by the parties and there is no legal remedy for any except by way of raising a fresh dispute and seeking intervention of statutory disputes settlement machinery. Whatever collective bargaining has been in vogue is restricted to larger undertakings having well organised unions and enlightened managements which have accepted the functioning of union and have faith in the efficacy of bilateral relationship.

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

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subsequently.

6. Once it struck root, adjudication could not be replaced by collective bargaining though attempts were made to retrace the steps at the Indian Labour Conference, 1952. Later, the central organisations of employers and workers did not support even a temporary suspension of adjudication when the matter was discussed at the Indian Labour Conference in 1958. With the launching of a planned economy, the Government's anxiety to maintain uninterrupted production effort provided an additional argument for its intervention in labour management disputes, more so in the context of the basically uncongenial conditions for collective bargaining.

7. Over the past 20 years or more, the system of adjudication which has been an important instrument of regulation of wage rates, standardisation, allowances and bonus, working conditions, social security provisions, etc. has been criticised on several counts; that it has failed to secure and maintain industrial peace, which is its main purpose; that it has inhibited the growth of trade union movement, because undue dependence on adjudication has deprived the movement of the incentive to organise itself on a strong and efficient basis and that it has rendered unions into mere petitioning and litigant organisations; that it has resulted in long delays in settlement of disputes. Also what is more adjudication has made labour and management litigation minded, and

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this attitude of mind will be difficult to get over. Proposals have been made from time to time for shifting the emphasis from adjudication to collective bargaining, if any improvement in industrial relations is to be secured; and even if adjudication were to be retained, improving procedures to make it more efficient and acceptable.

II

Evidence before the Commission.

8. The evidence before the Commission appears to favour the increasing adoption of collective bargaining to settle disputes and the gradual replacement of adjudication. The desire for a shift to collective bargaining has, however, been tempered by a concern for the avoidance of work stoppages and of any violent disturbances of industrial peace, as well as an awareness of the present deficiencies in the organisational factors necessary for effective collective bargaining. Hence, there is a general plea for gradualness, and phasing of the change, besides leaving a certain area of disputes (public utility services and cases where public interest is involved) for the continuance of adjudication. The consensus appears to favour the introduction of collective bargaining subject to above safeguards, in the organised sector, while retaining adjudication in the unorganised sectors where workers are not well organised and conditions of work and wages are unsatisfactory.

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9. The Ministry of Labour and Employment expressed the view that the present dependence on adjudication should be lessened and collective bargaining encouraged and given more importance. When collective bargaining fails, disputes should go to arbitration or adjudication. The State cannot be completely shut out from industrial disputes. It is its legitimate duty, as the custodian of public interest, to get into the disputes in certain circumstances. It should have the right to refer disputes to adjudication, and when it refuses reference to adjudication, it should give its reasons therefor.

10. Majority of the State Governments seem to prefer collective bargaining for disputes settlement with adjudication available as an alternative. They are of the view that in the present conditions, both methods have to exist side by side. Collective bargaining is made difficult due to inter-union and intra-union rivalries. In such circumstances, adjudication has to be resorted to particularly when industrial peace is threatened. Some State Governments are of the opinion that while adjudication cannot be dispensed with, it should be restricted to a well defined category of disputes; that adjudication should come to the rescue of workers in the unorganised sector whereas collective bargaining should be more and more resorted to in the organised sector. In their view, the power to refer disputes for adjudication should as at present be vested in the appropriate Government.

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Disputes in public sector should be left to the State Government jurisdiction.

11. Majority of the employers in both public and private sectors are of the opinion that collective bargaining should be the primary method of disputes settlement and adjudication can be resorted to only in the event of failure of collective bargaining. In their view, future industrial relations should be patterned on collective bargaining and the State should refrain from interfering in cases where bipartite relationship has been developed and a disputes settlement procedure agreed to between a recognised union and employer. The Government can continue to intervene in cases where the collective bargaining has failed, where public interest is involved and in case of public utility services. Where collective bargaining has not been developed, status quo should be retained. The adjudication machinery should be retained to be used by the parties with mutual agreement.

12. As regards making a reference for adjudication, the private sector employers are of the view that they should be given the right to go to adjudication direct. Reference by Government of a dispute should not be automatic and the parties be consulted before a reference is made. Some other suggestions are: (i) Reference-screening should be entrusted to a judicial officer of the rank of a District Judge, (ii) criteria to guide reference of cases for adjudication be laid down,

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(iii) the concerned authorities should consider only that report of the conciliation officer copies of which have been made available to the parties, (iv) no political pressures be exercised on making of a reference and adjudication of a dispute, (v) unfettered power to refuse a reference to be made appealable to the High Court. Case law should be codified to avoid reference of disputes over matter relating to which a law has already been evolved. Civil Court procedure should be used in adjudication. Section 33(2)(b) and 33 (A) of the I.D. Act should be repealed.

13. The public sector employers consider the present system of making references satisfactory, subject to some improvements. The Government should refer all disputes to adjudication which are so recommended by the conciliation officer. If the Government considers a dispute unfit for adjudication, the parties should be so intimated with full reasons therefor. Some, however, are of the opinion that the Government should not have absolute discretion in making a reference, and this discretion should be vested in an impartial commission.

14. Majority of the trade unions prefer collective bargaining for disputes settlement. Nevertheless, they are in favour of retaining adjudication to be made use of in case of a stalemate, or a dispute assuming a violent turn where bargaining agents are not well organised; where there is unwillingness for mutual discussions;

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where the art of negotiation is lacking; and where there is multiplicity of trade unions. Some have expressed the view that while collective bargaining settles terms and conditions of employment, the role of adjudication should be to resolve disputes relating to interpretation and implementation of agreements and other unresolved issues between the parties. A view point expressed is that the present system of adjudication has gone against the interests of workers; delayed justice is denial of justice; that collective bargaining is the only means for safeguarding industrial peace and not adjudication; and failing collective bargaining, there should be a trial of strength or arbitration.

15. They also favour giving the right of referring a dispute for adjudication to a recognised union; Government should have powers of making a reference to adjudication within a specified period, say one week. The Government should refer, all demands made by workers rather than picking and choosing some. Failing conciliation, reference to adjudication should not be automatic. Conciliation officers should be given powers of adjudicators and of prosecuting defaulting employer. Some workers' organisations are of the view that adjudication should be allowed only on request of the parties; and some others that a registered trade union should have direct approach to Labour Court/Tribunal who should be authorised to admit or reject a reference.

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16. All the four Study Groups on Industrial Relations have emphasised the importance of encouraging collective bargaining as the main method of disputes settlement. The Western Region Study Group on Industrial Relations has suggested that Government should prescribe rules for collective bargaining and encourage its growth and refrain from interfering in substantive matters of industrial relations. Unfair labour practices should be spelt out in the rules prescribed for collective bargaining. A quasi-judicial body on the lines of National Labour Relations Board be constituted to supervise union elections and decide bargaining agents and complaints regarding unfair labour practices. In the unorganised industries the present system and machinery for adjudication may have to be continued.

17. According to the Northern Region Study Group, in the present economic and political situation exclusive reliance on collective bargaining or adjudication is not feasible. Collective bargaining should be the first step in disputes settlement. Nevertheless, the State regulation of industrial relation has to continue in the economic interest of the country even if collective bargaining is accepted as the primary method of disputes settlement. Collective bargaining should be increasingly resorted to and recourse to compulsory adjudication minimised and measures be taken for growth of trade unions and their recognition as bargaining agents.

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18. The Southern Region Study Group observed that at present certain unions do not show willingness for mutual negotiations as they expect better protection through government intervention. For promotion of collective bargaining government intervention must be restricted to certain special circumstances only. Congenial conditions must be created to make it possible for employers to have collective bargaining with one recognised union without having to face the opposition from the rival unions in the same plant.

19. The Eastern Region Study Group has also suggested a switch over to collective bargaining, in preference to adjudication. In case of failure of conciliation if voluntary arbitration is not agreed to by the parties, a dispute may be referred for adjudication either on a joint request of the parties or if a strike or lock-out is not in existence and the Government is prima-facie satisfied about the merits of the reference. Problem of multiplicity of unions has to be satisfactorily solved to facilitate collective bargaining. The employers should be made obliged to bargain in good faith with the union declared to be the sole bargaining agent. Collective bargaining should be supported by effective joint consultation.

20. A number of other Study Groups (e.g. Fertilizers, Cotton-textile, Newspaper, Plantations, Iron & Steel, Ports & Docks, Coal, Oil Refinery, etc.) have also expressed a preference for collective bargaining as the

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main means of settlement of disputes. At the same time, they also sound a note of caution, that in the existing industrial and sociological conditions collective bargaining is not always feasible and some machinery is required to intervene and settle disputes objectively. A suggestion has been made, (Study Group for Banking), that Government should encourage the two parties to formulate procedures for collective bargaining and disputes settlement and such agreements should be legally enforceable like awards of Tribunals; and that adjudication should be sparingly resorted to.

III

International Practices.

21. Most industrially advanced countries have established complex systems of industrial institutions for collective bargaining. Various forms of conciliation and public review, labour courts to interpret agreements, voluntary or compulsory arbitration and many other devices are in vogue. But they do not destroy contractual relationship. These are only means to achieve one end namely the settlement of a dispute.

22. In Australia, multi-employer bargaining agreements are typical. The State and federal governments administer a compulsory arbitration system which is the dominant factor in settling wages and employment conditions. There does not, however, exist a tightly controlled and consolidated

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collective bargaining system as in Western Europe. Under the Australian system each State has a court of arbitration empowered to deal with wages and industrial disputes within its territorial jurisdiction. In addition, there is a Commonwealth or Federal Court of Arbitration which handles disputes and defines the basic or minimum wage and standard hours of work in particular industries on a nation-wide basis. The Australian experience shows that compulsory arbitration may not prove useful in achieving industrial peace if there is a lack of an effective and 'consolidated' collective bargaining structure. It also shows that massive intervention in labour disputes does not necessarily eliminate industrial conflict.

23. In Sweden, the Collective Bargaining Act, 1936 for the first time made it a statutory obligation on the part of employers in Sweden to recognise and negotiate with trade unions. It provides legislative confirmation of a well-established practice. It prescribes no penalties and provides for no prosecution. The degree of State intervention is, therefore, very mild. In 1938 the Basic Agreement between the Central Organisations laid down the foundation of the present relations in Sweden. It is largely concerned/ with measures for the avoidence and settlement of disputes and demonstrates the most outstanding instance of self-government by employers and unions. Sweden has had strong associations of employers and industry-wise bargaining for many years. Whenever a national union and an employers' association

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sign a collective agreement this is legally binding on all members and employees. If an employer should withdraw from an association he is still bound by the agreement which he accepted as a member of the association. However, when the agreement expires he would be free to negotiate a different contract. Local unions have not withered away under industry-wide bargaining and negotiations between national federations. Piece-rate negotiations, handling grievances and other activities keep the local unions busy.

24. In the U.K. collective bargaining processes, though often formal and detailed, have always been treated as voluntary. Unlike many other countries Britain does not have a labour code or legislation to provde for affirmative rights for unions - the right to organise and the right to bargain collectively. The Government of U.K. was among the first to ratify the I.L.O. Conventions on Freedom of Association and the Right to Bargain collectively. But there have been no steps to have laws passed to give effect to them. There is no special machinery in existence, as envisaged by these conventions, to ensure that the rights are respected. In spite of these shortcomings voluntary collective bargaining is deeply and firmly established in Britain. The negotiation of most collective agreements is carried out either at the level of enterprise or on an industry-wide basis. The current trend is for general wage increases to be negotiated for a given

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industry between union leaders and representatives of employers' federations. In the field of public administration and in the nationalised industries elaborate joint councils exist which negotiate a detailed and binding agreement. Special arbitration tribunals exist in certain industries such as coal mining, railways and civil services, in addition to the industrial court, to resolve disputes. The Donovan Commission (1965-68) has by and large recommended retention of this voluntariness in industrial relations in U.K., while suggesting certain measures for removal of certain defects that had grown in the present procedure; among these are the increasing use of factory level agreements, the registration of agreements, appointments of an Industrial Relations Commission, etc..

25. In the U.S.A. the National Labour Relations Act 1935 - popularly known as the Wagner Act (later modified by the Taft-Hartley Act) encourages the practice of collective bargaining. To implement that policy the Act created a National Labour Relations Board to determine legally the bargaining unit. The Board has framed rules to define an 'appropriate' unit for bargaining purposes. It has also divided the subjects of collective bargaining into three categories namely, mandatory, permissible and prohibited. The first category includes housing, group insurance, wage incentives and bonus systems, pensions, etc. which the parties must discuss and come to an agreement. The second category relates to matters not considered as

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'terms and conditions of employment.' The third category about which it is considered unlawful to bargain pertains to matters which are likely to discriminate against the reasonable interests of others. Bargaining in the U.S.A. customarily proceeds on a single employer basis.

26. In Japan Article 28 of the Constitution guarantees the right to bargain collectively and accordingly refusal to bargain in good faith without appropriate reasons prohibited as an unfair labour practice under the Trade Union Law of 1949. The law aims to promote collective bargaining. If at least three fourth of the workers of similar kind in a factory are bound by a collective agreement, the remaining workers are automatically covered by the agreement. A collective agreement is legally valid for a maximum period of three years. A ninety-day prior notice is required to terminate an agreement.

27. In Malaysia, the Industrial Relations Act, 1967 entitles only a recognised union for entering into a collective agreement. The agreements are to be submitted to the Industrial court for its cognisance. The Court can amend certain terms of the agreement if they are legally not valid. The Court consists of a President, an Independent person, a representative each of employers and workers. A dispute is referred to the Court only on a joint request of workers and employers. In exceptional cases the Minister himself can refer a dispute to the

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Court in the public interest. The awards are binding on the parties and cannot be appealed against or questioned in any Court of Law. Awards on reinstatement or re-employment of a workman are not subject to any stay of proceedings by any court of law.

28. In Burma collective bargaining can be initiated either at the Joint Works Committees constituted of representatives of the recognised union and management at the undertaking level or directly started between the management and the local union executives who can ask the assistance of their central organisation. Failing all efforts recourse can be taken to conciliation and arbitration machinery provided under the Trade Disputes Act. The Act provides for a standing court of Industrial Arbitrations and lays down the circumstances in which the President may refer a dispute to the court.

IV

Suggestions.

29. Any system of industrial relations whether based on collective bargaining, compulsory adjudication or a mixture of both should provide for procedures for the expeditious settlement of disputes. As has been mentioned, the Indian system which leans heavily on adjudication, has been the subject of severe criticism from time to time. It has its strong supporters too; consequently, there are divergent views on the question of the industrial relations procedures

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to be adopted in the future. The main alternatives suggested are:

(i) to retain the present system with suitable modifications and improvements, to eliminate, or at least minimise, its present defects like delays, etc.

(ii) to replace the present procedure by one of collective bargaining pure and simple;

(iii) to have a system which combines both collective bargaining and adjudication.

30. Those who favour the continuance of the present system of adjudication do so mainly on the grounds that: (a) the parties, particularly the trade unions are still unprepared and incapable of taking all the responsibilities of collective bargaining on a footing of equality with the employers and they need the assistance of the State (b) the withdrawal of State intervention through adjudication will lead to chaos in the industrial field, which we can ill-afford in the present stage of our developmental effort, when uninterrupted production and avoidance of work stoppages is of primary importance. In their view, while it may be true that adjudication has its defects, it has by and large succeeded in bringing about some measure of industrial peace in the country. They, therefore, feel that the best course in our present situation is to carry on with the existing procedures, trying at the same time to remove any obvious defects in the system through

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suitable improvements/modifications.

31. The arguments in favour of a switch over to collective bargaining are well known. Its best justification is that it is a system based on bipartite agreements and as such it is superior to any arrangements involving third party intervention in matters which essentially relate to the two parties. The advocates of collective bargaining argue that the present system although giving lip sympathy to collective bargaining has only perpetuated the adjudication system. The adjudication system which was expected to be a temporary measure till such time as labour came of age and could bargain with the employers on an equal footing has failed to fulfil the expectations. It has by the very logic of its functioning inhibited the growth of trade unions and has made them weak and litigious. The only way out is a wholesale rejection of reliance on a third party for settlement of disputes and acceptance of collective bargaining with all its implications, including the right to strike/lockout if negotiations fail. Collective bargaining in the initial stage may give rise to more industrial strife and work stoppages, but it is bound to be a temporary phenomenon and the situation will stablize after an initial period of uncertainty.

32. Those who support the third alternative, point out that neither adjudication nor collective bargaining can claim to be fully successful in maintaining industrial peace. Each system has its own defects; adjudication as it

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has developed in India, has tended to prolong disputes, allegations of pressures, and a weakening of trade union movement; on the other hand, collective bargaining as it has developed in the West may not be quite suitable for India. It cannot appropriately co-exist with the concept of a planned economy where certain specified targets have to be fulfilled. In the unorganised industries where trade unions are non-existent or too weak for collective bargaining, the State cannot avoid taking upon itself the responsibility of statutorily laying down certain minimum conditions of employment, wages, etc. Further, the interests of the consumer, and the community have also to be protected from the unrestricted operation of collective bargaining. Against this background, the pressure on Government to intervene in a dispute which threatens industrial peace or community interests becomes overwhelming. It can hardly do so without devising regulatory procedures such as adjudication of disputes by courts and tribunals wherever it considers necessary. It, therefore, becomes inevitable that in the complex economic and political situation we are in today, it may not be possible to rely exclusively either on collective bargaining or on compulsory adjudication as the basis of our industrial relations policy. The requirements of national economic policy make it imperative that State regulation has to be resorted to even when collective bargaining is the main method of regulation of labour management relations. Thus, it has to be a combination of both, with increasingly

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greater scope for and reliance on collective bargaining. Any violent change replacing adjudication by a system of collective bargaining would be neither practicable nor desirable. The process has to be more gradual and phased.

33. The first step therefore is to promote collective bargaining, and to create the conditions necessary for its success; and simultaneously to adjust the functioning of the adjudication system in such a way as to supplement, rather than supplant collective bargaining. The steps needed to create and develop conditions for the growth of collective bargaining are: change in the attitude of employers, improvements in the organisational set up of trade unions, development of rank and file leadership, recognition of majority union as sole bargaining agent, and empowering only recognised unions to carry disputes to conciliation and adjudication. During the period of transition, adjudication should be restricted to certain specified industries, such as public utilities, and when public welfare is threatened. In the areas where collective bargaining may prevail normally, it should be only in exceptional cases where the merits of the situation justify it and when public services or the general welfare is threatened by the continued strife that the State may step in and refer the matter to adjudication. For the regulation of these procedures, the following steps may be considered:

(1) Collective bargaining with a certified bargaining agent be made compulsory before taking recourse

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to the statutory conciliation and adjudication machinery. A refusal to bargain collectively by either of the parties be considered unfair labour practice which should be detailed and punishable under the industrial disputes legislation.

(2) Failing collective bargaining, the parties should agree to submit their dispute to a mutually agreed arbitrator or to adjudication.

(3) The majority union should be the sole recognised union given the right of bargaining collectively and represent workers before a conciliator/adjudicator/ arbitrator. A collective agreement reached by the recognised union and an award made by the Court/Tribunal in respect of a dispute raised by the recognised union should be applicable to all workers in an establishment.

(4) The parties should be allowed to refer a dispute to the independent authority constituted for this purpose directly for adjudication. The adjudicating authority should also be empowered to take cognisance of an apprehended or existing dispute on its own and initiate the proceedings.

(5) A composite independent authority entrusted with the functions of both conciliation and adjudication may be constituted to eliminate certain procedural delays caused by the existence of multiple authorities required to deal with a dispute. Major disputes relating to wages, allowances classification of workers can be

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dealt by a suitably constituted Bench.

(6) A separate standing court be constituted to enforce awards and certain provisions of the disputes.. legislation including unfair labour practice clauses.

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Working of the Adjudication Machinery

I

Introductory

Provision for a disputes settlement machinery is an obligation cast on the State by its concern for industrial peace and the consequent restrictions on work stoppages. An adjudication machinery consisting of National Industrial Tribunals, Industrial Tribunals (in addition, in some States, Industrial Courts and (statutory) tripartite Wage Boards) and Labour Courts has been functioning for the last two decades. Industrial tribunals and labour courts as provided under the Industrial Disputes Act, 1947 (I.D. Act) consist of one person of the prescribed judicial qualifications and experience. Provision exists for association of assessors with a tribunal for expert advice. Industrial courts functioning in Maharashtra and Gujarat under the Bombay Industrial Relations Act, 1946 (B.I.R. Act) consist of at least three members, one of whom can be a non-judicial person. A Wage Board - an industry-wise adjudicating authority functioning in these two States under the B.I.R. Act, consists of equal representatives of workers and employers along with independent members. Power to constitute the adjudicating authorities vests with the appropriate Government.

2. Matters to be referred to a labour court under the I.D. Act are broadly: propriety and legality of an order of the employer, application and interpretation of the Standing Orders, legality or otherwise of strikes, lock-outs, discharge/dismissal including reinstatement, as listed in the Second Schedule of the I.D. Act. The labour courts set up under the States legislation also deal with similar issues. Legal

practitioners are not permitted to appear before the labour courts though they can appear with the consent of the other party before the tribunals. Unlike the B.I.R. Act, the I.D. Act does not provide for an appeal against an award of the labour court.

3. Any matter enlisted in the Second or Third Schedule of the I.D. Act can be referred to an industrial tribunal. A National Tribunal is to be constituted by the Union Government to decide disputes involving questions of national importance or affecting industrial establishments in more than one State. An Industrial Court, besides entertaining appeals against the decisions of Registrar/Labour Commissioner/ Labour Court/ age Board, is empowered to decide all disputes referred to it in accordance with the provisions of the B.I.R. Act. Matters affecting the entire industry such as wage standardisation, classification of employees, rationalisation are referred to Wage Boards in Maharashtra/Gujarat under the B.I.R. Act. In certain respects a Labour Court/Industrial Tribunal has the power of a Civil Court under the Code of Civil Procedure, 1908.

4. No time limit is fixed for completion of adjudication proceedings. An adjudication award is binding on the parties. Though the awards of the courts/tribunals are final and cannot be questioned in a Civil and Criminal Court, Constitution does not confer on them a domain entirely independent of the High Courts and the Supreme Court. A writ petition for stayal of an award can be filed in the High Court under Article 226 of the Constitution and/or a special leave can be obtained to file an appeal in the Supreme Court under Article 136 of the Constitution.

5. The I.D. Act empowers the appropriate Government to frame rules of procedure for the tribunals and labour courts. For tribunals constituted by the Centre the rules of procedure are laid down under Section 10-B of the Industrial Disputes (Central) Rules, 1957. It may be said the time limits prescribed under Section 10-B for different stages of the proceedings are relaxable at the discretion of the Court/Tribunal. This discretion seems to have been exercised for various reasons, resulting in protracted proceedings before a Court/Tribunal.

Procedural Delays

6. Dissatisfaction prevails over the delays in adjudication which occur at different stages of the proceedings. Though the average time taken by tribunals in making awards is understood to vary between four and seven months, in different States, delays do occur much beyond these limits in certain cases either in the proceedings or in appeals and writ petitions. Excessive work load on the authorities is not always the reason behind such delays, though this is one of the important reasons. Parties to the dispute delay the hearings in a large number of cases. It has often been the experience that statements and rejoinders are not filed in time by the parties. Employers' lawyers/representatives and union leaders are busy on many occasions in attending to or appearing in cases before the superior courts. During the hearings several adjournments are taken by one or the other party either to prepare for the case or to pursue mutual negotiations to arrive at an out of court

settlement. The protracted and frequently interrupted hearings make the task of writing the award more difficult and time consuming.

7. The intervention by superior courts (High Courts and the Supreme Court) brought in by one or the other party to a dispute on preliminary issues, or by writ petitions or appeals against an award is another source of delay in reaching expeditious relief to workers. On the basis of High Court judgments published in Labour Law Journal in 1965, it has been estimated that the time taken in disposing a writ has varied between 18 months to 3 years as against the normal period of 6 months suggested by the Law Commission for disposal of a writ. Delay at the High Court according to the Law Commission is largely due to inadequacy of judicial personnel and a variety of jurisdictions demanding the time of the Court. Appeals filed in the Supreme Court take even longer time. An appeal to the Supreme Court can be filed on obtaining special leave which is permissible only after 90 days of publication of the award. If leave is granted, the submission of papers to the court in the formal manner and the hearing take the total time for disposal well within the region of three years.

II

Evidence before the Commission

8. Most State Governments are of the view that time taken at various stages of adjudication should be reduced; where necessary more courts/tribunals be constituted so that more than 30 disputes are never pending at a time. They have suggested legal advisors should be permitted to appear before the tribunals only with its consent;

adjournments should not be granted liberally and free of cost; all information be furnished in time to the court/ tribunal; creation of separate labour bench in the High Court. As regards appointment of tribunals, majority view is in favour of the power resting with the High Court; the other view being that the Government should have the privilege of choosing a name from a panel suggested by the High Court. Another alternative supported by one of the States is that the appointments be made with the approval of the Public Service Commission and the High Court and the Tribunals be placed under administrative control of the High Court.

9. At a recent conference of adjudicators in Maharashtra and persons appearing before them on behalf of workers and employers, an observation was made that delays occur not on account of laxity on the part of the presiding officers or the parties but by circumstances beyond the control of tribunals as well as parties; barring a few exceptions, adjournments were given in really difficult cases. Majority of adjournments were on the request of both the parties or on a request by one and consent by the other. Employers have on occasions delayed their submission and challenged the very jurisdiction of the court/tribunal to deal with matters in dispute. Lack of adequate facilities at the command of unions have made it difficult for them in ensuring timely attention to all cases pending for adjudication. The labour courts/ tribunals have granted adjournments for carrying on mutual negotiations, in the conviction that such negotiations might ensure enduring industrial peace. Delays in adjudication occur due to scrutiny of interlocutory orders

of a court/tribunal by High Courts on application by a dissatisfied party.

10. These observations made at the conference are by and large endorsed by other Industrial Tribunals in other States in their comments on a paper entitled 'Working of Adjudication Machinery in Maharashtra - A Review' prepared and circulated by the Commission's Secretariat.*

11. Some industrial tribunals have expressed the view that delays in adjudication are often exaggerated, and that the awards of courts/tribunals have given satisfaction to the parties. Most of them agree that it is not difficult to complete proceedings before a labour court and industrial tribunal in six and twelve months respectively, though fixation of a time limit is not desirable in principle. Others have complained that their strength is not increased commensurate with the increase in work load which is reported to have increased tenfold in certain cases during the last decade. Extension of labour court jurisdiction to disputes under Workmen's Compensation Act, Payment of Wages Act etc. has made added demands on the time of the courts in certain States when even for the conventional functions of courts they are inadequately manned.

12. Views of tribunals are divided on the nature of appellate authority - while some have suggested revival of the LAT, others have opposed it and suggested constituting special labour benches at the High Courts and Supreme Court. Regarding qualification of labour judges some tribunals have advocated judicial qualifications and experience.

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* This paper was circulated to Members with letter No. 1/23/68-NCL(C) dated the 17th June, 1968.

13. The Study Group on Industrial Relations (Northern Region) has held the view that adjudication system has invited criticism much because of delays involved particularly due to appeals to the higher courts. The Study Group on Industrial Relations (Southern Region) has mentioned that complaints are made about slow adjudication proceedings; frequent changes in the presiding officers of courts/ tribunals are stated to cause delays in completion of adjudication proceedings. It has recommended creation of an industrial judicial authority to substitute the present Industrial Tribunals and Labour Courts. Such authority should consist of persons having industrial experience and be presided over by a High Court Judge in place of a retired judicial officer appointed by Government. Direct reference of disputes to this authority should be permitted. The Eastern Region Study Group on Industrial Relations has stated that trade unions oppose adjudication as they considered it a time consuming and litigious process. To expedite proceedings, procedural technicalities laid down in the Civil Procedure Code and Evidence Act should be minimised so far as possible. Normally an industrial tribunal should not take more than six months to dispose of a case. The Study Group has added that it is worth considering whether in order to make them more acceptable to parties, the awards be made in terms of settlement arrived at between the parties with the persuasive intervention of Industrial tribunals.

14. The Central Working Group on Labour Administration has recommended that while the Industrial tribunals should as at present be manned by judicial officers, the labour courts should be constituted of Labour Department Executive Officers having experience of industrial and labour matters.

15. The workers organisations are of the opinion that adjudication machinery suffers from many draw backs. One of the central organisations has suggested the appointing authority should act under the advice of a tripartite committee. Only active judges of the rank of High Court Judge should be appointed and no assessors be allowed. Elimination of delays at the different stages of proceedings is a common complaint. Making adjudication proceedings time bound; abolition of writs and appeals to the High Courts and the Supreme Court; barring of the legal practitioners from appearing before the tribunals; sittings of the labour court be held more frequently at various industrial centres; special labour bench be constituted in the High Courts/Supreme Court to act as an appellate authority etc. are some of the specific suggestions.

16. Majority of employers feel that adjudication machinery is useful and has played an important role despite its shortcomings. Most of them are of the opinion that appointment of court/tribunal should be made by the High Court. Some employers suggest that the authority to appoint should be vested in the Law Department. Formation of an Industrial Judicial Service is proposed by some. The majority of the public sector employers are in favour of continuation of present system of appointment.

17. Suggestions put forth by employers are adjudication proceedings should be made more expeditious if necessary by increasing the strength of the adjudication machinery; the lesser number of adjournments be allowed to parties; the procedure adopted should be simple and not made too legalistic; awards be made binding for three years instead of one. A

view point expressed by the public sector employers is fixation of a time limit for adjudication. The revival of the L.A.T. is suggested by a majority of both public and private sector employers. The former have suggested laying down of norms for the guidance of adjudicators so that appeals arise only on substantial questions involving gross injustice, serious national repercussions; or jeopardising peace in industry or local area.

III

International Practices

18. Compulsory adjudication is not a widely prevalent method of dispute settlement in other countries. Australia and Newzealand are two countries having a long tradition of compulsory adjudication.

19. In Australia compulsory adjudication has been in practice for over sixty years under the Commonwealth Conciliation and Arbitration Act, 1904. Arbitral and judicial functions under the Act are entrusted to two different bodies, viz. (i) Commonwealth Conciliation and Arbitration Commission (CCAC) and (ii) Commonwealth Industrial Court. The Commission is constituted of both judicial and lay members. Disputes on important matters such as hours of work, basic wages and long service leave are adjudicated by a Bench constituted of three members, one of whom has to be a judicial member.

20. In hearing and determination of a dispute the Commission is not bound to act in a formal manner and is neither bound by rules of evidence. The President, members of the CCAC/State adjudication authorities make themselves available to the workers and employers for informal

discussions, and consultations during the pendency of a dispute or even in absence of a dispute. Unofficial help and guidance rendered by the Commission often prevent a dispute from precipitating and expedite the formal adjudication proceedings. In reaching a decision, it is only obliged to act ~~according~~ in equity and good conscience and according to substantial merits of the case. Though the proceduresprescribed under the Act are considered to be legalistic and dialatory, the Commission has been able to reduce delays. It is understood in the federal system a Commissioner takes over a case from another at any stage to suit the conveniences of the parties. Notwithstanding the informality of its approach, the Commission's procedures for collection of information for processing a case, through detailed examination and cross-examination of witnesses, and visits to different places of interest are extremely time consuming and expensive. Delays also occur in many cases due to frequent adjournment motions sought by the parties to prepare their case.

21. The Commission has power of subpoena, can take evidence on oath or affirmation, make an interim award, fix penalties for breach of any of the terms of the award subject to the limits prescribed under the Act. The Commission can dismiss a dispute if considered by it trivial in nature. The Commission can implead in or strike off a party to the dispute before it. Its awards are binding on all parties. An appeal against an award of the Commissioner lies with a Bench constituted of at least three members of the Commission, two of whom have to be its judicial members. For deciding the appeal the Commission can admit further evidence and take the assistance of a Commissioner or Conciliator.

IV

Suggestions

22. Inspite of the fact that delays in adjudication can be explained on grounds of certain unavoidable circumstances and expediency, any complacency about the expeditious functioning of the adjudication machinery may not be in the best interests of industrial peace. Legal delays are proverbial but may not be taken for granted. The following suggestions also supported by the majority of labour courts and industrial tribunals - can be considered for introducing a measure of urgency in procedures, to rationalise work pressure on the authorities and for general improvement in the constitution of adjudication machinery. Put in considering these suggestions one point has to be noted. In recent years, there has been a tendency in the parties to treat casually all stages prior to formal hearing before a tribunal. In fact, real collective bargaining starts once the dispute referred to adjudication and even in the early stages of hearing and settlements are reached. Experience has shown that such settlements are better implemented by parties than awards handed down to them.

1) Pre-trial Stage

Pre-trial proceedings should start soon after a dispute is referred to a court/tribunal. All efforts should be made at this stage to bring about a settlement or to narrow down differences, instead of allowing adjournments for mutual negotiations during the hearings of a case. Parties should be called upon at this stage to first file their written statements and then all the

positive statements and documents on which they would be relying during the hearings, so that they get time to examine the material submitted by each other before the hearings start. This would also reduce the evidence to bare minimum. Rebuttal statements if necessary can be permitted at the time of hearings. Pre-trial hearings would to a large extent eliminate adjournments and reduce discontinuity of hearings.

2) Small Causes Courts Procedure

Labour courts can adopt procedure followed by Small Causes Courts in dealing with discharge, dismissal and reinstatement cases. This would save the time otherwise required for recording detailed evidence, and expedite proceedings.

3) Filing of Statements by Parties

Time limits for filing all statements and exhibits before the hearings, should be fixed and adhered to. To implement this, the date of hearings may be fixed first and the parties be asked to file their statements before that date. The parties may be made legally bound to file their written statements. The parties should be urged upon, to the extent feasible, to make precise and definite statements.

4) Affidavits

In order to reduce the time spent in recording evidence, use of affidavits may be tried in certain types of cases which could be listed.

5) Adjournments

Adjournments should be minimised and permitted only under unavoidable cases. A ceiling on the number of adjournments to be allowed to a party and affixing a court fee on adjournment application can be tried to restrict

adjournments. Where the adjournments are at the instance of one party (and acquiesced by the other) the time for such adjournments should not be counted in working out the life of a case before a tribunal.

6) Work Load

It is difficult to determine the work load which a judge/tribunal should carry in terms of the number of cases - the complexity of each will naturally differ. Within the law of averages it should be possible to determine the work load per tribunal.

7) The present arrangement of having ad-hoc tribunals for settling interest disputes with a single member sitting should be replaced by arrangements similar to an industrial court where the President of the Court distributes work to members and at the same time is a senior among equals to supervise and guide the work of others will be advisable.

8) An arrangement as in 7 will make it possible to ensure independence of the tribunals from the executive.

9) All this will be on the assumption that we need industrial tribunals and for settling ~~interest~~ industrial disputes in preference to collective bargaining.

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CONCILIATION

Provisi n of a machinery for the settlement of industrial disputes is an obligation which devoles on the State because of its concern for maintaining industrial peace and preventing work stoppages. This task assumes increased importance in a planned economy. In the words of the First Plan 1951-56.

> "an economy organised for planned production and distribution aiming at the realisation of social justice and the welfare of the masses can function effectively only in an atmosphere of industrial peace. India is moving in this direction. It is also at present passing through a period of economy and political emergency. Taking the period of the next few years, the regulation of industrial relations in the country has to be based on these two considerations and it is incumbent on the State to arm itself with legal powers to refer disputes for settlement by arbitration or adjudication on failure of efforts to reach an agreement by other means".

Conciliation has been an important aspect of the arrangements for disputes settlement, the others being voluntary arbitration and adjudication.

2. The importance of conciliation as a method of settlement of disputes by bringing the parties together has been long recognised. Apart from the recommendations by Enquiry Committees set up by Governments of Bengal and Bombay as far back as 1921 the Trade Disputes Act 1929 for the first time provided for the setting up of machinery to examine the issues at disputes. Where a trade disputes existed or was apprehended, it was left to the discretion of the appropriate Government to refer any matters in dispute to a Board of Conciliation for promoting a settlement. The Board investigated the dispute and did all such thing as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute". The Boards were given the same powers as civil courts in matters such as summoning witnesses production of documents, etc.

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The parties were entitled to be represented before a Board by legal practioners. Report of the Board was not binding on the parties and its acceptance and implementation were left to the pressure of public opinion. The machinery of Boards of Conciliation provided under the Trade Disputes Act, 1929 was, however, found to be rather cumbrous. The Royal Commission on Labour in India (1929-31) also laid stress on the need to provide for conciliation at a sufficiently early stage, as in its view, it was better to get the parties to a dispute settle it themselves than put forward a settlement for them and attempt to give it force by invoking public opinion or otherwise.

3. The Bombay Trade Disputes Conciliation Act, 1934 provided for conciliation through official conciliators, who would be available for intervention at any stage of a trade dispute. If a trade dispute existed or was apprehended either party or the Labour Officer could report the matter to the Conciliator concerned for a settlement of the dispute. A conciliator also could take cognizance of a dispute on the basis of his own knowledge or information. Even under the provisions of this Act, there was no obligation on the parties to seek conciliation before resorting to a strike or lock-out. There was also no provision for postponing strikes and lock-outs pending conciliation. Some of these defects were sought to be remedied by the Bombay Industrial Disputes Act, 1938, which provided for compulsory conciliation and voluntary arbitration. The Bombay Industrial RelationsAct, 1946 introduced further improvements in the conciliation machinery provided. Under this Act conciliation of all industrial disputes in industries to which the Act was applied, was made compulsory except in certain cases where it was specifically barred. If an agreement was arrived at in the course of conciliation, a report together

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with a memorandum of the terms of settlement was required to be submitted and if no settlement was arrived at, a full report indicating the reasons for the failure of the conciliation had to be submitted to Government. The Government was at liberty to send the dispute at any time to a Board of Conciliation for settlement. The total period fixed for the completion of all stages of conciliation proceedings was one month subject to extension upto two months. The total period of conciliation could not in any case exceed three months from the date of its commencement.

4. The administration of the Conciliation machinery provided in the Trade Disputes Act 1929 was reoriented under the Industrial Disputes Act, 1947. Under the 1947 Act, which provides for the appointment of Conciliation Officers and Boards of Conciliation, conciliation is compulsory in all disputes in public utility services and optional in the case of other industrial establishments. Over the years the optional provisions are also acquiring compulsory status in non-public utilities. With a view to expedite conciliation proceedings time limits have been prescribed - 14 days in the case of Conciliation Officers and two months in the case of Board of Conciliation. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon between the parties or for a period of one year and will continue to be binding until revoked by either party. The Act also prohibits strikes and lock-out during the pendency of conciliation proceedings. Though Conciliation Officers have certain statutory powers for entering the premises of establishments and for calling documents for inspection they are expected generally to function through suggestion and persuasion rather than compulsion and fault finding.

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5. The intention of the conciliation system under the Industrial Disputes Act and other State Acts is to create an atmosphere conducive to settlement of disputes through constitutional means and to attempt to bring about an agreed solution through timely intervention. The conciliation machinery has been doing useful work although it has been subject to certain handicaps and has been criticised by various interests for its shortcomings. Statistics show that a fair percentage of disputes have been settled at the conciliation stage and to that extent one cannot deny the usefulness of this machinery but these require to be interpreted with caution. By and large however, there are only few major cases where conciliators have achieved success.

6. Recent trends, indicate a growing dissatisfaction with the functioning of the conciliation machinery. This has been attributed to a variety of factors such as:

(a) lack of confidence in this machinery on the part of one party or the other,

(b) easy availability of adjudication,

(c) Growing use of legal and technical experts to prepare and argue the cases, particularly on behalf of employers. (It is said that the employers at least such of them who count, prefer to get their case settled on merits in adjudication where a proper representation of their cases through an expert is possible, rather than submit to a compromise in conciliation proceedings).

(d) Multiplicity of unions and political pressures; (Multiplicity of trade unions affiliated to different political parties had led to the allegation that the conciliation machinery has often worked in a way favouring trade union organisations of a particular political persuasion).

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Inadequate Status of Conciliation Officers: (The status enjoyed by the conciliation officers and lack of proper training initial as well as refresher, are also factors which have rendered the work of conciliation officers difficult and less acceptable to the parties.)

(e) Delays involved in the proceedings: (With increase in industrialisation and the growth of unions, the number of disputes coming up before conciliation machinery has grown in recent years without a corresponding increase in the strength of this machinery. This has led to pressure on the existing machinery and often to delays in the completion of the proceedings. The increase in labour legislation and the tendency to make the conciliation officers responsible for the implementation of the provisions under several enactments has also heavily burdened them with numerous and miscellaneous duties resulting in less time and attention to their main function of conciliation.)

II

Evidence before the Commission

7. As one would except views reaching the Commission on this issue are divergent, depending upon the source they come from, State Governments expressing satisfaction and workers' and employers' organisations though generally appreciative of cases where settlement was effected in conciliation preferring a major overhaul in the machinery. There is a fair measure of consensus that conciliation has a useful role to perform in resolving disputes; also a large area of agreement about the improvements to make it more

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efficient and effective.

8. The State Governments are generally of the view that the conciliation machinery has played a useful part in resolving industrial disputes. They are at the same time conscious of the shortcomings of the machinery and feel that it could be made more useful and more effective if certain reforms in the powers and functions of the conciliation machinery are introduced. Among the remedies suggested are: enforcement of time limits for the disposal of cases, improvement in the status and emoluments and training facilities of the conciliation officers, enhancement of their powers to enforce attendance, call for documents, etc. and creation of a cell in the Labour Commissioner's office to ensure central direction and advice to conciliation officers on legal and accounts matters, etc. while legal experience can be an asset, too much of it may prove to be a liability. The more important requirement should be a legal discipline.

9. A majority of the employers' organisations seem to feel that conciliation as at present practised has by and large not proved effective or useful. Some however, have stated that it has played a useful role although to a limited extent. The main criticism on the employers' side has been that the conciliation machinery is biased against the employer, that it is amenable to political pressures, and acts in favour of labour and that the manning of the machinery is unsatisfactory. The machinery requires to be geared up and made more effective. The conciliators should be persons with industrial experience and who are otherwise well qualified to handle labour problems. They should enjoy greater independence and initiative and should be given enhanced powers. Most of all they should be able to create among both employers and employees an attitude of trust and acceptance.

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10. Workers' organisations have also stated that the conciliation machinery has not functioned satisfactorily. The shortcomings and the remedies suggested by workers' organisations are also on familiar lines, the difference being that in their view the conciliation is often biased in favour of status quo or a marginal change. In addition to improvements in the status, emoluments, powers, etc. of the conciliation officers, workers' organisations have also suggested, among others, that collective disputes should be entertained only when referred by a recognised union and that in matters of disciplinary actions, the individual worker concerned or the representative union alone should be authorised to bring a dispute to a conciliator.

11. The Study Groups on Industrial Relations have felt that the conciliation machinery has played a fairly satisfactory role in resolving disputes although it has not been as effective as it could have been. Their suggestions for improvement have mainly related to creation of a proper attitude on the part of employers and workers and improvements in the staffing, training, status and powers of the officers of the machinery.

III

International Experience

12. Conciliation machinery has played an important role even in countries like the U.K. and U.S.A. where collective bargaining is the method of settlement of disputes. In U.K. the Department of Employment and Productivity provides a conciliation service which operates throughout its regional net-work as well as its headquarters. The Department's staff have close contacts with representatives of employers and trade unions at all levels and keep in touch with negotiations at the plant level. In most cases their help is first requested by one or both of the parties, though

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occasionally it is volunteered. In the U.S.A. the Federal Mediation and Conciliation Service created under the Labour Management Relations Act is responsible for settlement of industrial disputes. The Service steps in when the parties to the dispute approach it for its intervention.

13. In Australia, where the system of compulsory conciliation and arbitration exists, disputes not solved at the negotiating table are taken to the conciliation officer who tries to bring about a settlement. If there is no settlement, the dispute automatically goes to compulsory arbitration. Since Conciliation is a part of the functions of the Commonwealth Conciliation and Arbitration Commission the proceeding before conciliators nor the suggestions made by them are free from criticism about political interference.

14. In Malaysia, there is no legislation prescribing conciliation procedure to be followed in the event of a dispute, but the Ministry of Labour has a number of officials who specialise in the field and intervene as conciliators in disputes at the request of the parties.

15. In Japan, the tripartite Labour Relations Commissions provide voluntary conciliation, fact finding and arbitration. The Commissions may undertake conciliation quite freely, formally or informally, individually or on a bipartite or tripartite basis, at the request of one or both parties or upon the initiation of the Commission itself.

16. In Sweden, the Conciliation Act, 1906 provides a machinery for conciliation and arbitration. The conciliation machinery is not mandatory and it enters a dispute if requested to do so either by an employer or by an organisation representing at least one-half of the workers involved in a dispute. The machinery offers its services to bring the parties together for

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purposes of negotiation and urges acceptance of such adjustments and concessions as may seem reasonable. If no agreement is reached, the conciliator may encourage the parties to put their dispute to arbitration. The conciliator himself is not allowed to step into the role of an arbitrator.

Suggestions

17. Conciliation machinery will play an important role in the disputes settlement procedures, whether compulsory adjudication continues to hold the field, or whether collective bargaining assumes added importance and replaces adjudication. With the development of collective bargaining, in fact, the role of conciliation may become more crucial. If the transition from compulsory adjudication to collective bargaining is to be orderly and smooth, there will be need for conciliation machinery of adequate competence. Under a system of disputes settlement through collective bargaining conciliation will in effect be a continuation of the process of collective bargaining with outside assistance. The intention in conciliation is to help the parties concerned to find a mutually acceptable basis for the settlement of differences which have arisen between them. (Failing settlement an attempt will be made to secure agreement to arbitration). To be able to build up a position of trust and be acceptable to both employers and workers, the conciliation machinery has to maintain its independence and neutrality and even more to acquire a public reputation of having these qualities.

18. An important issue that arises is whether conciliation should be compulsory before the failure of negotiations between the parties leads to a strike or lock-out. If conciliation is made a compulsory intermediate step between failure of mutual negotiations and resort to a cessation of

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work, it would help the parties to get the services of a neutral outside agency, with better chances of settlement; at the least, it would provide a necessary 'cooling off' period for the parties to reconsider their respective stands.

19. Would provision of compulsory conciliation before cessation of work lead to the machinery being overwhelmed with too many cases? Not necessarily; with the recognition of majority unions as sole bargaining agents and the growth of collective bargaining and the setting up a grievance machinery and joint consultative bodies most issues, both individual and general, would get settled between the parties and only such unresolved issues and differences would be taken to conciliation.

20. However, for this to be effective, the conciliation proceedings will have to be expeditiously completed, within clearly prescribed time limits, say 2 weeks from the date of strike notice unless the parties mutually agree to adjourn the proceedings for completing negotiations. Further, in order to make the conciliation machinery function effectively, apart from the often repeated suggestions regarding qualifications of the officers, adequate staffing, status and emoluments, training and retraining, powers of enforcing attendance, producing documents etc., some basic changes are called for These are:

(1) While the evidence is weak to substantiate charges of political interferences, in the context of the forces in Trade Union as are likely to emerge, there is a case for reassuring the public that conciliation machinery is independent of other influences. It should be a part of a permanent and independent adjudication or arbitration machinery by whatever name we call it. All claims of :

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one party or the other if they are not mutually settled should, without being processed by Government go to this permanent machinery which should decide if a particular claim is likely to be settled in conciliation. Under the auspices of this machinery conciliation can have a better chance of success because of the knowledge that if it fails something is likely to be imposed on the parties by the adjudicatory process.

(2) It is not proper to attack conciliation because it is dilatory. The procedure will take time. Its basis is to operate on the minds of the two parties about the reasonableness or otherwise of a stand taken by one or the other. And this will necessarily involve time. To ask conciliator to finish work in a specified time is to invite a failure report.

(3) If conciliation becomes a part of the Adjudicating machinery, it should be possible for that machinery to decide, depending on the nature of disputes, the tradition built up by the parties to settle matters between themselves and various other factors, whether conciliation should be dispensed with. This will cut out all delays in reaching the final stage in the settlement of disputes.

(4) It will help conciliators to familiarise themselves with the problems of a particular industry or problems involved in dealing with specific demands over a period and acquire expertise so that his help is sought by the parties mutually.

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(5) In this situation legal knowledge nor knowledge of complicated accounts may not be a necessary qualifications. These will be supplied by experts attached to the centralised adjudicatory system. Nor will any special powers for enforcing att-endance, production documents, be needed.

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Voluntary Arbitration

I

Voluntary Arbitration is one of the important methods of settling industrial disputes. It came into prominence in the early twenties with Mahatma Gandhi advocating it for the settlement of the disputes in the Textile Industry in Ahmedabad. The Bombay Industrial Disputes Act, 1938 and the Bombay Industrial Relations Act, 1946 also recognised voluntary arbitration for the settlement of disputes alongside conciliation and compulsory arbitration.

2. The Second Five Year Plan referred to the use of voluntary arbitration in the settlement of industrial disputes thus: "Once disputes arise, recourse should be had to mutual negotiations and to voluntary arbitration. The machinery for facilitating these stages should be built up by the Central and the State Governments". Subsequently, the I.D. Act, 1947 was amended and under Section 10(A) provision was made for the joint reference of industrial disputes to voluntary arbitration. The same section also laid down that nothing in the Arbitration Act, 1940 shall apply to voluntary arbitration.

3. The Code of Discipline (1958) reiterated the principle of voluntary arbitration and enjoined on

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employers and workers the responsibility to resort to voluntary arbitration, on failure of other methods of settlement. Under the Code, the parties agreed "affirming their faith in democratic principles, to bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration."

4. In view of the continued reluctance of the parties to accept voluntary arbitration in most cases, the matter came up for discussion at various tripartite forums - at the I.L.C. and the I & E Committee in 1959. The Indian Labour Conference at its twentieth session (August, 1962) reiterated the need for wider acceptance for voluntary arbitration: "Whenever conciliation fails arbitration will be the next normal step except in cases the employer feels that for some reasons he would prefer adjudication.(Such reasons being creation of new rights having wide repercussions or those involving large financial stakes). However, the reasons for refusal to agree to arbitration must be fully explained by the parties concerned in each case and the matter brought up for consideration by the implementation machinery concerned."

5. The Industrial Truce Resolution (November, 1962) also referred to the need for settlement of disputes

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through voluntary arbitration. All complaints pertaining to dismissal, discharge, victimisation and retrenchment of individual workman not settled mutually should be settled through arbitration.

6. Voluntary arbitration has not become popular except at a very high level and in disputes where heavy stakes are involved. There are also cases where differences in interpreting an agreement/settlement have been resolved through arbitration. Generally employers whether in the public sector or in the private sector have not found it possible to accept it on a large scale. Factors which have contributed to the slow progress of arbitration are: (i) the easy availability of adjudication in case of failure of negotiations; (ii) dearth of suitable arbitrators who command the confidence of both parties; (iii) absence of recognised unions which could bind the workers to common agreements; (iv) the fact that an arbitration award given under Section 10(A) of the I.D. Act is binding only on the parties to the agreement - workers who are not parties, are not covered by the award of the arbitrator; (v) absence of facilities for appeal against an arbitrator's award, even if it is perverse; (vi) absence of simplified procedure to be followed

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in voluntary arbitration; (vii) expenditure to parties, particularly workers, and so on.

7. Inspite of its apparent unpopularity in its present form and in the present condition of labour management relations, both employers and employees are not averse to the idea of voluntary arbitration as such. In order to revive interest in voluntary arbitration, to make it more acceptable by removing some of the present defects and to coordinate efforts for its promotion, Government has set up a National Arbitration Promotion Board (NAPB) with a tripartite composition, to review the position, examine the factors inhibiting the wider acceptance of arbitration and suggest measures for their removal. The Board is also to evolve principles, norms and procedure for the guidance of arbitrators and the parties. It would look into causes of delay and expedite arbitration proceedings wherever necessary, and also specify from time to time the type of disputes which would normally be settled by arbitration in the light of tripartite decision.

II

Analysis of Evidence

8. The evidence before the Commission shows a general awareness of the value of voluntary arbitration as a method of settling disputes as well as its limitations.

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The consensus is in favour of generally limiting its application, in the initial stages, to disputes of a minor nature and those relating to individual disputes, and disputes of interpretation and implementation of clauses of agreements, etc. Setting up of Standing Arbitration Tribunals is not favoured, as it might turn out to be no different from compulsory arbitration.

9. The State Governments generally agree that voluntary arbitration has an important role to play in promoting good industrial relations. At the same time, they are conscious of the difficulties that have stood in the way of a more general acceptance of this mode of settlement. To make it more acceptable, they have suggested: (a) voluntary arbitration should be made expeditious by eliminating procedural delays, cumbersome practices and judicial complications; (b) collective bargaining should be promoted and should generally precede voluntary arbitration, if it is to succeed; (c) the parties should agree in the process of collective bargaining to refer any unresolved issues or questions of interpretation, etc. to arbitration.

10. Many State Governments seem to favour the idea of Standing Arbitration Boards consisting of

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representatives of employers and employees besides an independent chairman. Since the view has been expressed that the creation of Standing Arbitration Boards may take away its voluntary character and be considered as another permanent labour court or tribunal, as an alternative, it is suggested that there may be standing panels of arbitrators from which the parties to a dispute may make their own selection. On the question of sharing the expenses of arbitration, State Governments suggest that the State should bear 50 per cent of the cost, the rest being shared by the employers and the employees. In the view of some others, the expenses should be shared only by the employers and workers. One State Government has suggested that allocation of costs between the two parties should be left to the discretion of the arbitrator.

11. The majority of employers' organisations feel that voluntary arbitration is an important and desirable mode of settling disputes although it has had only limited scope in the Indian situation. The lack of progress is attributed mainly to the existing system of adjudication, the attempts of authorities to impose arbitration on the employers which took away its voluntary character and the absence of competent and suitable arbitrators. In their view, the system would become

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more acceptable when trade union recognition becomes compulsory and collective bargaining becomes a normal mode of settlement of disputes and the present disabilities in arbitration procedures are removed. Most employers feel that voluntary arbitration would be suitable to disputes relating to application and interpretation of standing orders, individual grievances, differences in interpretation of collective agreements, and matters of local interest not having any wider repercussions. They are not generally in favour of Standing Arbitration Boards but favour selection of an arbitrator from a panel. They also suggest that expenses of arbitration should be shared by the parties concerned in varying proportions.

12. Workers' organisations have generally favoured voluntary arbitration for settlement of disputes. In their view, all disputes can be referred to voluntary arbitration. A number of them favour the setting up of Standing Arbitration Boards which should be tripartite in character. Some unions, however, see difficulties in the parties accepting Standing Arbitration Boards. Most organisations favour the employers bearing the entire expenses of arbitration, while some have suggested that the Government and the employer should share the expenses.

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13. The Study Groups which have touched upon this topic have generally favoured the increasing adoption of voluntary arbitration to settle disputes between workers and the employers. The Industrial Relations Study Group (Eastern Region) recommended that voluntary arbitration should be encouraged. Collective agreements should provide a clause for voluntary arbitration on interpretation of disputed clauses. The suggestions made by the various Study Groups are : (a) minor issues and disputes involving individual workmen or a small group of workmen would be suitable for voluntary arbitration and not any major issues involving heavy financial stakes, substantial questions of law, etc.; (b) there is need for suitable arbitrators; (c) one appeal should be provided for on the arbitrator's award; (d) arbitrators should be men of integrity, with knowledge of industry and law though not necessarily lawyers. What is most important is that they should have the confidence of both parties.

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III

International Practices

14. In the United Kingdom, the Industrial Courts Act provides that the Minister may, if he thinks fit and if the parties consent, refer an existing or apprehended trade disputes for settlement by arbitration. The consent of the parties is thus essential both for the reference of the matter for settlement and to the form of arbitration to which the matter is to be referred. If any party to a dispute withholds consent, arbitration cannot proceed; arbitration provided for under the Act is therefore entirely voluntary. The forms of arbitration to which a dispute may be referred under the Act are:

(a) the Industrial Court;

(b) one or more persons appointed by the Minister; and

(c) a board of arbitration consisting of one or more persons nominated by or on behalf of the employers concerned, and an equal number of persons nominated by or on behalf of the workers concerned, together with an independent Chairman nominated by the Minister.

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The statutory provisions which enable the Minister of Labour to make arrangements for voluntary arbitration are only a part of the extensive and widely differing provisions for settling disputes which have grown up as collective bargaining has developed. The growth of joint voluntary machinery, and particularly of joint industrial councils, has led most industries to make provision for the settlement of issues in dispute and this may provide for arbitration arrangements. This takes many forms, ranging from self-contained arbitration machinery such as exists on the railways or in the coal industry to arrangements that, in the event of disagreement between two sides of a joint negotiating body, the chairman may act in the capacity of arbitrator.

15. The process of resolving disputes and differences by reference to arbitration has been developed to a high degree in the U.S.A. Here arbitration is of a voluntary nature and not imposed by the Governmental agency. Arbitration may involve establishment of new rights as well as interpretation of the existing rights. Arbitration of new rights is not a common feature in the U.S.A. though there have been some cases of this nature. However, arbitration involving interpretation of the existing agreements and rights are quite common. An agreement

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arrived at between the parties may either provide for resolving all disputes arising out of the agreement itself by reference to arbitration or even if such a clause does not exist they take recourse to resolving the difference or dispute by reference to arbitration as and when they arise. The choice of the arbitrator depends upon the nature of dispute. The concept of compulsory arbitration does not exist in the U.S.A.

16. Disputes and differences between employers and workers are subject to the process of compulsory conciliation and arbitration in the Australian system. Attendance of parties is compulsory in all conciliation proceedings. If the parties to a dispute are unable to arrive at a settlement or agreement during the process of conciliation, the Commission gives its award which is binding on the parties. Thus there is no scope for voluntary arbitration in the Australian system of resolving disputes and differences between employers and their workers.

17. In Malaysia with the system of collective bargaining prevailing, provision is made for settling unresolved issues by reference to arbitration. In regard to individual disputes of public employees

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which cannot be submitted to the Whitley Council these are required to be taken up with the departmental heads and as a last resort submitted to the Public Service Commission which is an independent judicial body. The institution of Industrial Court also exists and cases not settled in conciliation may also be referred to arbitration of the Industrial Court. This of course is a statutory machinery.

IV

Suggestions

18. The experience of the working of voluntary arbitration in foreign countries as well as our own, seems to point to one fact: that it will grow only in an industrial relations situation where collective bargaining prevails as the principal method of settling industrial disputes. The reasons seem to be quite obvious. - successful collective bargaining pre-supposes the existence of a recognised union representing all the employees, and an attitude of mutual trust and an acceptance of each others' bonafides in both parties. As such, it is perhaps not a matter for surprise that voluntary arbitration has so far had little success in India.

19. With the growth of collective bargaining and the general acceptance of recognition of representative

unions, the ground may be cleared, at least to some extent, for wider acceptance of voluntary arbitration. Voluntary arbitration is the natural method for settling unresolved inter-pretational and other disputes in collective agreements. The National Arbitration Promotion Board may then have a better scope to succeed in its task of promoting the idea.

20. Since non-availability of suitable arbitrators has been and is likely to be a major impediment to the acceptance of voluntary arbitration, the NAPB would do well to pay special attention to preparing and building up suitable panels of arbitrators and generally making voluntary arbitration more popular and acceptable.

21. It is true that in some cases where parties accepted arbitration, the atmosphere was vitiated by the conduct of the arbitrator; in others the costs of arbitration proved deterrent. Put there will be the difficulties in building up any new institution. To argue, as some employees do that there should be an appeal over an arbitration award is the negation of arbitration when perversity of an arbitrator is already guarded against.

22. It is also against the spirit of arbitration and indeed against the spirit of the industrial relations machinery to permit conciliators/conciliation officers

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to act as arbitrators in matters however small. What is objectionable is not the individual but his official capacity. We should not permit a feeling in the conciliation machinery that if one officer cannot settle a matter in the proceedings another is there in any case to give an authoritative decision.

23. Arbitration is a method which requires to be built up over a period. In the process of its being built up the parties will have to show some tolerance . As indeed they show in case a matter is settled jointly through the legal process. It has to be understood that an arbitrator can make or mar himself by his conduct. If he fails to satisfy one side or the other because of unfairness he will not be in demand. The present attitude among employers and workers seem to be on the basis that because employer is resisting workers opt for it. It is possible that when employer starts accepting arbitration it will be workers turn to say 'no'. At present we seem to be in a situation where the profession of arbitrators cannot prosper for lack of demand and because there is lack of demand good men do not venture into the profession. This situation requires to be remedied.

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NATIONAL COMMISSION ON LABOUR

Strikes and Lock-outs

I

Introductory

Conceptually the right to strike/lock-out is recognised in all democratic industrial relations systems. The degree of freedom granted for its exercise, however, varies according to social, economic and political advancement of the system. The option of direct action is considered indispensable where collective bargaining is accepted as the main method of settling industrial disputes. Nevertheless, for safeguarding public interest even in such systems strikes/lock-outs are subjected to rules and regulations either voluntarily agreed to by the parties or statutorily imposed. In a planned economy, State assumes wider powers to ensure realisation of targets by maximising production and regulating distribution in the interest of resource mobilisation. Right to strike/lock-out in India has been viewed in this context particularly since Independence.

2. State's concern for maintaining industrial peace has, however, a more distant past. The Indian Trade Disputes Act, 1929 enacted after the bitter experience of strikes during the Twenties curtailed the right to strike/lock-out but without constituting a machinery to prevent or settle disputes. During the Second World War, under Rule 81-A of the Defence of India Rules Government acquired additional powers to compel parties to seek Government's

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intervention in any industrial dispute by referring it to compulsory conciliation or arbitration and prohibiting strikes and lock-outs without 14 days' prior notice. In the post-war period State's anxiety for economic reconstruction justified the continuance of restrictions of strikes and lock-outs with slight variations as seen in the Industrial Disputes Act, 1947 (I.D. Act). Under the Act a distinction is made between strikes/lock-outs in public utility and non-public utility industries. Certain industries such as Railway, Posts and Telegraphs, Electricity and Power etc. are defined to be public utility services under the Act and others enumerated in the First Schedule of the I.D. Act to be declared as public utility industries on the discretion of the appropriate Government.

3. A strike or lock-out in the public utility service is illegal under the Industrial Disputes Act,1947 if it takes place

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

(ii) within fourteen days of giving such notice;

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

4. A strike or lock-out in other industries is prohibited in the following situations:

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

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

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

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

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

5. It is noticeable that while no strike or lock-out can be declared during the proceedings before a court or board, no such restriction has been laid down where the proceedings are pending before a conciliation officer in case of 'non public utilities'. But proceedings before a conciliation officer are adequate to bar a strike in regard to public utilities. Strikes and lock-outs are prohibited during the period of operation of an award in respect of any of matters covered by the award. Heavy penalties of fine or imprisonment or both are prescribed by the Act for persons found guilty of participating, instigating or financing an illegal strike/lock-out.

6. These provisions by themselves have not succeeded in curtailing work-stoppages. Prohibition of strikes during adjudication proceedings has particularly failed to achieve its purpose. Small matters are sometimes precipitated

leading to strike situations either because of lack of any meaningful consultation between union and management or because the union has been too ready to give a strike call. Also, labour has devised new forms of agitation such as go-slow, work-to-rule, gheraos, etc. which fall beyond the purview of statutory provisions relating to strikes. A suggestion is often made to circumscribe all such forms of agitation by suitably defining strikes. The issue, remains, however, whether legal restrictions on strikes would succeed.

7. The issues that arise in relation to strikes/lock-outs are: (i) whether an absolute right to direct action can be given or is it to be qualified; (ii)if restrictions are to be imposed what should be the justifying factors; (iii) should the nature of industry be the guiding criterion in qualifying the right to strike/lock-out; (iv)whether a distinction be made between industries/services any interruption in which may immediately bring hardship to the community and others a cessation in which would jeopardise public interests/national economy but after a time lag. If such a distinction is justifiable, should there be two types of regulation of the right to strike/lock-out - (a) restrictions on occurrence of strike/lock-out by requiring prior notice; (b) restrictions on continuance of strike/lock-out by imposing a 'cooling off' period.

II

Evidence before the Commission

8. The general view over strikes/lock-outs as revealed in the evidence before the Commission is that resort to direct action be made failing all the available disputes settlement procedures and that State intervention must be allowed in case of work stoppages endangering public life and nation's economy.

9. Majority of the State Governments have suggested modifications in the eixsting pattern of strike/lock-out regulation. A few of the States are, however, in favour of maintaining status-quo. A view-point expressed is industrial peace can be better ensured by promoting omnibus collective agreements with provision for arbitration on interpretation of any of the terms of an agreement and not by making strikes and lock-outs illegal. It has been stated that unjustified restrictions many times provoke the parties to defy them.

10. It has been suggested that (i) strikes and lock-outs in respect of any matters governed by an award or agreement during its pendency and those declared without taking recourse to conciliation and 14 days' prior notice should be made illegal; (ii) strikes and lock-outs in public utility and other industries should be treated alike; (iii)participation in an illegal strike/lock-out should be made a cognizable offence punishable with dismissal; (iv) trade union office-bearers guilty of such action be disqualified from holding

any office in any trade union for a minimum period of three years and registering any trade union; (v) an employer declaring an illegal lock-out should be made to pay heavy compensation. A proposition is made that existing law relating to strikes/lock-outs be amended in the light of Code of Discipline.

11. Majority of employers organisations are of the view that the right to strike/lock-out must be provided though restricted to certain circumstances only. A view-point expressed is that subject to reasonable conditions a strike for improvement of terms and conditions of service is to be considered a legitimate weapon in the union armoury. Similarly a lock-out declared in 'self defence' with prior notice is to be considered permissible. Certain key personnel like watch and ward, maintenance workers and workers engaged in essential services should be debarred from going on strike.

12. The suggestions made are: (i) widening of the definition of strikes to include go-slow, work to rule, gheraos and other forms of agitation; (ii) compulsory recourse to existing disputes settlement machinery prior to declaring a strike; (iii) observance of an interval of at least two months between two strikes; (iv) spelling out the demands in the strike notice; (v) declaration of strike/ lock-out both in private and public sector undertakings only

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after ~~after~~ prior notice, the period of which should be increased; (vi) treating continuous process plants on par with public utility services for purposes of strike/lock-out; (vii) outlawing strikes on minor demands;(viii)the immunity provided under Section 18 of the Trade Unions Act be removed to empower managements to take action against workers, office-bearers of trade unions guilty of instigating illegal strike, go-slow and other forms of agitations; (ix) participation in an illegal strike should amount to break in service or be made punishable with dismissal; (x) failing settlement by negotiations or voluntary arbitration the parties must compulsorily submit their dispute to arbitration of the industrial court.

13. The public sector employers have in additional suggested: (i) ban on such strikes or lock-outs which the Government considers will seriously affect the nation's economy; (ii) ban on lock-outs where Government's prior permission has not been taken; (iii) ban on referring to adjudication demands for payment of wages for the period of an illegal strike. A suggestion made in certain quarters is that a lock-out in defence from a serious situation created by a strike or other forms of agitations be made permissible.

14. Majority of the unions consider the right to strike/lock-out as a basic right and oppose its curtailment. An important section of trade unions believes that strikes

should be resorted to only after having tried all available peaceful methods of dispute settlement. Another opposes curtailment of strikes and lock-outs during pendency of conciliation or adjudication proceedings, since it debars workers from taking direct action even on certain major issues that crop up during this period. A third view is that in a democratic society workers should have free right to strike while the employer's right to lock-out should not stand on the same footing. There can be no reciprocity in the matter.

15. The suggestions made by unions are (i) exclusion of go-slow, gheraos from the definition of strike; (ii)a distinction to be made between non-legal and illegal strikes (including strikes marked by acts of sabotage, intimidation and different types of violence)(iii) enumeration of public utilities under the relevant legislation without giving discretionary powers to the State; (iv) recourse to direct action both by labour and management be taken only failing arbitration; (v) taking over by Government of establishments suffering a strike believed to be endangering public health and safety. During the period of Government's control parties should be asked to mutually settle their dispute .

16. The Study Group on Industrial Relations(Eastern Region) is of the view that though prohibition of strikes/ lock-outs by law is not always effective there should be

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some restrictions on strike/lock-out in public utility concerns. Restrictions on strikes/lock-outs be imposed only on matters covered by an agreement or award or on issues pending adjudication. The parties should be given more and more freedom to pattern their mutual relations and State interference be confined only where community interests are likely to be jeopardised. Hartals, bandhs, and general strikes though cause serious disruption of production and community's life, are often political in character and therefore need a political solution. In their special note on Gheraos, the Study Group has concluded that besides leaving adverse effects on discipline and working of the industry, gheraos strike at the very root of trade unionism and collective bargaining and as such should not be resorted to. Employers trade unions and Government should join hands in dealing with gheraos to safeguard the larger interests of the national economy.

17. The Southern Region Study Group on Industrial Relations and the Study Group for Heavy Chemicals are against lightening strikes in continuous process plants. The former has suggested that no strike/lock-out in such plants and essential services be allowed without 14 days' prior notice. The Industrial judicial authority should be authorised to grant an injunction banning a strike/lock-out in appropriate cases and be empowered to punish any defiance of the injunction order. Essential servicemen such as watch and

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ward personnel, maintenance staff be debarred from striking. The Study Group for Heavy Chemicals has recommended that without imposing legal restrictions on the right to strike, a 'cooling off' period of 90 days be made compulsory in case of basic industries which would in effect mean a strike notice. Efforts should be made to peacefully settle the dispute during this period. The Study Group for Oil Refining and Distribution holds similar views on the need for a 'cooling off' period.

18. In the Study Group for Ports and Docks opinion was divided on the question whether in public utilities there should be compulsory adjudication and strikes be prohibited. The Study Group for Newspaper Industry has recommended that a union should take a strike ballot open to all workers before calling a strike.

III

International Practices

19. Right to strike/lock-out is recognised in all free societies though it is subject to certain regulations in the interest of industrial peace and discipline necessary for industrial efficiency. Even in industrially advanced countries wedded to free collective bargaining strikes are agreed to be avoided during pendency of a collective agreement. In less developed countries right to direct action is subjected to more stringent regulations and the

State has reserved powers to intervene in any dispute and provide machinery for its determination. In all countries only a limited right to strike/lock-out is provided to workers engaged in essential services. Public employees are mostly prohibited from resorting to direct action.

20. In the U.S.A., the Taft Hartley Act prohibits strikes and lock-outs during the 60-day notice period required for terminating or modifying a collective agreement. A no-strike clause provided in most of the collective agreements restrains a union from striking during the term of the agreement and obligates it to settle disputes relating to interpretation and application of the agreement through the grievance procedure and arbitration. A union guilty of breach of the no-strike clause can be sued by the employer under the Taft-Hartley Act. Many agreements provide penalties such as termination of the entire agreement or suspension of union shop arrangement; discharge; forfeiture of seniority rights; termination of other contracted benefits for employees participating in strikes in contravention of the 'no strike' clause.

21. In case of a strike in public emergency believed to imperil national health and safety, the Taft-Hartley Act empowers the U.S. President to restrain strike action for a maximum period of 80 days by a court injunction, during which period the parties are obliged to settle the dispute with the help of the Federal Conciliation and Mediation

Service and a secret ballot ascertainment of employees' acceptance of employer's last offer. Failing all efforts the Court injunction is lifted and the President has to make full report to the Congress with his recommendations for necessary action.

22. The public employees in the U.S.A. are prohibited from striking though they can organise and bargain collectively.

23. In the U.K., the law recognises the right to strike in furtherance of a trade dispute irrespective of trade union support behind it. Sympathetic strikes or secondary boycotts are not prohibited by law. Sit-down strikes in some cases are considered to be illegal. Political strike is punishable as a criminal conspiracy if it is seditious. Strikes in civil service though not prohibited by law can be punished as a disciplinary offence. Participation in strikes in emergencies though not to be treated as criminal offence or industrial conscription, such a strike if depriving the community of the essentials of life the Government can take special measures such as taking possession of factories and goods, regulating prices, putting armed forces on civilian work. The Donovan Commission(1965-68) examined the possibility of introducing a new procedure for dealing with stoppages "creating grave national loss or widespread hindrance to public health and safety" and that of making strike

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ballots compulsory; and rejected both.

24. In Australia, a strike is made illegal either by statutory prohibition or by an 'anti-ban' clause in an award meaning thereby that no organisation, party to the award, shall be directly or indirectly concerned in any ban or work in accordance with the award. The breach of an 'anti-ban' clause is a breach of the award, punishable as contempt of court. The State laws have anti-strike provisions with the exception of Victoria. However, they are not invoked in all States uniformly.

25. Strikes in Japan are not launched to seriously disrupt production process but are rather resorted to pressurise the employer and invite public support on issues involved. They are of pre-informed, short and fixed duration as laid down in the 'schedule of strikes' which is given to the employer at the very start of collective bargaining or even earlier at the time the demands are submitted. The employment right of workers participating in such strikes is generally protected by the Courts. A strike can be launched only if supported by a majority secret ballot votes of the enterprise trade union members or delegates in case of a federation or national union.

26. A strike believed to be jeopardising the national economy and daily public life can be restrained by the Prime Minister for fifty days through court injunction obtained with the consent of the Central Labour Relations

Commission which is to try settling the dispute within this fifty-day cooling off period by methods other than compulsory arbitration.

27. Workers employed in Government owned industries are denied the right to strike though they can organise and bargain collectively.

Suggestions

28. A developing economy which aims at establishing a more egalitarian society has to design its economic activities not only to yield the planned growth rate but also to maximise employment and raise living standards of the masses without altogether overlooking the needs of cpital formation and investment. The democratic ideals of the State prevent it in abridging individual freedoms but its social objectives justify the Government's regulation of such freedoms to reasonably harmonise them with social interests.

29. In patterning labour-management relations third party interests are to be taken care of - strikes/lock-outs collective bargaining all are to be regulated to promote pre-determined social and economic goals of the society. A sudden or prolonged work-stoppage may jeopardise the national economy and the interests of its participants and beneficiaries, similarly collective agreements freely negotiated between the parties may in certain cases either lead to labour exploitation consequent to its weak bargaining strength or generate a chain of adverse effects on the

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economy -shift the incidence of additional costs on the consumer or curtail capital formation, industrial expansion and employment potential. In the long run, an equilibrium through free market forces may not be an impossibility but in order to hasten the process of economic growth and protect the community from hazards of the extreme situations right to strike/lock-out is to be suitably qualified and restricted by the State which is also the care-taker of the community.

30. The exponents of free collective bargaining and the indispensable right to direct action believe that sustained betterment in industrial relations is possible only if the two parties are given the freedom to evolve bipartite relationship which imbibes in them a sense of responsibility and strengthens their organisation and brings the economic forces into play minimising extraneous considerations behind strikes.

31. Broadly the following propositions emerge from the above set of reasonings:

(1) Continuance of statutory restrictions on strikes/ lock-outs with suitable modifications along with provision for conciliation/adjudication of disputes. A distinction be made between essential services and other industries for purposes of strikes/lock-outs.

(2) Allowing right to strike/lock-out failing collective bargaining except in essential services where resort to direct action may cause hardship to the community, jeopardise public health, safety and nation's economy. The collective agreements should be legally enforceable and should provide

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for arbitration over interpretation of disputes and a no-strike clause to be enforced during the term of the agreement. Termination and modification of a collective agreement be subjected to prior notice during which status-quo is to be maintained.

32. If it is accepted that considerations of planned economy are to be given premium in the best interests of the community and that there is a general lack of preparedness and willingness in the trade unions and employers for collective bargaining and consequently only a phased switch over to collective bargaining is possible as suggested in the note on 'Collective Bargaining versus Adjudication', the following procedures may be considered:

(1) Every strike should be preceded by a strike ballot open to all members of the union concerned and a decision for strike be supported by 2/3rd votes. The strike ballot can be conducted by an officer of the industrial relations machinery.

(2) Instead of a total prohibition of strikes/lock-outs during pendency of conciliation/adjudication proceedings, the no-strike lock-out period in respect of fresh issues of dispute not covered under the reference already made be restricted to a specified period, say six months or so following reference of a dispute to the 'composite conciliation and adjudication authority'.(as suggested in the note on Collective Bargaining versus Adjudication). Prior notice of strike/lock-out be given to the conciliation/adjudication authority before which a reference is pending, and which will have discretionary powers to take cognisance of the fresh dispute in the interest of industrial peace if no settlement can be reached between the parties.

(3) The present prohibition of strike/lock-out in regard to matters under a reference be continued. In case of more than one reference pending in an establishment, the no-strike/lock-out period be counted from the date of the last reference.

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(4) In case a collective agreement is reached between the recognised union and management there should not be any strike during the term of the agreement on matters covered under the agreement. Termination or modification of the agreement be subjected to a prior notice of a month or so.

(5) No strike/lock-out be declared for a week and two months respectively after the conclusion of conciliation and adjudication proceedings.

(6) As at present there should be no strike/lock-out on matters covered under an award/settlement during the term of its operation.

(7) In essential services which should be so defined as to include only those, any interruption which has adverse repercussions on public life, health and safety, a strike/lock-out be declared only after a prior notice of three weeks or so. Such services should be listed under the disputes legislation and should not be left to the discretion of the appropriate Government.

(8) In basic industries, a strike which may endanger public interests or economy may be subjected to a 'cooling off' period of 30 days or so on the issue of an injunction order at the instance of a high level State authority. During the 'cooling off period' the parties be asked to settle their dispute by mutual negotiations or arbitration by a mutually agreed person, failing which the dispute be referred to conciliation-adjudication authority after the expiry of the 'cooling off' period. Basic industries for this purpose be enumerated under the disputes legislation.

(9) No distinction need be made between public and private sector undertakings for purposes of strikes/lock-outs.

(10) The Government employees governed by Service Conduct Rules should not be given the right to strike as any interruption in the

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Government's functioning is potent with far reaching dangers to community's welfare and security. Provision need be made for statutory arbitration machinery in case of unresolved disputes of Government employees.

(11) Gheraos be treated as a law and order situation to be treated under common law. The criterion for definition as at present should be a collective absence from work or concerted refusal to work and as such work to rule, go-slow cannot be covered under strikes. These can be treated as mis-conducts punishable under the Standing Orders.
