LAW COMMISSION OF INDIA

ONE HUNDRED TWENTY – SECOND REPORT

ON

FORUM FOR NATIONAL UNIFORMITY IN LABOUR ADJUDICATION

DECEMBER, 1987

Tel. No. 384475

LAW COMMISSION
GOVERNMENT OF INDIA
SHASTRI BHAWAN
NEW DELHI

D.A. DESAI
Chairman

December 9, 1987

My dear Shri Shiv Shanker,

Continuing the series on decentralisation of administration of justice, I am happy to forward today One Hundred and Twenty-second report of the Law Commission on 'Forum For National Uniformity In Labour Adjudication'.

As you have by now become aware that the task of recommending judicial reforms was assigned to the Law Commission in February, 1986. The terms of reference for the proposed commission to deal with and recommend judicial reforms were sent to the Law Commission with a request to accord top priority to this assignment.

The Law Commission appreciating the anxiety of the Government of India to accord priority to recommending reforms in judicial system which as some analysts say is on the brink of collapse, topic-wise reports are being sent to you and your predecessor-in-office for more than a year. Undoubtedly the Law Commission is fully occupied with this work alone but it hopes to deal with all items before its term expires.

The present report deals with the question of introducing and setting up a forum having All-India jurisdiction developing an All-India perspective dealing with labour laws simultaneously excluding the jurisdiction of High Courts and retaining one appeal to the Supreme Court under Article 136 of the Constitution. As this report deals primarily with the setting up of such a forum for dealing with labour laws, it is in the fitness of things that the Department of Justice establishes direct liaison with the Labour Ministry so that they may have the benefit of the report. The element of urgency in this request lies in the fact that according to the media report, Labour Ministry is engaged in recommending comprehensive amendments to Industrial Disputes Act, 1947. The recommendations herein contained can become an integral part of it and it may not be treated in isolation. I would request you to look into this aspect at your earliest convenience.

With regards,

Yours Sincerely,
Sd/—

(D.A. Desai)

Hon'ble Shri P. Shiv Shanker,
Minister for Law and Justice,
Government of India,
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Encl : A report.

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CHAPTER I

INTRODUCTION

1.1. One of the tasks assigned to the present Law Commission is to study measures for judicial reforms and to recommend innovative suggestions, *inter alia*, with a view to decentralise the system of administration of justice, amongst others, by estalishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts. One of the ways indicated in the Terms of Reference in the Context of Studying Judicial Reforms is to devise specialist tribunals as envisaged in Part XIVA of the Constitution for expeditious resolution of causes and controversies coming before generalist courts, including Supreme Court and the High Courts.

1.2. The Law Commission submitted a Report recommending setting up of Central Tax Courts for dealing with causes and controversies under Direct Tax Laws, Indirect Tax Laws, and Export and Import Regulations[1]. In that Report, detailed analysis has been made for decentralisation of monolithic system of administration of justice as operating in India today. Conceding that at the trial level, there are specialist courts and tribunals dealing with disputes arising under different sets of laws, the High Courts enjoy the Constitutional power of judicial review over decisions of all the specialist courts and tribunals. There was thus a fusion of specialist and generalist court work at the High Court level as also in the Supreme Court. The fall out was that at the High Court level, all sorts of causes and controversies of specialist nature were dealt with by non-specialist Judges. The need for decentralisation with a view to providing specialist appellate level bodies has been reasoned out in that Report and in continuation of those reasons, the present report deals with the questions of suggesting an all-India forum for bringing about uniformity in the matters/disputes arising under numerous labour laws.

1.3. The need for setting up specialist courts and tribunals has been felt in almost all common law countries. The movement to specialised jurisdiction is thus common to many parts of the world. The various industrial jurisdictions which have existed in Australia throughout the present century are unique in character[2]. The Tax Court and Emergency Court of Appeals in America are specific examples of specialist courts. Not that this method of setting up specialist courts by decentralisation of administration of justice is without a caveat. The protagonists of the specialist courts assert that knowledgeable Judges would not need to be educated about how the instant dispute fits into the broader corpus of law. As a consequence, specialist Judges could resolve questions faster and perhaps more 'correctly' without as much effort on the part of counsel to teach them the law. Further, specialist Judges could devote more time to individual matters without the press of other business. Limiting certain acts of litigation to a single specialist court would ensure uniformity and predictability and allow lawyers to settle more disputes without resort to all the courts. In sum, efficiency and predictability are said to result when a court hearing dispute works constantly with the law to be applied[3]. The opponents of specialist court assert that setting up specialist court would result in isolation and less research and scrutiny of the arguments if certain class of cases are withdrawn from judicial mainstream[4]. There is a tendency in the Bar to treat specialist courts as inferior courts regardless of their place in the judicial hierarchy. Members of the Bar are less prone to accept judgeship in specialist courts. This fear in Indian condition is wholly unwarranted.

1.4. Decentralisation of administration of justice has taken place by setting up numerous types of specialist courts. The known specialist courts in Australia are : (1) Children's Courts, (2) Family Courts, (3) Industrial Courts, Commissions and Boards, (4) Small Claims Courts and Tribunals, (5) Coroner's Courts, (6) Licensing Courts, (7) Warden's Courts, (8) Land and Environment Court, (9) A Local Government Court, (10) A Market Court, (11) Miner's Courts, etc[5]. Requirements of informality and expertise provide an adequate support to such specialist courts. This is in contrast with the impression of laymen about ordinary courts as excessively formal and lacking in expertise.

1.5. A reform movement is in process to modernise court structure and administration and to achieve additional court related objectives around which some consensus has developed.[6]

1.6. Since a demand for specialist court for dealing with disputes arising under labour laws, as distinct from general civil jurisdiction courts, is founded on the assumption that while the courts of general civil jurisdiction would take the contract as it is, the formal approach would be inconsistent with courts set up to resolve disputes between the employers and workmen where the approach is what ought to be the contract. To some extent, it was also a response to the mounting case law problems in generalist courts. As work proliferates, lawyers are getting increasingly specialised. In America, solo practitioners have largely joined partnerships, solo local firms are being supplemented by national firms. If that be so, the inter-relation between the Bar and the Bench can be established by providing more specialist courts with knowledgeable Judges of the special nature of the disputes coming before the specialist courts. One's possible response to this greater specialisation amongst Judges is that while no one advocates the demise of the generalist judiciary, complex cases requiring technical knowledge and an insight into the inter-relation between the parties and the nature of *lis* are not always handled well by Judges with no expertise in the particular area of law involved.

1.7. Judges dealing with disputes under numerous labour laws must be equipped in humanities, social sciences, need for socio-economic justice, unequal position of parties to the dispute, the national economy, goals of planning and the shape of future society which the Constitution envisages. In short, they must have knowledge of all aspects which will help them in balancing the individual need and the social good.

1.8. Law reform to be effective must reflect the views of those likely to be affected by the change suggested as also the society at large, which is vitally interested in the development of law as an instrument of social engineering. In order to reach the interest groups concerned with administration of labour laws in this country, the Law Commission drew up a comprehensive working paper to which a short questionnaire was added in the hope that the attention of those interested in the discussion would be focussed on the specifics with which the Commission would deal in this report. It may appear that the tentative approach of the Commission in the working paper undergoes refinement when the final report emerges. This should be so in the very nature of things because it shows the impact of suggestions received, discussions and deliberations heard and the recent literature dealing with the subject. For proper appreciation, the working paper is annexed to this report as Appendix I.

1.9. The Law Commission is also happy to record that central trade unions, employers' organisation and various other interest groups positively responded to the working paper and the questionnaire and we owe a debt of gratitude to them in that they helped us in formulating our recommendations. A measure of consensus has laid the foundation of this report.

CHAPTER II

PRESENT STRUCTURE

2.1. In a power-ridden society divided into segments, one capable of excercising powerful authority over the other, conflict of interests would inevitably surface. It is inherent in the very texture of society. In an industrial society where means of production are privately controlled, maximisation of profit is the only desired end. This, to some extent, legitimises exploitation of those who are unequal in the matter of contracting with those who employ them. Let no one be beguiled that out of humanitarian consideration or in order to be fair and just, some rights were conferred on the labour force. In fact, it is a trite saying that labour law such as the one that can be found in the Industrial Disputes Act, 1947, was not enacted as a measure of socio-economic justice but it was in fact a law and order measure. Where interests clash such as the employers' keenness to pay the least and labour's keenness for payment which can keep body and soul together, the clash of interests would lead to confrontation which, in turn, would lead to direct action impinging upon production. In the First Five year Plan, it was observed....:

> "Answer to class antagonism and world conflict will arrive soon if we succeed in discovering a sound basis for human relations in industry. Economic progress is also bound up with industrial peace. Industrial relations are, therefore, not a matter between the employers and employees alone but a vital concern of the community which may be expressed in measures for the protection of its larger interest.".[7]

2.2. This realisation grew as a consequence of according high priority to economic development by laying down a strong infrastructure for industrialisation of the feudal Indian society. Till then, and especially commencing from the days of the Second World War, the State machinery was geared to avoid direct action which may impinge upon production—unhampered production—first for the war effort and then for the planned development of Indian society.

2.3. Rule 81A of the Defence of India Rules, the precursor of the Industrial Disputes Act, 1947, empowered the appropriate Government to intervene in industrial disputes by compelling the parties to go to compulsory adjudication by prohibiting strikes or lock-outs during the pendency of adjudication proceedings and for a period of two months thereafter. A blanket ban was imposed on strikes which did not arise out of genuine trade disputes.[8] "A process of conciliation, with arbitration in the background, is substituted for the rude and barbarous process of strike and lock-out. Reason is to displace force: the might of the State is to enforce peace between industial combatants as well as between other combatants; and all in the interest of the public."[9] On the termination of war, the rule was due to lapse effective from October 1, 1946; but was kept in operation by the Emergency Powers (Continuance) Ordinance, 1946. Simultaneouly, Industrial Employment (Standing Orders) Act, 1946, was enacted providing for framing and certifiying of standing orders covering various aspects of service conditions with a view to compelling the employers in industiral establishments to prescribe with sufficient precision the conditions of service under them and to make the industrial employees aware of those conditions. On the advent of the Constitution, under Part IV thereof, the State, meaning thereby all limbs of Government, had to strive to promote the welfare of the people, by securing and protecting as, effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The State had, in particular, to strive to minimise the inequalities of income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations (article 38). The State had, within its limits of economic capacity and development, to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want (article 41). The State was required to make endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural

opportunities (article 43). The State was required to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry (article 43A).

2.4. As the Constitution envisaged a society governed by rule of law, the State had to enact numerous legislations to translate into reality the promise in the Preamble that the State shall secure to its citizens, justice, social, economic and political and equality of opportunity. Law was to ensure socio-economic justice to labour, transforming their position from being a factor of production to partner in industry. Through the instrumentality of law, the unequal bargaining power of the labour was to be strengthened so as to avoid direct action, confrontation, or conflict and to ensure peace and harmony in the industry which was a prerequisite for higher production and thereby improving and ameliorating the economic position of the labour force. Exploitation by the powerful industrial employers of the workmen had to be eschewed by enacting numerous legislations, which would help in avoiding confrontation and impel parties having apparently conflicting interests to negotiate and resolve their disputes. With this end in view, the Central Government enacted roughly about 51 legislations since 1947, a list of which appears at Appendix II of this report.

2.5. The underlying assumption in all these enactments is that once law is enacted, legal sanctions are created, machinery for its enforcement provided and violations are dealt with, peace and harmony would reign in the industry. The word "peace", as used in this context, should not mislead anyone. "Peace" does not imply slavish subjugation imposed upon the weaker sections by the more powerful dictating its own terms. "Peace, in the profound sense of the term, is not a mere negative concept of the avoidance of strife, but a positive idea of the fruitful co-operation of all for the fullest possible development of each."[10]

2.6. Law, to be an effective instrument of change for social transformation and for rendering socio-economic justice, must have sanction behind it and must compel obedience. In its effective implementation, the expectation from the law must be wholly fulfilled, otherwise law itself becomes an instrument for further exploitation. The laws for improvement of the conditions of labour employed in various industries provided for promoting arbitration by consent of parties, failing which by compulsory adjudication, with a further power to compel obedience to these provisions by declaring strike or look-out illegal after an order for compulsory adjudication is made.

2.7. To appreciate this position adequately, a brief reference to the provisions of Industrial Disputes Act would become necessitous. The dictionary clause defines, amongst others, "appropriate Government" on which power to make a reference for compulsory adjudication is conferred. Section 3 envisages setting up of a works committee consisting of representatives of employers and workmen engaged in the industrial establishment charged with a duty to promote measures for securing and preserving amity and good relations between the employer and the workmen and, to that end, to comment upon the matters of common interest or concern and endeavour to compose any difference of opinion in respect of such matters. The State of Gujarat, in the application of section 3, has also introduced sections 3A and 3B providing for joint management council and prescribing the functions of the council. One can safely say that these provisions are a non-starter. In fact, for a long time the operation of section 3 was stayed by an injunction granted by the Supreme Court of India. Section 4 envisages appointment of conciliation officers. Section 5 deals with setting up of boards of conciliation and section 6 empowers the Government to constitute courts of inquiry. Section 7 confers power to constitute one or more labour courts. Such labour court will have jurisdiction to adjudicate industrial disputes relating to any matter specified in the Second Schedule to the Act. Section 7A, which was introduced in 1956, conferred power on the appropriate Government to constitute one or more industrial tribunals for adjudication of industrial disputes relating to any matter specified in the Second Schedule or the Third Schedule. Section 7B, which also was introduced in 1956, conferred power on the Central Government to constitute National Industrial Tribunal for adjudication of industrial disputes which may involve questions of national importance or are of such a nature that industrial establishments constituted in more than one State are likely to be interested in, or affected by such disputes.

Section 9A, which was introduced by the same Act of 1956, obliged the employer to give a notice of change if it is intended to effect a change in the condition of service applicable to any workmen in respect of any of the matters specified in the Fourth Schedule. Section 10 confers power on the appropriate Government to refer any industrial dispute that exists or is apprehended to a board for promoting settlement or to a court of inquiry or to a labour court or to a tribunal, as the case may be, for adjudication. Sub-section (5) of section 10 confers power on the appropriate Government, while making a reference of an industrial dispute for adjudication, to include in the reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in the establishment or group or class of establishments. Section 22 prohibits strike in a public utility service without giving to the employer a notice of strike as provided therein. Section 23 puts a general embargo on strike and lock-out during the period of proceedings before a labour court, tribunal or National Tribunal and for a period of two months after the conclusion of the proceedings.

2.8. A brief resume of these provisions will show at a glance that effective power was conferred upon the appropriate Government to intervene in an existing industrial dispute or to interdict a threatened situation to compel the parties to resort to adjudication and to avoid direct action.

2.9. The award made by the authority empowered to adjudicate the industrial dispute is binding on the parties subject to the power of the appropriate Government under section 17.

2.10. Labour Courts, industrial tribunals, National Industrial Tribunal, all enjoy the power of compulsory adjudication. Their awards enjoy finality. The statute does not envisage any appeal over the decision of the aforementioned fora.

2.11. Since the advent of the Constitution, the awards of the aforementioned fora can be questioned by writ of certiorari, prohibition or even mandamus invoking the constitutional power of judicial review conferred on the High Court under article 226 and the Supreme Court under article 32. In the absence of any appellate fora, as a matter of course, a large number of awards are challenged either before the High Court or before the Supreme Court of India. Thus, High Courts and the Supreme Court, while exercising extraordinary jurisdiction under the Constitution, have for all practical purposes become appellate fora.

2.12. The twin purposes underlying the enactment of Industrial Disputes Act, 1947, were to provide mode and machinery for arbitration/compulsory adjudication between two segments of society amongst whom conflict of interest was inherent as also to arm the State with power to effectively intervene in industrial disputes which, if left to the warring parties to settle by direct action and confrontation, would certainly hamper and thwart economic regeneration of the nation. If the industrial disputes are sought to be resolved by the force of might, there was a distinct possibility of chaos and anarchy in the Society. The Industrial Disputes Act, 1947, is, in the opinion of the Supreme Court, a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute-resolutions and set up necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive matters and assurance of industrial justice may create a climate of goodwill. Industrial peace is a national need and, absent law, order in any field will be absent. Chaos is the enemy of creativity sans which production will suffer. Thus, the great goal to which the I.D. Act is geared is legal mechanism for canalising conflicts along conciliatory or adjudicatory processes.[11] The emerging concept of welfare state, which was in the air since independence, implied an end to exploitation of workmen and they were to be ensured a living wage, decent conditions of work and dignity of labour. Some legal mechanism was necessary and one underlying the Industrial Disputes Act is 'geared to conferment of regulated benefits to workmen and resolution, according to sympathetic rule of law, of the conflicts, actual or potential, between management and the workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful coexistence, to the benefit of both—not a neutral position but restraints on *laissez aire* and concern for the welfare of the weaker lot'.[12]

2.13. With the pace of industrialisation, numerous labour courts and industrial tribunals had to be set up throughout the length and breadth of this country. Each forum was having power to make awards with finality attaching to it. What was

inherent in this situation was that conflicting awards, decisions and approaches would emerge. An approach to the High Court under article 226-227 of the Constitution would, at best, bring about some uniformity at the State level but the High Courts *inter se* differ. The situation was agonising for industrial establishments having inter-State operations or having production units in more States than one and being subject to jurisdiction of different High Courts. Ultimately the matter had to be taken to the Supreme Court which was both dilatory and time consuming.

2.14. The situation herein discussed attracted the attention of the law makers "which, in a welfare state, cannot afford to look askance at industrial unrest and industrial disputes".[13] The law makers, being aware of a need to provide uniformity in the matter of conditions of service and benefits which the workmen may enjoy as a consequence of industrial adjudication, enacted Industrial Disputes (Appellate Tribunal) Act, 1950. The establishment of Appellate Tribunal having all-India jurisdiction was thus a natural response to the need for a measure of uniformity of underlying principles and norms to govern the awards of the different Industrial Tribunals. Accordingly, the Industrial Disputes (Appellate Tribunal) Act, 1950, was put on the statute book. It provided for constituting a Labour Apellate Tribunal for hearing appeals from the awards or decisions of Industrial Tribunals in accordance with the provisions of the Act. Section 7 of the Act conferred jurisdiction on the Appellate Tribunal to entertain an appeal from any award or decision of Industrial Tribunal if—

(*a*) the appeal involves any substantial question of law, or

(*b*) the award or decision is in respect of any of the following matters, namely :—

(*i*) wages,

(*ii*) bonus or travelling allowance,

(*iii*) any contribution paid or payable by the employer to any pension fund or provident fund,

(*iv*) any sum paid or payable to, or on behalf of, the workmen to defray special expenses entailed on him by nature of his employment,

(*v*) gratuity payable on discharge,

(*vi*) classification by grade,

(*vii*) retrenchment of workmen,

(*viii*) any other matter which may be prescribed.

Practically the entire gamut of industrial relations was covered and any award on any of these aspects would become appealable to the Appellate Tribunal. Even if the award does not cover any of the aforementioned items, an appeal can still be entertained by the Appellate Tribunal on the footing that the appeal involves a substantial question of law. Almost all awards became appealable to the Appellate Tribunal. Undoubtedly, the Tribunal having all-India jurisdiction and an all-India perspective could, by exercise of its appellate jurisdiction, bring about uniformity in the matter of industrial relations which otherwise would have almost developed into a law of jungle because of conflicting awards by different tribunals including those having jurisdiction in the same State.

2.15. Somehow, this Appellate Tribunal incurred the wrath of the leading national organisations of workmen. As it was inherent in the situation, the haves, i.e., the employers, were financially well off and could afford the luxury of litigation. They preferred numerous appeals to the Appellate Tribunal and, according to workmen, there was inordinate delay in the disposal of these appeals whereby the implementation of awards was held up and thereby prolonged the litigation. The workmen with their weak staying power could ill-afford such delay while on the other hand the employers protracted the litigation by casually preferring appeal and abused the inherent tendency of every judicial process, namely, delay. Undoubtedly, what was then considered the prolongation of the litigation by the Appellate Tribunal taking roughly about two years on an average in deciding appeals has now boomeranged by its abolition. There was also a feeling among the workmen that the Appellate Tribunal, being manned by the retired Judges of the High Courts, disclosed a tilt in favour of the management disclosing a class bias, compounded by the lack of

knowledge of industrial relations. Crass legalistic approach and lack of commitment to social justice in deciding appeals further accentuated the feeling of the workmen and a near unanimous demand was voiced for the abolition of the Labour Appellate Tribunal. This found its echo in the Statement of Objects and Reasons accompanying the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955, which *inter alia* made provision for abolition of Labour Appellate Tribunal. It was therein stated that : "There is a large volume of criticism tha appeals filed before the Appellate Tribunal take a long time for disposal and in volve a great deal of expenditure which the workers cannot afford." The employers on the other hand, contended that the Appellate Tribunal has introduced considerable uniformity in the basic principles underlying industrial awards and was building up sound case law on industrial relations. They asserted that an appellate forum was a necessary adjunct of compulsory adjudication and its abolition, while retaining Industrial Tribunals and the method of compulsory adjudication, would again usher in a jungle of conflicting awards. Ultimately, in a democracy, the voice of numerically stronger section prevailed. Shri K.K. Desai, formerly Labour Minister, said during the discussion on the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955, that : 'It is not that justice is not being done but the workers should believe that the justice is being done to them as expeditiously as possible and, therefore, the Appellate Tribunal is going'. No factual data was supplied to the Parliament as how much delay an appeal to the Tribunal entails. At any rate, it was stated in the Statement of Objects and Reasons accompanying the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955, that Industrial Disputes (Appellate Tribunal) Act, 1950, be repealed while conceding that the Appellate Tribunal had achieved some uniformity in the basic principles governing awards of Industrial Tribunals but the consideration of future uniformity had to be balanced against the requirements of speedy settlement of industrial disputes.[14] Even though no formal enquiry was made, it appears that on an average the Appellate Tribunal took two years to dispose of an appeal before it. Therefore, the execution and implementation of the award was postponed at best by preferring of the appeal by two years. When it was pointed out that some uniformity was necessary in industrial relations which the Appellate Tribunal brought about, it was conceded that the Supreme Court would certainly take care of it in future. On that note, the Labour Appellate Tribunal was formally abolished in 1956.

2.16. Since the abolition of the Labour Appellate Tribunal, award of the Labour Court and Industrial Tribunal is challenged either by invoking the jurisdiction of the High Court under articles 226-227 of the Constitution or by special leave petition to the Supreme Court of India under article 136 of the Constitution. Even occasionally they are questioned by a writ petition under article 32 of the Constitution to the Supreme Court of India. Article 141 of the Constitution provides that the law declared by the Supreme Court shall be binding on all courts, including tribunals and Government, within the territory of India. Obviously, therefore, Supreme Court can bring about uniformity in the matter of industrial relations.

2.17. Industrial disputes occur very frequently. There are a number of statutes which, directly or indirectly, deal with industrial relations. Numerous laws have been enacted for ameliorating the conditions of service of industrial labour. All these statutes provide a fruitful ground for litigation. Undoubtedly some of the statutes provide a mechanism and forum for resolution of disputes under the statute as well as an appellate forum. However, the desirability of introducing uniformity in industrial relations throughout the length and breadth of this country must be kept in view. On the abolition of the Labour Appellate Tribunal, that function reverted to the Supreme Court. Now if the Supreme Court can deliver the goods expeditiously, the *raison d'etre* for this report may disappear. If Labour Appellate Tribunal could have justified its existence and continued to be alive, it would not have become necessary to think anew about the subject. There was, of course, one primary defect in the Act setting up the Labour Appellate Tribunal. Unquestionably, the Tribunal under the Industrial Disputes (Appellate Tribunal) Act, 1950, was a Tribunal within the meaning of the expression in articles 136 and 227 of the Constitution. The Appellate Tribunal held sittings in various States. The constitutional outcome of this situation was that each High Court within whose jurisdiction the Appellate Tribunal held a sitting would have jurisdiction under article 227 to examine the legality and correctness of its award. A piquant situation arose because of this position. While all the decisions of the Labour

Appellate Tribunal would be binding on the Industrial Tribunal and Labour Court and the expression "Industrial Tribunal" was widely defined by section 2(c) of the Act, yet once the High Court had jurisdiction to interfere, different High Courts took irreconcilable view and the national uniformity again got disturbed and disrupted. While setting up Labour Appellate Tribunal having all-India jurisdiction, it was then not considered advisable to exclude the jurisdiction of the High Court which can now be done under article 323B(3) (d) of the Constitution. This glaring lacuna proved counter-productive in as much as while the Labour Appellate Tribunal was intended to bring about uniformity in industrial relations by bringing different awards of different tribunals to a common denominator, yet the High Court, in exercise of its extraordinary jurisdiction, could successfully disrupt the uniformity leaving it again to the Supreme Court to re-introduce the same.

2.18. Thus the question looms large whether the faith reposed in the Supreme Court to bring about uniformity throughout the length and breadth of this country has been fulfilled. Under successive plans, the pace of industrialisation accelerated, and as its necessary corollary, the industrial disputes multiplied. Public sector in this respect behaved almost in the same manner as the private sector and there was phenomenal proliferation of industrial disputes. Conflicting awards multiplied emergence of industrial disputes. The Supreme Court, with its widest possible jurisdiction, had to deal with this large number of awards by different Industrial Tribunals and even conflicting decisions of the High Courts to bring about a semblance of uniformity in the field of industrial relations. If the Supreme Court had done it expeditiously, no further question could have been raised. But the phenomenal backlog of cases in the Supreme Court has considerably thwarted the disposal of labour cases by the Supreme Court which alone could bring about uniformity. The greater the delay in disposing of labour cases, the greater the proportionate rise in industrial disputes year after year; and the delay in disposal of labour cases by the Supreme Court is gradually increasing. Appeals under the labour laws not involving any constitutional interpretation that are coming to the Supreme Court by way of special leave petitions under article 136 are pending from the year 1973 and the total pendency is 690 as on 1st October, 1987. (See Appendix III—Part A). 953 appeals under labour laws were pending as on 1-1-1986 (See Appendix III—Part B). By the end of 1985, the pendency of cases under the labour laws in the High Courts, except four High Courts, namely, Madras, Calcutta, Madhya Pradesh and Jammu & Kashmir, aggregated to 14,818. (See Appendix V). Some of these matters are over a decade old. Is it to be assumed that during this period of ten years, no industrial dispute of a similar nature arose anywhere else? Can it be kept pending for ten years till the Supreme Court finds time to pronounce its decision on it which may be binding on all Tribunals and Courts so as to bring about uniformity in industrial relations ? Some instance of a revealing nature may be set out here. A wage board for revising emoluments of working and non-working journalists under Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, was set up under the Chairmanship of Mr. Justice Palekar, retired Judge of the Supreme Court in June, 1975. The wage board gave its award on 12-8-1980. It was challenged by some newspaper establishments in the Supreme Court in the year 1980. The writ petition is awaiting disposal in the Supreme Court. In the meantime, a new wage board has been constituted on 11-7-85 under the Chairmanship of Bachawat, J. The award of the present wage board will supersede the earlier award which is under challenge. What guidance will the present wage board get from the Supreme Court in this situation ? There is such inordinate delay in disposal of all cases, including cases under the labour laws, coming before the Supreme Court that the faith reposed in it that it will expeditiously pronounce its verdict and help in introducing uniformity has been belied. And, in the absence of the Supreme Court, on the abolition of the Labour Appellate Tribunal, all the labour courts and Industrial Tribunals almost enjoyed finality of their award save under some State statutes. The result is a tremendous lack of uniformity in the awards of the Industrial Tribunals and multiplicity of litigation and proliferation of industrial disputes which very often threaten industrial peace and harmony dislocating the goal set up in the plan documents.

2.19. Industrial sickness has acquired a high visibility. Thousands of units are closed. Textile industry, the fulcrum of the economic activity of Gujarat, is in ruins. Thousands of workmen have been rendered jobless. Can the situation be remedied by a judicial or, say, quasi-judicial process ? The entire enquiry in this

behalf is for the Ministry of Labour to undertake. Only one limb of it can be examined here, namely, to devise a machinery for bringing about uniformity in industrial relations by setting up a body having an all-India perspective and jurisdiction below the Supreme Court so that industrial strife can be minimised.

2.20. There is almost near unanimity on the question of providing a forum having an all-India jurisdiction and perspective to which an appeal may lie or which may also enjoy some original jurisdiction so that much desired uniformity in industrial relations can be brought about. Since the abolition of the Labour Appellate Tribunal, numerous awards were challenged in the Supreme Court by invoking jurisdiction under article 136. Decades after, appeals arising out of the special leave petition were heard. Time, on an average, of two years taken by Labour Appellate Tribunal in disposing of an appeal before it has paled into insignificance when one views the delay in the Supreme Court on which the protagonists of the abolition of Labour Appellate Tribunal reposed faith for expeditious disposal of cases under the labour laws so as to provide the much needed uniformity. Truth has dawned upon them that the Supreme Court will not be able to deliver the goods. In fact, Supreme Court was not meant to be a regular forum for appeal. Even when article 136 confers jurisdiction of widest amplitude on the Supreme Court, yet it was to be exercised to deal with legal formulations of general public importance. It was a cryptic saying that even where a point of law is of vital importance to the two parties to the dispute, that by itself would not be sufficient to invite the Supreme Court to entertain the special leave petition. Every question of law cannot be clothed with the garb of an important question of law. Not only the question of law must be important but it must be of general public importance vital to the community which alone would permit the Supreme Court to entertain a petition for special leave. Undoubtedly, this jurisdiction of widest amplitude was conferred on the Supreme Court so that, without being trammelled by technical arguments as to want of jurisdiction it can reach every nook and cranny to render justice where rank injustice appears to have been perpetrated. But in a country of India's dimensions and its litigious traditions which have acquired a high visibility profile,[15] if the Supreme Court, merely on the feeling that there is some injustice to the party by an award of the Industrial Tribunal, agrees and undertakes to examine the same, it was inherent in the situation that the delay in disposing of the cases coming before it would be inordinate and would accordingly be counter-productive. That is the present situation. Therefore, there is a revival for the demand of an appellate forum over the Industrial Tribunals having an all-India jurisdiction. In a well-ordered judicial system, it is considered absolutely essential to provide for one appeal as of right with safeguards of a further possible appeal by leave in appropriate cases. The International Labour Organisation had recommended that workman whose service is terminated must have a right of appeal to a neutral body.[16] Supreme Court cannot be a forum for regular appeals as a matter of right. Therefore, an intermediate appellate forum is the need of the day. There is a renewed interest in either devising such a forum, if not the revival of the Labour Appellate Tribunal.

2.21. The first Law Commission recommended that the Legislature should provide for an adequate right of appeal in labour matters either by reviving the Labour Appellate Tribunal or by empowering the High Court to hear appeal in suitable cases.[17] Empowering the High Court to hear appeals in labour matters would be a remedy worse than the disease. The High Court did enjoy the jurisdiction to entertain a writ petition against the award of the Industrial Tribunal or even the Labour Appellate Tribunal. The outcome is there for everyone to see. The problem got further accentuated.

2.22. The representatives of the All-India Trade Union Congress, while conceding in principle the setting up of an all-India forum for entertaining appeals against the award of the Industrial Tribunal, simultaneously submitted that the jurisdiction of the High Court should be excluded. It even went to the extent of suggesting that the writ jurisdiction of the Supreme Court may be excluded. That would be rather inappropriate. It also expressed an opinion that statute setting up such a forum must provide a time-limit within which the appeals coming before such forum must be disposed of.

2.23. The Indian National Trade Union Congress was of the opinion that at least one appeal should be allowed either to the special Bench of the Supreme Court or to the revived Labour Appellate Tribunal. In any event, the INTUC was in the forefront for demand of the abolition of the Labour Appellate Tribunal, which, having

seen the developing scenario, has reconsidered its stand and is in favour of an appellate forum having an all-India jurisdiction and perspective.

2.24. The Law Commission approaches the problem from two different angles. The Law Commission is primarily interested in decentrialisation of administration of justice with a view to reducing the burden on the High Courts and the Supreme Court. Simultaneously, it is of the opinion that matters arising under the labour laws require specialist knowledge of industrial relations, humanities, social sciences, goals of planned economy, targets of planning and, above all, the attainment of the goals of the Constitution as hereinbefore set out. As pointed out earlier, if lawyers are becoming increasingly specialised, such as labour lawyers, tax lawyers, patent lawyers, even tort lawyers, why should this specialisation be not reflected in the judicial fora and hierarchy ? The notion that most people want the black-robed Judges, well-dressed lawyers and panelled court rooms for the resolution of disputes is a myth. People with problems like people with pain want relief and they want it as quickly as possible.[18] This report aims at attaining all the three objectives, keeping in view the present depressing and distressing situation.

CHAPTER III

APPROACH OF THE BODIES IN THE PAST TO THIS QUESTION

3.1. The Law Commission submitted its Fourteenth Report on Reform of Judicial Administration in September 1958. By that time, Labour Appellate Tribunal was already abolished. The Law Commission, while examining the inflow of work in the Supreme Court, took special notice of the fact that the Court had to grant special leave to appeal against decisions of various Labour Tribunals. It was noticed that in the year 1956, as many as 257 special leave applications against decisions of Labour Tribunals were granted, out of which 140 such applications were allowed. The Commission was of the opinion that the situation created by these large number of appeals admitted in labour matters causes concern in two respects. The first effect noticed was that it clogged the work of the Supreme Court notwithstanding the recent increase in its strength and secondly, that the disposal by the Supreme Court was not equal to the rising institution with which it was faced. According to the Commission, these matters have in a sense been forced upon the Court inasmuch as the Court could not refuse to entertain appeals against the decisions which appeared to be arbitrary and capricious and made in disregard of well-accepted principles of law and natural justice. According to the Commission, a large number of applications for special leave in these matters made to the Supreme Court synchronised with the abolition of the Labour Appellate Tribunal. The situation of which notice was taken was that against the decisions of the Industrial Tribunals, no appeal lay to any forum. Accordingly, in most cases, a petition for special leave was filed in the Supreme Court contending that the decision was unjust and arbitrary. The fact that the relief under article 226 of the Constitution by the High Court would be by a writ of certiorari which would permit the High Court to set aside the award/order of the Industrial Tribunal ; but the High Court cannot make its own decision and substitute for that of the Tribunal, the rush to Supreme Court under article 136 was inevitable. Having noticed this situation, the First Law Commissin was of the opinion that :

> "It is, therefore, imperative that the Legislature should intervene and provide for an adequate right of appeal in these matters. Such a right of appeal could be provided either by constituting Tribunals of Appeal under the labour legislation itself or by conferring a right of appeal to the High Court in suitable cases".[19]

3.2. It may be recalled that the situation noticed by the Law Commission in 1958 was the emerging scenario on the abolition of the Labour Appellate Tribunal and the situation had not deteriorated to the extent it has now. The latest situation is more depressing. The figures tell their own tale. Let them speak for themselves—14,82,450. (Appendix IV)—as per the information given to the Parliament on 18-11-87. One aspect that unfortunately escaped the notice of the Law Commission was that on the abolition of the Labour Appellate Tribunal, the awards of the Industrial Tribunals scattered throughout the length and breadth of this country had finality subject to constitutional remedies. There was no body at an all-India level which can provide uniformity in this matter—a function discharged by the Labour Appellate Tribunal. The awards of the Industrial Tribunals on questions of wages, dearness allowance, retirement benefits, different allowances, if not brought to some common denominator, were likely to introduce conflict and chaos. Uniformity in this behalf can only be introduced by an Appellate Tribunal having an all-India jurisdiction and a national perspective. Conferring appellate jurisdiction on the High Court over the awards of the Industrial Tribunal would not only not have improved the matter but the much desired uniformity would be shattered. The lack and absence of uniformity surfaced itself on the disappearance of the Labour Appellate Tribunal.

3.3. The Government of India constituted a Commission, chaired by Justice P.B. Gajendragadkar, Cheif Justice (retired) of the Supreme Court, for a comprehensive review of various matters connected with labour. One of the important aspects dealt with by it is the power of the State to intervene in the settlement of industrial disputes commencing with the Trade Disputes Act, 1929, and ending with the Industrial Disputes Act, 1947. Conceding that the ultimate legal remedy for the settlement of an unresolved dispute is its reference to adjudication by the appropriate Government, the Commission observed that during the last twenty years, the adjudication machinery has exercised considerable influence on several aspects of conditions of work and

labour-management relations. It was noticed that 'adjudication is dilatory, expensive and even discriminatory as the power of reference vests in the appropriate Government'. It was also of the opinion that by and large 'it has failed to achieve industrial peace'. The Commission felt that disadvantages noticed by it may have been over-stated. It indicated that greater scope should be given to collective bargaining. Ultimately, it recommended the setting up of an Industrial Relations Commission at National and State levels for settling disputes broadly covering matters listed in the Third Schedule to the I.D Act. The broad set up of the Industrial Relations Commission and the method of appointment of the President and the Judicial and Non-Judicial Members of the Commission was indicated. The procedure for settlement of disputes was chalked out. The Commission was to replace Industrial Tribunals and National Industrial Tribunal. Labour Court was to be set up in each State to be presided over by Judicial Members and appeal over the decision of the Labour Court in certain clearly defined matters may lie to the High Court within whose jurisdiction the Court is located.[20] The recommendation remained unattended.

3.4. The National Labour Conference held on 17th and 18th of September, 1982, appointed a Committee under the Chairmanship of Shri Sanat Metha, the then Minister of Finance and Labour, Gujarat, inviting it to examine important industrial relations' issues, one of which being machinery and fora for resolution of industrial disputes. This Committee took note of the fact that a National Labour Conference had practically approved the recommendations of the National Commission on Labour for setting up of Industrial Relations Commissions at the Centre and State level for resolution of industrial disputes. The Committee recommended that the new legislation dealing with industrial relations must provide for setting up of independent Industrial Relations Commissions and the constitution, set up, qualifications of Chairman, Members and the subordinate officers and staff shall be on the same lines as given in the recommendations of the National Commission on Labour. It recommended setting up of Standing Labour Courts to work under the overall supervision of the Industrial Relations Commission and they would deal with disputes relating to rights and obligations, interpretation and implementation of award etc. Reading the Report as a whole, it appears that the Industrial Relations Commission at the Centre as well as State level was to have original jurisdiction.

3.5. On receipt of the Report of the Committee chaired by Shri Sanat Metha, the Standing Labour Committee formulated the infra-structure of the legislation to be introduced in this behalf. The State level industrial Commission was to have an appellate jurisdiction over the orders and decisions of the Labour Courts. The Industrial Relations Commission at the Centre will have both original and appellate jurisdiction.

3.6. Commencing from the setting up of the Labour Appellate Tribunal in 1950 upto the recommendations of the Committee chaired by Shri Sanat Metha, and consequent upon its recommendations, the infra-structure drawn up by the Standing Labour Committee unambiguously converge on the view that there has to be a forum at the national level having both original and appellate jurisdiction which would enable that body to introduce an all-India perspective in the matter of industrial relations. Of necessity, such body must be composed of such persons having intimate knowledge of labour problems, economic planning, just and fair distribution of wealth, socio-economic justice and legal formulations as would enable it to dispose of matters expeditiously and effectively. It also clearly emerges that the jurisdiction of the High Court in labour matter has to be abolished to avoid the confusion arising from different High Courts taking different view in matters of common interest. The present approach is that apart from the advantages herein indicated, this new set up will help in reducing the workload in the High Courts and the Supreme Court, because the jurisdiction of the High Court in labour matters will be abolished and the jurisdiction under article 136 of the Supreme Court will be sparingly exercised, as a specialist body with an all-India jurisdiction has examined the matter. This is the justification, if one is needed, for the present approach.

CHAPTER IV

APPROACH AND JUSTIFICATION

4.1. The Law Commission was required to study measures for judicial reforms and make recommendations, *inter alia*, on the need for decentralisation of the system of administration of justice by setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres; and establishing other tiers or systems within the judicial heirarchy to reduce the volume of work in the Supreme Court and the High Courts. This twin objective set out in the Terms of Reference in the Context of studying Judicial Reforms must influence, and has considerably influenced, our approach.

4.2. On the question of participatory justice, the present Law Commission has given cogent, convincing and extensive reasons for modelling justice system on participatory basis. In the Report on Gram Nyayalaya[21], while recommending a novel body for resolution of disputes emanating from rural areas, the Commission extensively examined the need for replacing the existing model of State courts by a forum manned by lay justices catering to the need of participatory justice. *Panch* system, both at regional and caste level, had the trappings of participatory justice. There is a tribe called *Nandiwala* with a habitat on the South-Eastern Border of Maharashtra. It is a Scheduled Tribe. Like the Greek City states, the whole community constitutes into a body to render justice. The deliberations are guided by one who is called Guru, an outsider. The entire tribe participates in resolving disputes arising between the members of the tribe brought before it. Where the entire tribe participates in resolving a dispute, it is the most ideal model of participatory justice. But practical consideration outweigh the ideal. Therefore, many local areas had their regional *Panch* and some castes had also their caste *Panch*. The Law Commission is not unaware of the tyranny of caste *Panch*. At present, only its feature of participatory justice is being taken note of. Magna Carta included a demand for Peer's justice. If the Judge is not some black robed elite but a man of his own level of his locality, aware of his own traditions, talking in his own language, he would inspire greater confidence in the litigant. Under the imperial rulers, the entire justice system underwent a transformation and the judicial power of the State came to be exercised by State courts. It was a non-participatory model. Slowly and imperceptibly, while this non-participatory model introduced an aura of outward respectability, it failed to generate the confidence in consumers of justice. This non-participatory model over a course of time became very formal, legalistic, professionally manned, dilatory, technical and prolix. Its rigid rules of procedure, its deliberations in a foreign language and its highly technical approach rendered justice illusory. A yawning chasm developed between those who have to render justice and the consumer of the system. Therefore, participatory justice with many of its advantages already discussed in earlier reports has guided the deliberations of this Commission and virtually dictated the course. As pointed out, even the Terms of Reference require the Law Commission to recommend setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres.

4.3. The second object influencing the approach of the Commission in this behalf is to introduce decentralisation in the system of administration of justice. There are two distinct advantages of decentralisation of the system of administration of justice. To briefly mention them, they are : specialist courts in contra-distinction to generalist courts, and consequent expeditious disposal of cases and controversies coming up before the Tribunals manned by specialists.

4.4. Industrial disputes, in the interest of the parties concerned, the society at large and the public, must be disposed of as expeditiously as possible. Adjudication of industrial disputes is quasi-judicial in character. While some legal formulations would certainly enter the adjudicator's verdict, by and large industrial adjudication requires the approach guided by consideration of socio-economic justice in its extended meaning. The industrial adjudicator has to keep in view the Directive Principles of State Policy which require him to so mould his decision as to be able to effectively enforce the Directive Principles of State Policy relating to socio-economic

justice and elimination of inequality in status and income. The approach is dictated by constitutional goals and objects. Anyone enjoying the power of industrial adjudication must have adequate knowledge of, apart from other things, norms of socio-economic justice, industrial relations, economic planning and allied subjects. One need not be dyed in the wool in legal formulation to be an accomplished and efficient adjudicator. Depending upon the technological advancement of the concerned industry in which the dispute has arisen, the adjudicator may have to acquire knowledge of technology or may have to seek assistance of assessors who may be well-versed in the subject.

4.5. If, therefore, a body for industrial adjudication can be devised in which, apart from those conversant with legal norms and formulations, there are other participants who are well-versed in economic planning, industrial relations, norms of socio-economic justice and allied subjects, not only the ideal of participatory justice would be achieved but this inter-action amongst such adjudicators would certainly help in expeditiously resolving the industrial disputes. Therefore, labour adjudication is an area in which system of participatory justice with defined jurisdiction and powers can be effectively introduced.

4.6. The second object sought to be achieved by this approach is to provide for a tier or system within judicial hierarchy, which would certainly include quasi-judicial hierarchy, to reduce volume of work in the Supreme Court and the High Courts.

4.7. Article 226 of the Constitution confers power on the High Court, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories direction, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by Part III or for any other purpose. Article 227 confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Article 227 has been so interpreted as to confer on the High Court the power of judicial review over the decisions of the tribunals functioning in the State for which the High Court is set up. In the absence of an intermediate appellate forum, against almost all the awards of the Industrial Tribunal and the orders of the Labour Court which are not subject to appeal under any State statute, writ petitions are always filed in the High Court clogging up the work in the High Court. Pendency as on 31-12-85 of matters under labour laws High Court-wise is tabulated in Appendix V. Compared with the information supplied by Ministry of Justice, the pendency is higher as per statement attached to Appendix V.

4.8. Article 32 of the Constitution confers jurisdiction on the Supreme Court to issue directions, orders or all prerogative writs for the enforcement of any of the rights conferred by Part III of the Constitution. Article 136 confers jurisdiction on the Supreme Court to grant special leave to appeal against any judgment, decree, determination, sentence or order passed by a tribunal in the territory of India. Thus, all the awards of the tribunal can directly be questioned in the Supreme Court by a petition for special leave to appeal. And numerous matters are filed in this manner (Appendix III).

4.9. After the High Court decides the matter, a petition for special leave to appeal against the decision of the High Court can be filed in the Supreme Court under article 136. As pointed out earlier, an appeal is admitted by the Supreme Court as a matter of right where it is pointed out that there is a conflict amongst decisions of various High Courts or two High Courts have differed on the same point. Conflict in approach in dealing with labour matters amongst High Courts is not unknown.

4.10. Article 323B in Part XIVA of the Constitution confers powers on the appropriate Legislature, by law, to provide for adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in clause (2), which, inter alia, includes industrial and labour disputes. Entry 11A in the Concurrent List reads : 'Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts'. Entry 22 in the Concurrent List reads : 'Trade unions; industrial and labour disputes'. Entry 11A, read with entry 22 in the Concurrent List would enable the Parliament to enact a law for setting up of a tribunal as contemplated by article 323B(2)(c) for adjudicating industrial disputes, both with original as well as appellate jurisdiction.

If such a tribunal is set up having jurisdiction at an all-India level, it will develop an all-India perspective. Its decision could be questioned under article 136 before the Supreme Court only. In order to avoid the unfortunate experience of an omission while setting up the Labour Appellate Tribunal, the law setting up a tribunal, as herein conceived, must also simultaneously provide for excluding the jurisdiction of all courts, including the High Courts, except the jurisdiction of the Supreme Court under article 136 with respect to all or any of the matters falling within the jurisdiction of such tribunal as contemplated by article 323B(3)(d). Once the tribunal, as herein conceived, is set up, it will provide for a forum for participatory justice in an area where it is sorely needed and simultaneously it will bring in the missing all-India perspective and would certainly reduce the volume of work considerably in the High Court and proportionately in the Supreme Court. These objects have influenced and guided the approach of the Law Commission in devising such a forum.

CHAPTER V

THE FORUM, ITS FORMAT, JURISDICTION AND PERSONNEL MANNING THE SAME

5.1. To have a comprehensive view of the new model herein to be indicated and to appreciate its functional adaptability, it would be advantageous to briefly refer to the existing model devised by the Industrial Disputes Act, 1947, for resolution of industrial disputes.

5.2. Section 7 of the I.D. Act envisages setting up of Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule to the Act. The qualifications prescribed for a person to be eligible to be appointed as the Presiding Officer of the Labour Court are such as would almost make it an impelling necessity to select persons from civil judiciary and therein lies the potentiality for spill over of all the technicalities, dilatoriness and formal approach quite evident in administration of civil justice. To be a Presiding Officer of a Labour Court one has to be either a Judge of the High Court, sitting or retired, or has been, for a period of not less than three years, a District Judge or Additional District Judge, or has held any judicial office in India for not less than seven years, meaning thereby sitting or retired members of the subordinate judiciary, or has been a Presiding Officer of a Labour Court constituted under any of the State statutes for a period of not less than five years. It would merely add to the length of this report if one were to refer to all those State statutes prescribing qualifications of eligibility for being appointed as Presiding Officer of Labour Court. In sum, they are such as would only make members of the State civil judiciary eligible for being appointed with the same undesirable consequences. The subject matter of jurisdiction of the Labour Court is referable to topics set out in the Second Schedule of the I.D. Act. By and large, they involve day-to-day conditions of work in industrial establishments and indicate the grey areas where disputes might arise.

5.3. Section 7A confers power on the appropriate Government to constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter specified in the Second Schedule or the Third Schedule. Sub-section (3) prescribes qualifications for being appointed as Presiding Officer of a Tribunal. To be eligible, one has to be either a sitting or a retired Judge of a High Court or District Judge or Additional District Judge for a period of three years. The criticism hereinbefore set out will apply *mutatis mutandis* to the present situation also which tends to perpetuate the hold of the judiciary dealing with administration of civil justice over Labour Courts and Industrial Tribunals.

5.4. Section 5 of the Industrial Disputes (Appellate Tribunal) Act, 1950, prescribed the qualifications for a member of the Labour Appellate Tribunal. The approach was the same. The qualifications were that 'the member, to be eligible for being appointed, is or has been a Judge of a High Court, or is qualified for appointment as a Judge of a High Court, or has been a member of an Industrial Tribunal for not less than two years'. The only opening made here for entry of persons other than members of civil judiciary was in favour of a practising advocate.

5.5. Way back in 1973, a Committee appointed by the Government of Gujarat, known as Labour Laws Review Committee, took notice of this situation when it observed as under :—

> "The Judges so drawn from the civil judiciary do carry with them their life-long experience of administration of civil and criminal justice. Undoubtedly, they were the officers who had the perspective and objectivity of a Judge and their experience had taught them to look each dispute or problem coming before them from an objective standpoint. While administering socio-economic justice in Labour and Industrial Courts, this approach may not be very helpful. The principal object of the labour laws is to smoothen the passage of State, having sole object of maintaining law and order, to Welfare State. For achieving ideal of a Welfare State, foundation of which is socio-economic justice, new norms of industrial relations have to be formulated, shaped and enforced. Targets set out in various Five Year Plans have to be kept in view,

In other words, social philosophy of the day is to be fully imbibed and given legal form by devising norms of socio-economic justice. The officer must have training and aptitude to understand how persons consigned to miserable existence are lifted and taken to tolerable existence, if not wholly civilized existence which should be the ideal.....The Judges who have worked for their whole active life in civil judiciary undoubtedly, with notable exceptions, may not be able to rise to the occasion and stand up to the requirement. No attempt has been made over a quarter of a century to create Labour Judicial Service."[22]

5.6. As the first step, this Committee recommended that retired Judges or those about to retire from civil judiciary should not be inducted in the Industrial and Labour Courts and Industrial Tribunals.

5.7. One of the grounds in support of vociferous demand for abolition of Labour Appellate Tribunal was that the Judges manning the Tribunal were mostly drawn from the cadre of retired High Court Judges and, therefore, by habit, temperament and tradition, they were prone to be technical, formal and non-responsive to the demands of socio-economic justice. Assuming that the demand for abolition of Labour Appellate Tribunal was an immature reaction of some persons annoyed by the slight delay in disposal of appeals by the Tribunal, the fact remains that those who had spent their whole active life in courts administering civil justice are prone to be precedent-oriented, technical, traditional and impervious, if not blind, to the utter inequalities of parties appearing before them when functioning as members of Tribunals set up to resolve industrial disputes. If in their journey through life as Judges, they were accustomed to find out what the contract is and sincerely believed that parties must be held to their own contracts, it would be expecting too much from them to say that when taking up an industrial adjudication they will be looking at the unfairness of contracts and devise what contract ought to be, that is, what ought to be a fair relation between the employer and the workmen. This historical perspective is to be kept in view while devising a forum for resolution of industrial disputes, both at the State level and national level.

5.8. To sum up, three aspects have emerged from the preceding discussion and historical review since 1947 till today. In the absence of an all-India body having jurisdiction to reconcile conflicting awards of Labour Courts/Industrial Tribunals so as to frame a consistent noteworthy industrial jurisprudence within the perspective of Part IV of the Constitution, contradictory, conflicting and irreconcilable industrial relation norms have emerged. Secondly, the expectation that Supreme Court of India will supply this lacuna by providing quick uniformity has been wholly belied. Thirdly, industrial adjudication cannot operate purely in a legal framework devoid of humanistic touch. It requires understanding of constitutional goals, humanities, social sciences, economic planning and national and international economic developments. In short, it is thus a field of specialist study and, therefore, must be a concern of specialist court. Finally, the fundamental consideration governing industrial adjudication being industrial peace and harmony creating fruitful environment for economic advancement of the nation, the adjudicator must have vision and capacity to move in that direction. Over a period, industrial adjudication has developed all the trappings of civil litigation bringing in all its imperfections, limitations and disadvantages. A bold and innovative approach must dictate the choice. The solution lies in providing a system of participatory justice. Industrial adjudication is an area where a system of participatory justice with defined jurisdiction and powers can be introduced with advantage which will remove the ills so far noticed and set out above.

5.9. At the base level, a Labour Court, as contemplated by section 7 of I.D. Act, is functioning. It is generally a one man Tribunal, mostly manned by members drawn from civil judiciary. At this level, drawing upon our experience in the Report on Gram Nyayalaya, it is necessary to introduce a participatory model. The Judge of the Labour Court should be assisted by two lay Judges drawn from the rank of workmen and employers. Today, the Labour Court has all the trappings of a court administering civil justice. It is desirable to transform the present model of Labour Court, which is formal and legalistic, to an informal and participatory model. The jurisdiction of the Labour Court covers items set out in the Second Schedule of the I.D. Act. A reference to Second Schedule will show at a glance that subjects therein set out are better dealt with by inter-action of all the

three members constituting the Labour Court. The Labour Court can examin the propriety or legality of an order passed by an employer under the standing orders. It can examine the implications and interpretations of standing orders. Matters covering these items are generally of a simple nature. Item No. 3 in the Second Schedule deals with 'Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed'. The bulk of litigation in this field arises from discharge or dismissal of workmen and claim for reinstatement or other ancillary relief, such as, compensation for retrenchment, back wages where reinstatement is ordered, ancillary benefits if reinstatement is ordered after a long time. It is here that interaction of a lay Judge coming from class of workmen with one coming from employer and a third having a legally trained mind would produce a result which would be more or less very satisfactory. Item No. 4 provides for withdrawal of any customary concession or privilege. Those who are working either as trade union leaders or in employer's association would be well conversant with what are customary concessions and privileges. Item 5 deals with illegality or otherwise of a strike or lockout. It apperas crystal clear that the matters set out in the Second Schedule are such as can better be dealt with by a participatory model.

5.10. Industrial Tribunals have to be set up by the appropriate Government in exercise of the powers conferred by section 7A of I.D. Act. Central Government can set up a National Industrial Tribunal in exercise of the power conferred by section 7B for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes. Sub-section (2) of section 7B provides that a National Industrial Tribunal shall consist of one person only, to be appointed by the Central Government. By and large, this one man National Tribunal is generally presided over by a retired Judge of the High Court or of the Supreme Court. This model has been tested since 1956. Most of the awards of National Tribunals have been questioned in the High Courts and the Supreme Court. A new thinking and departure from present day set up is necessary in this behalf. A participatory model, both at the National and State level, replacing the National Industrial Tribunal and Industrial Tribunal respectively, would certainly be a step forward and hopefully result-oriented. Let it be made crystal clear that in this behalf we are not writing on a clean slate. National Commission on Labour has examined the advisability, desirability and the feasibility of introducing Industrial Relations Commission,[23] both at the State and Central level. Sanat Mehta Committee,[24] as late as 1982, endorsed the recommendation of the National Labour Commission. The subsequent meeting of the Standing Labour Committee accepted the recommendation of Sanat Mehta Committee. We are influenced by this recommendation not only for all those reasons which appealed to those august bodies but also for the additional reason that the model of participatory justice can be conveniently introduced in the field of industrial adjudication. It would effectively help in decentralisation of administration of justice which is at present monolithic.

5.11. Industrial Relations Commission herein envisaged can also come under the generic term 'Tribunal for Adjudication of Industrial Disputes' and these recommendations can be effectively implemented by law passed for this purpose in exercise of power conferred by article 323B of the Constitution.

5.12. It needs to be re-emphasised that the Industrial Relations Commission, both at the Central and State level, would be providing a model of participatory justice.

5.13. The additional advantage would be the consequent reduction in the workload in the High Court and the Supreme Court because the jurisdiction of the High Court to deal with matters falling within the jurisdiction of the Industrial Relations Commission should be excluded.

5.14. The Industrial Relations Commission at the Central and State level would be composed of a President drawn from the rank of a retired Judge of the Supreme Court for the Central Commission and a retired Judge of the High Court for the State Commission. There will be an equal number of members drawn from the rank of union leaders and employees' organisation constituting the Commission. It must be made specifically clear that these members need not have a degree in law or a

background of legal training as essential qualifications. They must, however, have adequate knowledge in the field of industrial relations, management of industries, economic planning and industrial, fiscal and monetary policies of the Government of India.

5.15. The Industrial Relations Commission at the State and at the Centre will have both original and appellate jurisdiction. Appeal against the decision of the Labour Court purely on an important question of law will lie to the State Industrial Relations Commission. The appeal shall be heard by a Bench of three Judges; one of them must be a judicial member, the other two non-judicial members. All industrial disputes at present falling within the jurisdiction of Industrial Tribunals shall fall within the jurisdiction of State Industrial Relations Commission and the reference should be made to it by the State Government as appropriate Government under section 10 of the I.D. Act. All matters which could have been referred to the National Industrial Tribunal shall fall within the jurisdiction of I.R.C. at Centre. It shall be heard by such number of persons as may be decided by the President of the Commission. The I.R.C. at the Centre will also have appellate jurisdiction over the awards and decisions of the I.R.C. at the State level but the appeal will be limited purely to the important questions of law to be stated specifically at the time of admission of the appeal.

5.16. The members of the I.R.C., both at the Central and State level, will be appointed by the Central and State Governments respectively in consultation with National Judicial Service Commission to be set up as recommended by the Law Commission in its 121st Report. The Act setting up such Commission may as well consider conferring power of conciliation on I.R.C.

5.17. The terms and conditions of service of the President and members of I.R.C. at Central and State level shall be determined by the Central Government in consultation with the National Judicial Service Commission.

5.18. Arrangement for effective training of the members to be appointed to the Commission shall be made by the Government, in tune with the scheme of training recommended by the Law Commission in its 117th report.

5.19. The law setting up I.R.C. shall provide, amongst others, for exclusion of the jurisdiction of the High Court in each State from dealing with matters which fall within the jurisdiction of the I.R.C. at the State and Central level. The Labour Court shall be outside the superintendence of the High Court and shall be brought within the superintendence of the State I.R.C.

5.20. In the event of a dispute amongst the members constituting the Commission dealing with a particular matter, the decison of the majority will prevail. In the event of conflict between decisions of State level Commissions, the matter can be withdrawn by the I.R.C. at the Centre to be decided by it. The decision of the I.R.C. at the Centre will be binding on all State I.R.Cs. and Labour Courts.

5.21. The jurisdiction of the Supreme Court under article 136 over decisions of the I.R.C. at the Centre will remain intact.

5.22. Today there are roughly around 51 statutes passed by Parliament dealing with industrial labour (Appendix II). Some statutes have provided for setting up its own machinery, original and appellate, for resolution of disputes arising under the statutes. An attempt is made to tabulate various authorities functioning under these statutes. The Table at Appendix VI also shows the appellate body to which an appeal can be preferred against the decision of authority having original jurisdiction. To illustrate, under the Payment of Gratuity Act, 1972, the dispute can originally be brought before the controlling authority and the appeal would lie to the appropriate Government. This is a quasi-judicial adjudication. To avoid the charge of bias and administration taking over quasi-judicial function, the appellate jurisdiction under each statute must be conferred on I.R.C. at State level. The Table at Appendix VI also sets out the authorities competent to take cognizance of offences under these statutes. In order to simplify and specialise, it is necessary to confer jurisdiction to try offences under these statutes on the Labour Courts. Similarly, the appellate authority must be the State I.R.C. That would provide for all labour

aws being dealt with by specialist jurisdiction courts. It would be a step for rationalising the laws, the procedure and the forum. When it is recommended that a law will have to be enacted to set up I.R.C. at the State and Central level, that very opportunity should be seized to provide for what is herein indicated about the forum for taking cognizance of offences under the labour laws as well as one State appellate forum under all those laws.

We recommend accordingly.

Sd./-
(D.A. DESAI)
Chairman

Sd/.-
(V.S. RAMA DEVI)
Member Secretary

NEW DELHI, dated
the 9th *December*, 1987.

REFERENCES

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21. L.C.I., 114*th Report*, Chapter III.
22. (1974) Report of the Labour Laws Review Committee, p. 20, para 4.4.
23. Report of the National Commission on Labour, pp. 332—335, paras 23.61 to 23.65
24. Sanat Mehta Committee Report, para 2.1.2.

88- /J(D)89MofLJ&CA—3

APPENDIX I

(Para 1.8)

LAW COMMISSION OF INDIA

WORKING PAPER
(QUESTIONNAIRE)

ON

FORUM FOR NATIONAL UNIFORMITY IN LABOUR ADJUDICATION

QUESTIONNAIRE

Introduction :

The Government of India had resolved to set up a Commission to study, examine and recommend judicial reforms. One of the terms of reference was :—

> "The need for decentralisation of the system of administration of justice by—
> (iii) establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts".

While examining this aspect, it was indicated that provisions contained in Part XIV A of the Constitution permitting establishment of tribunals may be kept in view. The ultimate aim was to translate the object underlying article 39A of the Constitution into reality. Article 39A provides that 'the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities'.

2. Ultimately, the Government of India assigned this task of studying and recommending judicial reforms to the present Law Commission. Accordingly the Law Commission drew up a comprehensive programme of restructuring justice delivery system in all its limbs.

The Law Commission has by now dealt with litigation emanating from rural areas, structuring and strengthening subordinate judiciary in States, setting up an all-India judicial service as envisaged by article 312 of the Constitution, imparting training to members of the judiciary at all levels and setting up Central Tax Court for both direct and indirect taxes as well as for resolving disputes in the field of import and export of commodities. The twin objects behind re-structuring judicial system are to make the justice delivery system resilient, effective, time-bound, inexpensive and deprofessionalised so as to reduce arrears and to remove the backlog of cases. The second object is to make access to justice easy, inexpensive and non-technical.

3. Even in the hoary past it was felt that the Civil and Criminal Courts, as operating in this country since the colonial days, would be ill-equipped to deal with labour/industrial disputes in which the approach is to expand distributive justice. Integral to this was the other belief that a developing country like ours can ill-afford the luxury of confrontation in commerce and industries which affects production and retards development and therefore, it must have an effective machinery for resolution of labour/industrial disputes. Compulsory adjudication was devised as an alternative to strikes and confrontation. Ignoring the earlier stray efforts, such as Employers and Workmen (Disputes) Act, 1860, the Indian Trade Disputes Act, 1929, Bombay Industrial Disputes Act, 1937, the first major step was taken by enactment of the Industrial Disputes Act, 1947. The provisions of the 1947 Act did not seek to confer any specific benefits on the workmen but it merely provided a forum for adjudication of industrial disputes by conferring power on the Government to compel the parties to avoid confrontation and to resort to adjudication. Broadly stated, it was an act for industrial arbitration. Some later amendments to this Act did confer some specific benefits on the workmen and also imposed some liabilities on the employers. For the present purpose, this part is hardly relevant.

4. It may be mentioned here that a number of States have enacted legislation for acquiring power to compel parties to resort to industrial adjudication and to curb the strikes. Some of them, such as the Bombay Industrial Relations Act, are quite comprehensive in character. Some others, like the U.P. Industrial Dipsutes Act. more or less adopt the Central Act as a model. In this questionnaire, the scheme of the Central Act is kept in view. The questionnaire has a very limited aim, namely to devise a forum intermediate between labour Courts/Industrial Tribunals on the one hand and High Courts/Supreme Court of India on the other so as to remove the jurisdiction of High Courts and interpose a tribunal with all-India jurisdiction. The enquiry is related to term of reference extracted in para 1.

5. Industrial Disputes Act, 1947, was enacted to make provision for investigation and settlement of industrial disputes. It envisages setting up of a Labour Court for adjudication of industrial disputes relating to any matter specified in the second schedule (Sec. 7); Industrial Tribunals for the adjudication of industrial disputes to any matter as specified in the second or the third schedule, and for performing such other functions as may be assigned to them under that (sec. 7A); National Tribunals for adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes (sec. 7). It also envisages setting up of Courts of Enquiry for inquiring into any matter appearing to be connected with or relevant to an industrial disputes (sec. 6). It further envisages setting up of a Grievance Settlement Authority for settlement of industrial disputes connected with an individual workman employed in the estblishment (sec. 9C).

6. Section 10 confers power on the appropriate Government as defined in the Act to refer any industrial dispute which either exists or is apprehended to a Board, Court of Inquiry, Labour Court, or an Industrial Tribunal, as the case may be, for adjudication thereof. Section 10 (1A) confers power on the Central Government to refer an industrial dispute of the nature therein specified or any matter appearing to be connected with, or relevant to, the disputes to a National Tribunal for adjudication. Subsection (2) of section 10 obligates the appropriate Government to refer an industiral dispute to a Board, Court, Labour Court, Tribunal or National Tribunal, as the case may be, where the parties to such an industrial dispute apply in the prescribed manner. The Body, to which a reference is made, shall adjudicate upon the dispute and give an award. The award has to be submitted to the appropriate Government and the appropriate Government has to publish the same within thirty days from the date of its receipt.

7. The scheme relevant to the provisions for adjudication of an industrial dispute, would show that there is no provision for an appeal against an award by a Board, Court, Labour Court, Industrial Tribunal or National Tribunal. It is assumed that the decision by any of the aforesaid authorities would be flawless and acceptable to the parties whatever be the outcome of the dispute. In all other jurisdictions, ordinarily every decision can be appealed against. There will be an appeal on facts; there will be a second appeal on a question of law; there will be an appeal to the Supreme Court of India under article 136 of the Constitution. Even under such socially beneficent laws such as for introducing agrarian reforms, the relevant statutes provide for one or two appeals. It is only in the field of labour adjudication that the statute under which adjudication could be or ordered did not provide for any appellate forum. Now there is a considerable body of legal opinion that where the statute setting up an administrative or quasi-judicial tribunal does not provide for an appellate forum, the decision of the tribunal is challenged in the High Court invoking article 226 of the Constitution. Petition is generally entertained on the specious plea that there is no alternative efficacious remedy. Extending this principle to the situation where the statute provides for an appeal or revision, the High Court raises the question whether alternative remedy under the statute is an efficacious remedy. Where the statute levying tax provides for an apeal against the decision of an assessing authority and makes deposit of assessed tax, a condition precedent to the entertaining of appeal, the Supreme Court has held that the alternative remedy is not efficacious or adequate.[1] Same view was adopted

1. *Himmatlal Harilal Mehta* vs *The State of Madya Pradesh*, (1954) SCR 1122 at 1128.

while examining the scheme of Employees State Insurance Act. It was observed that High Court was right in holding that the remedy under the Act should have been pursued before approaching the High Court under art. 226[1].

The fall out of a total absence of any provision for appeal under Industrial Disputes Act may induce an instinctive reaction and art. 226 may be freely invoked. What is the fall out ? The fall out is that every award of a Labour Court, Industrial Tribunal, or a National Tribunal, one can question in a certiorari proceeding before the High Court under articles 226 and 227 of the Constitution and before the Supreme Court of India under article 136 of the Constitution. The more ugly feature of the fall-out is that where a preliminary contention is raised that there reference is either incompetent or bad in law, a writ of prohibition is sought under articles 226 and 227 before the High Court or under article 136 before the Supreme Court. Occasionally, article 32 was invoked on the specious plea that such invalid and illegal proceedings contravene the fundamental right of the employer to carry on any occupation, trade or business guaranteed by article 19 (1) (g). And cases are not known where the High Courts and the Supreme Court have entertained the writ petition at an interlocutory stage and stayed further proceedings with the result that a final adjudication of the dispute suffered inordinate delay. The Courts while entertaining such proceedings indicated that in the absence of a corrective forum in the form of an appeal, it is inevitable for enforcement of the Rule of Law that extraordinary jurisdiction conferred by the constitution has to be invoked.

8. The powers that we were not unaware of this distinct possibility since the introduction of the Constitution. Accordingly, in the year 1950, Labour Appellate Tribunal was set up under a statute called The Industrial Disputes (Appellate Tribunal) Act, 1950 providing for an appeal against the awards of the Labour Courts/Industrial Courts in respect of specified topics.

9. The Labour Appellate Tribunal had two-fold function to perform :—

(*i*) It would be a correctional forum against human fallibility; and

(*ii*) it would bring about a national synthesis in conflicting and differing awards all over the country.

It was all the more necessary in the case of industrial establishments having inter-State operations. The establishment of Labour Appellate Tribunal was, in fact, a natural response to the need for a measure of uniformity of underlying principles and norms to govern the awards of different industrial tribunals for maintaining industrial peace and stability in the interest of un-interrupted production.

10. Somehow, this Labour Appellate Tribunal fell foul with the workmen. A country-wide movement voicing its grievances against the Labour Appellate Tribunal swept the country. The movement received its powerful support from the Indian National Trade Union Congress. The governing consideration in support of the demand for abolition of the Labour Appellate Tribunal was, according to the standards of those days, the inordinate delay in the disposal of appeals with consequent prolonged litigation and hardship. The award may have given some monetary benefit. As soon as the employer appealed, ordinarily interim stay would follow; the staying power of the workers being weak, they could ill-afford the extended period of litigation while the employers used the appellate forum with a view to thwarting the aspirations of the workmen and exhaust them. Experience of working of courts and especially superior courts in India that any legislative process becomes a hand maid of the wealthy and the financially affluent section of the society and a tool for unfair use of courts. Another argument was that the adjudicatory process with an added appellate forum would thwart trade union activity and convert the trade union office into a solicitor's forum thereby weakening the trade union movement. The battle cry as it appeared then was that where the appellate tribunal reversed the award by which some monetary benefit was granted, it left bitterness and led to mutual recrimination widening the gulf between the employers and the employees and thereby threatening industrial peace. Different Central Trade Unions articulated different approaches in this behalf, but the cry was common that the labour appellate tribunal should be abolished. One of the grievances voiced on behalf of the Indian National Trade Union Congress was that the

1. *Basant Kumar Sarkar and Other* vs. *Eagle Rolling Mills Ltd. and Others*, (1964) 6 SCR 913 at 918.

personnel manning the Labour Appellate Tribunal was drawn from the cadre of retired High Court Judges who, in their active days, had hardly dealt with labour matters and were ill-equipped to deal with distributive justice or social justice, as the case may be, and because of their training and up-bringing, their approach was mechanical and legalistic. Probably, the Full-Bench formula on Bonus fuelled the fire. Avoiding going into the various objections to the continuance of the Labour Appellate Tribunal, the one that was to be in the forefront was that the delay it entailed in finally implementing the award, and adding to the uncertainty of the situation. The voice of the labour prevailed and finally the Labour Appellate Tribunal was abolished in September, 1956. The situation returned to square one as it existed prior to the setting up of the Labour Appellate Court. Every award, both at the intermediate and final stage, more or less, came to be questioned before the High Court under articles 226, 227 and before the Supreme Court under article 136 and also under article 32 of the Constitution.

11. What is the present position 30 years after the abolition of the Labour Appellate Tribunal ? If delay in resolution of disputes by continuing it before the appellate forum was widely resented so as to strive for abolition of the appellate forum, then the situation at present is, to say the least, atrocious. In the Supreme Court of India, 953 matters under the labour laws are pending as on 31-12-1985 and they ranged from 1971 to 1985. The dispute which has come before the Supreme Court in 1971 and which is pending here for 15 years must have started before the Labour Court at least five years before, if it has not come via the High Court and if it has come via the High Court, 10 years befoer 1971. Calculating either way, the 1971 disputes pending in the Supreme Court of India must now be pending for over 25 years. Similarly, the labour matters pending in 18 High Courts, at the end of the years 1982 were 5766. The figures available for seven High Courts upto and inclusive of December 31, 1985 would show pendency at 10,233. Pendency has doubled within three years. It is difficult to workout an acceptable detailed analysis and the duration of their pendency. In any event, the duration must be not less than five years excluding the time taken before the adjudication forum. Reverting to the grievance that the Labour Appellate Tribunal took about two years for deciding the appeals coming before it, which was considered atrocious as to call for its abolition what would one say about the present situation where the matters are pending with the High Court and the Supreme Court for over decades? Those who were votaries of abolition had also reposed faith in the Supreme Court to bring about expeditious disposal and national conformity. What a shock for them ?

12 Two ugly features of the system have surfaced. There has been a general tendency to avoid the High Court and to rush to the Supreme Court because Labour Court/Industrial Court is a tribunal whose orders and awards are judicially reviewable by the Supreme Court of India under article 136. But even if the matter is taken to High Court, the delay is inordinate. Industrial disputes affecting individuals, such as dismissal, termination of service, punishment for misconduct, individual monetary benefits, are dragged on to the High Court and the Supreme Court not with a view to get effective justice, but to force upon a weak adversary namely the workman an unjust compromise keeping in view that the staying power of the workman is limited. Two cases in this connection may be illustrated.[1]

*In Goyal's case the workman was suspended from the service of Bank of Baroda in July 1965. He sought a reference under sec. 10 of the I. D. Act which was given. The tribunal held the reference invalid on a flimsy ground. The S. C. in 1978 held the reference valid and remanded for award on merits. This award was challenged and the matter was brought to Supreme Court. Reinstatement was granted on 18-7-1979 and stayed. Finally he went back in service in 1983 i.e., eighteen years after his suspension.

In the second case of Shambunath Mukherjee facts are more gruesome. His name was struck off the rolls on January 19, 1966. Till he died on May 30, 1984 he was chasing a mirage of justice through the labyrinth of High Court and Supreme Court.

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1. *Shambhunath Goyal* vs. *Bank of Baroda, 1978 2 SCC 353.*
Delhi Cloth and General Mills Ltd. vs. *Shambu Nath Mukherjee, 1984 Supp. SCC. 534.*

13. The second feature of an appellate forum with an all-India jurisdiction was that by its awards, it can bring about a measure of uniformity in the norms of industrial relations and formulate principles for guidance of the Labour Courts and Industrial Tribunals. On the face of it, the High Court cannot bring about this uniformity because its jurisdiction is confined to the State in which it operates. While there are a number of big industrial undertakings which have Inter-State operations, there are also monopolies like the Life Insurance Corporation, General Insurance Corporation, which have all-India operations. Similarly, there are such cartels as Bharat Petroleum, Hindustan Petroleum, etc. which fall within the category of industrial employers and are subject to conflicting awards by Labour Courts/Industirial Courts operating in various parts of the country and subject to the jurisdiction of local State Governments. This is not conducive to the healthy growth of norms of industrial relations. Further, these industrial undertakings with Interstate operations find themselves subject to varying awards introducing a certain amount of differential treatment amongst its employees.

14. Can the Supreme Court fill the bill of providing a sort of uniform norms of industrial adjudication applicable all over the country, that was the expectation of votaries of abolition of Labour Appellate Tribunal. Let it be made clear that the Supreme Court was never conceived as a Court of Appeal. It was a body with a very wide plenitude of jurisdiction to correct some glaring of errors involving miscarriage of justice, or constitutional provisions. It cannot function as a Court of Appeal in the sense in which a Court of Appeal functions. It is, therefore, inevitable that a body having an all-India jurisdiction operating at a level below the Supreme Court which can bring about uniformity in industrial relation norms, and which can provide a sort of uniformity in dealing with disputes in industrial undertakings having Inter-State operations.

15. The National Labour Commission, after having viewed at close quarters the vacuum created by the abolition of the Labour Appellate Tribunal, recommended setting up of an Industrial Relations Commission, both at National level and State level. It recommended the continuance of Labour Courts and recommended an appeal over its decision to the High Court.[1] With respect, a decision by the High Court over the award or the decision of the Labour Court, would hardly be helpful in bringing about uniformity at national level. The High Courts differ and again the Supreme Court is made to intervene to resolve the conflict and in this process, the delay is inevitable.

16. Even before the National Labour Commission dealt with this aspect, the Law Commission of India examined this aspect. The Law Commission, having taken note of the pending appeals in labour matters on the file of the Supreme Court observed :—

> "These matters have, in a sense, been forced upon the Court, inasmuch as the Court could not refuse to entertain appeals against decisions which appeared to be arbitrary and capricious and made in disregard of well accepted principles of law or natural justice. It will be noticed that a large number of applications for special leave in these matters made to the Supreme Court synchronise with the abolition of the Labour Appellate Tribunal. The new labour legislation constitutes tribunals against the decisions of which no appeal lies. Not unnaturally, therefore, in most cases of unjust or arbitrary decisions, there are applications for special leave to appeal to the Supreme Court. The aggrieved party approaches the Supreme Court because the jurisdiction of the High Court under article 226 is too narrow to afford relief in these matters. Under article 226, the High Court can only quash an order made by these tribunals, but cannot make its own decision and substitute it for that of the tribunal. The High Court, would, generally speaking, quash these orders only in cases of excess of jurisdiction or an error of law apparent on the face of the record or a contravention of the principles of natural justice or the like. It is, therefore, imperative that the legislature should intervence and provide for an adequate right of appeal in these matters."

17. The High Courts and the Supreme Court are under a great pressure of torrential inflow of work. When the Court tries to control one branch of litigation, the other goes out of control. The High Court is unable to provide a Labour Bench round the year. So also, the Supreme Court. The unedifying outcome is that the longest delay

1. Report of the National Labour Commission on Labour, Chapter 23 para 23.63 to 23.66, pp. 312—315.

occurs at the Supreme Cout level, comparatively less at the High Court level and by and large, there is expeditious disposal before the Labour Court Industrial Tribunal. This reverse phenomenon clearly indicates that the abolition of the Labour Appellate Tribunal was short-sighted measure. If there was any legitimacy in the grievance about the personnel manning the tribunal, the sensible solution was to deal with the manpower problem but not put an end to the body itself.

18. The Law Commission is of the opinion that the time has come to review the situation in all its aspects. The High Court and the Supreme Court would go on entertaining matters because the Labour Court/Industrial Tribunal may commit errors. Though the jurisdiction of High Court is narrow, the matters are dealt with as if these courts are hearing appeals . Cases are not unkown where the awards are interfered with under the pretext that the findings are perverse and the delay is horrendous. To illustrate, some matters questioning the correctness of Palekar Award in the matter of wage structure between the journalists and the newspaper employers are still pending in the Supreme Court even though Bachawat Panel has already been set up and started functioning about a year back. One would stand aghast at the idea that till Bachawat Panel finalises its recommendation, those affected by the Palekar Award are not certain as to what would be the outcome of the deliberations of the Supreme Court of India. A remedial measure has become inevitable.

19. The Law Commission, in its search for expeditious disposal and liquidation of backlog of cases, has a tentative plan to recommend an Industrial Relations Commission having an appellate jurisdiction over the awards of the Labour Court/Industrial Tribunals. This Commission can sit in benches. It will have an all-India jurisdiction. Efforts will be made to provide manpower imbued with notions of social justice, industrial relations, norms, peace and harmony in industry, avoidance of class conflict, growth of industrial prosperity, etc. The Law Commission, therefore, requests you to please answer the questions set out in the annexure to this introductory part and submit the same on or before 15th March, 1987, to the Law Commission of India.

ANNEXURE

QUESTIONS

1. Are you in favour of an Appellate forum having all-India jurisdiction over awards of the Labour Courts/Industrial Tribunal ?

2. If the answer to the first question is in the affirmative, would you suggest the nature and format of the forum ?

3. Would it be advisable to revive the Labour Appellate Tribunal ?

4. What measures would you suggest to expedite hearing of appeals before such an appellate forum ?

5. What will you consider to be the yardstick for selecting personnel for such an appellate forum ?

6. In whom the power to select personnel may be vested ?

7. Would such an appellate forum be invested with power to grant interim stay of the award unconditionally or always subject to conditions or no such power should be conferred.

   (You may kindly keep in view sec. 17B recently introduced in the Industrial Disputes Act by Industrial Disputes (Amendment) Act, 1982, which provides for payment of full wages to workmen pending proceedings in higher courts.)

8. What, in your opinion, should be the time-frame for disposal of appeals ?

9. Would you be in favour of every award being made appealable or the appeal may lie only on a question of law on the analogy of section 30 of the Workmen's Compensation Act, 1923, or Sec. 8 of the Industrial Disputes (Appellate Tribunals) Act, 1950 ?

10. Are you in favour of a total ban on entertaining any appeal at the interim stage ?

11. If the forum, as herein indicated, is set up, should the jurisdiction of the High Court under articles 226, 227 be retained or abolished ? You may consider article 323B of the Constitution in this behalf.

APENDIX II

(Paras 2.4/5.22)

LIST OF INDUSTRIAL AND LABOUR LAWS

1. Apprentices Act, 1961.
2. Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
3. Beedi Workers Welfare Cess Act, 1976.
4. Beedi Workers Welfare Fund Act, 1976.
5. Boilers Act, 1923.
6. Bonded Labour System (Abolition) Act, 1976.
7. Children (Pledging of Labour) Act , 1933.
8. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.
9. Cine-Workers Welfare Cess Act, 1981.
10. Cine-Workers Welfare Fund Act, 1981.
11. Coal Mines Labour Welfare Fund Act, 1947.
12. Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
13. Contract Labour (Regulation and Abolition) Act, 1970.
14. Dangerous Machines (Regulations) Act, 1983.
15. Dock Labourers Act., 1934.
16. Dock Workers (Regulation of Employment) Act, 1948.
17. Emigration Act, 1983.
18. Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
19. Employees' State Insurance Act, 1948.
20. Employers' Liability Act, 1938.
21. The Child Labour (Prohibition and Regulation) Act, 1986.
22. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
23. Equal Remuneration Act, 1976.
24. Factories Act, 1948.
25. Fatal Accidents Act, 1855.
26. Industrial Disputes Act, 1947.
27. Industrial Disputes (Banking and Insurance Companies) Act, 1949.
28. Industrial Disputes (Banking Companies) Decision Act, 1955.
29. Industrial Employment (Standing Orders) Act, 1946.
30. Industries (Development and Regulation) Act, 1951.
31. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
32. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976.
33. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976.

34. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
35. Maternity Benefit Act, 1961.
36. Mica Mines Labour Welfare Fund Act, 1946.
37. Mines Act, 1952.
38. Minimum Wages Act, 1948.
39. Motor Transport Workers Act, 1961.
40. Payment of Bonus Act, 1965.
41. Payment of Gratuity Act, 1972.
42. Payment of Wages Act, 1936.
43. Personal Injuries (Compensation Insurance) Act , 1963.
44. Plantations Labour Act, 1951.
45. Sales Promotion Employees (Conditions of Service) Act, 1976.
46. Trade Unions Act, 1926.
47. Weekly Holidays Act, 1942.
48. Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous provisions Act, 1955.
49. Working Journalists (Fixation of Rates of Wages) Act, 1958.
50. Workmen's Compensation Act, 1923.
51. Collection of Statistics Act, 1953.

APPENDIX IV

PART A

(Para 2.18)

LABOUR PENDENCY IN SUPREME COURT AS ON 1ST OCTOBER, 1987 UNDER ARTICLE 136

Year	Labour		
	Ready	Not Ready	Total
	(1)	(2)	(3)
1973	3	1	4
1974	—	1	1
1975	2	4	6
1976	5	1	6
1977	24	8	32
1978	7	33	40
1979	25	48	73
1980	27	23	50
1981	21	20	41
1982	41	23	64
1983	04	80	84
1984	04	77	81
1985	12	52	64
1986	18	45	63
1987	05	76	81
TOTAL ..	198	492	690

PART B

Paras 2.18/4.8)

Number of Regular hearing of Non-Constitutional Labour matters pending in Supreme Court as on 1-1-86—Age-wise

Year	Labour
1969	—
1970	—
1971	3
1972	—
1973	6
1974	4
1975	7
1976	11
1977	36
1978	42
1979	74
1980	93
1981	48
1982	69
1983	94
1984	123
1985	388
Total ..	953

APPENDIX IV

(Para 3.2)

Statement in reply to parts (a) & (b) of the Lok Sabha unstarred Question No. 1793 for 18-11-87

STATEMENT I

Pendency of cases in the High Courts arranged in descending order

Sl. No.	Name of High Court	No. of cases pending	As on
1	Allahabad	288060	30-6-86
2	Madras	187250	31-12-86
3	Calcutta	156447	31-12-86
4	Bombay	133245	30-6-87
5	Kerala	120890	30-6-86
6	Andhra Pradesh	86137	30-6-87
7	Delhi	77191	30-6-87
8	Karnataka	66741	31-12-86
9	Patna	56904	31-12-85
10	Madhya Pradesh	53888	31-12-86
11	Punjab & Haryana	53568	30-6-87
12	Gujarat	52623	30-6-87
13	Rajasthan	48921	31-12-85
14	Orissa	37854	30-6-87
15	Jammu & Kashmir	35945	30-6-87
16	Gauhati	17880	31-12-86
17	Himachal Pradesh	8820	31-12-86
18	Sikkim	36	30-6-87
	Total	14,82,450	

APPENDIX V
(*Para* 4.7)
(*Para* 2.18)

Statement of cases under the Labour Laws pending in High Courts from 1977 to 1985

Name of the High Court	1977	1978	1979	1980	1981	1982	1983	1984	1985
1. Bombay	1109	1346	1308	1078	7184	—	2697	3061	3226
2. Sikkim	—	—	—	—	—	—	—	—	—
3. Himachal Pradesh ..	—	—	—	6	5	5	12	15	17
4. Orissa	—	37	76	115	131	301	1345	1174	803
5. Patna	136	180	173	245	350	—	462	471	534
6. Punjab and Haryana ..	—	—	—	—	—	552	603	671	919
7. Delhi	681	674	813	842	761	—	830	885	900
8. Kerala	—	234	214	290	356	300	615	661	895
9. Gujarat	—	54	151	146	233	637	976	1410	1991
10. Madhya Pradesh ..	—	—	—	—	—	—	—	—	—
11. Gauhati	—	—	—	47	69	70	15	25	32
12. Jammu & Kashmir ..	—	—	—	—	49	—	—	—	—
13. Allahabad	627	610	676	685	1119	1166	1249	1675	1961
14. Andhra Pradesh ..	—	324	367	503	730	691	753	916	1215
15. Madras	1314	736	711	1105	1332	—	—	—	—
16. Rajasthan	—	192	280	363	347	635	174	258	365
17. Karnataka	—	434	579	468	735	508	1432	2381	1960
18. Calcutta	—	296	376	444	334	631	—	—	—
Total ..	3867	5317	5724	6337	8155	5796	11145	13603	14818

ANNEXURE TO APPENDIX IV

Matter under Labour Laws pending in the High Courts (as supplied by Deptt. of Justice)

Pending as on 1-1-85	Instituted during the year 1985	Disposed of during the year	Pending as on 31-12-85
13545	8262	4557	17250

APPENDIX VI

(Para 5.22)

List of Labour Laws indicating the provisions regarding settlement of disputes and appellate authorities

Sl. No.	Name of Act	Provisions regarding original Authority	Authority deciding disputes	Provisions regarding Appellate authority	Appellate Authority	Cognizance
1	2	3	4	5	6	7
1	Apprentices Act, 1961	20(1)	Apprenticeship Adviser	20(2)	Apprenticeship Council	—
2	Beedi and Cigar Workers (Conditions of Employment) Act, 1966.	4	Competent Authority	5	Authority specified by the State Government	—
3	Beedi Workers Welfare Cess Act, 1976	—	—	—	—	—
4	Beedi Workers Welfare Fund Act, 1976	—	—	—	—	—
5	The Indian Boilers Act, 1923	6	Inspector	19	Chief Inspector	—
6	The Bonded Labour System (Abolition) Act, 1976	10 21	District Magistrate Executive Magistrate or Judicial Magistrate	—	—	Cr. P.C. provisions are attracted
7	The Children (Pledging of Labour) Act, 1933	—	—	—	—	—
8	Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981.	4 5	Conciliation Officer Tribunal	—	—	Revisional powers with the High Court No court should take cognizance of offence except on a complaint made with permission of State Government
9	Cine-Workers Welfare Cess Act, 1981	—	—	—	—	—
10	Cine Workers Welfare Fund Act, 1981	—	—	—	—	—
11	Coal-Mines Labour Welfare Fund Act, 1947	—	—	—	—	—
12	Coal-Mines Provident Fund and Miscellaneous Provisions Act, 1948.	—	—	—	—	—

13	Collection of Statistics Act, 1953	—	—	—	—	No prosecution will be made without the permission of the Statistics authority.
14	Contract Labour (Regulation and Abolition) Act, 1970.	S. 6	Registring Officer	S. 15	Appellate Officer	Prosecution may be launched with the previous sanction of the Inspectors.
15	Dangerous Machines (Regulation, Act, 1983	S. 5	Controller	34	State Government	Complaint by the Controller will be taken cogfiisance by the Court.
16	Dock Labourers Act, 1934	3	Inspectors	—	—	No prosecution except with the previous sanction of the Inspector.
17	Dock Workers (Regulation and Employment) Act, 1948	—	—	—	—	Cognisance of offence on the report of the officer or Inspector.
18	Emigration Act, 1983	S. 15	Competent Authority	S. 23	Central Government	Offences under the Act are cognisable S. 26
19	Employees' Provident Funds and Miscellaneous Provisions Act, 1952.	S. 5A 5B 5C	Central/State Board	—	—	Prosecution with the previous sanction of Central Provident Commissioner.
20	Employees' State Insurance Act, 1948	S. 54	Medical Board	54A	Medical Appeal Tribunal or Employee's Insurance Courts.	—
21	Employees' Liability Act, 1938	—	—	—	—	—
22	The Child Labour (Prohibition and Regulation) Act, 1986	S. 17	Inspector	—	—	No court inferior to that of Metropolitan Magistrate shall try the offence.
23	Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.	—	—	—	—	No prosecution shall be instituted except with the permission of the officer authorised by Government.
24	Equal Remuneration Act, 1976	S. 9	Inspector	—	—	Do.
25	The Factories Act, 1948	S. 8	Inspector	S. 107	Prescribed Authority	—
26	Fatal Accidents Act, 1855	—	—	—	—	—
27	Industrial Disputes Act, 1947	7A 7B	Tribunals National Tribunals Courts	—	—	—
28	Industrial Disputes (Banking and Insurance Companies) Act, 1949.	—	—	—	—	—
29	Industrial Disputes (Banking Companies) Decision Act, 1955.	—	—	—	—	—

APPENDIX VI—*concld.*

1	2	3	4	5	6	7
30	Industrial Employment (Standing Orders) Act, 1946.	S. 5(2)	Certifying Officer	S. 107	Prescribed Authority	No prosecution to be launched except with the sanction of appropriate Government.
31	Industries (Development and Regulation) Act, 1951.	—	—	—	—	—
32	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service Act, 1979.	S. 7	Licensing Officer	S. 11	Appellate Officer	—
33	Iron Ores Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976.	—	—	—	—	—
34	Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976.	—	—	—	—	—
35	Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.	—	—	—	—	—
36	Maternity Benefit Act, 1961	S. 14	Inspector	—	—	Cognisance of offence with the previous permission of Inspector.
37	Mica Mines Labour Welfare Fund, Act, 1946	S. 5	Inspector Welfare Administration	—	—	—
38	Mines Act, 1952	S. 5	Chief Inspector Inspector	—	—	—
39	Minimum Wages Act, 1948	S. 19	Inspector	S. 20	Commissioner for Workmen's Compensation.	—
40	Motor Transport Act, 1961	S. 4	Chief Inspector Inspector	—	—	Prosecution to be launched with the previous sanction of Inspector.
41	Payment of Bonus Act, 1965	S. 27	Inspector	—	—	No court shall take cognisance of offence except with the permission of Labour Commissioner.
42	Payment of Gratuity Act, 1972	S. 3 S. 7	Controlling Authority Inspector	S. 7 (7)	Appropriate government	—

43	Payment of Wages Act, 1936	S. 15	Presiding Officer of any Labour Court or Industrial Tribunal or Commissioner for Workmen's Compensation.	S. 17	Court of Small Causes in Presidency Town and Distt. Court elsewhere.	
44	Personal Injuries (Compensation Insurance) Act, 1963.	—	—	—	—	—
45	Plantations Labour Act, 1951	S. 3A	Registering Officer	S. 3-C	Prescribed Authority	
46	Sales Promotion Employees (Conditions of Service) Act, 1976.	S. 8	Inspectors	—	—	Cognizance of the offence will not be take unless made within 6 months. S. 11.
47	The Trade Unions Act, 1926	S. 3	Registrar of Trade Unions	S. 11	High Court in Presidency towns or Principal Civil Court of Original Jurisdiction elsewhere.	Previous sanction of Registrar is necessary for prosecution.
48	Weekly Holidays Act, 1942	S. 7	Inspector	—	—	—
49	The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.	—	—	—	—	—
50	The Working Journalists (Fixation of Rates of Wages) Act, 1958.	—	—	—	—	—
51	The Workmen's Compensation Act, 1923	S. 19	Commissioner for Workmen's Compensation	S. 30	High Court	No prosecution shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognizance of any offence unless complaint thereof is made within six months of the date on which the alleged commission of the offence came to the knowledge of the Commissioner.

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