CHAPTER VI
THE LEGAL ADJUDICATION SYSTEM

The ESIS has an important external linkage with the Law Courts. They are required to interfere whenever an aggrieved party (Corporation, employers or employees) approaches them in connection with any of the following:
1) Coverage and non coverage of establishments
2) Settlement of cash claims
3) Dissatisfaction with the award given by the Medical Board
4) Recovery of arrears of contribution due from the employers (Bhatnagar, 1985).

Any Social Security system needs prompt and judicious settlement of disputes. While both the Corporation and the employer can afford prolonged litigation but the worker would always prefer an early decision and sensitive adjudication machinery. Therefore, an abnormal delay in the finalisation of legal proceedings harms the interest of the beneficiary. This Chapter examines the ability of the legal redressal machinery in Faridabad district to provide justice to victims of Occupational Diseases and Injuries.

THE ESIS ADJUDICATION SYSTEM

Section 54A of the ESI Act has prescribed a two tier system for appeals against decisions of Medical Boards viz Medical Appellate Tribunal (MAT) and Employees' Insurance Courts (EI Courts).

Medical Appellate Tribunals

Regulation 73 of The ESI General Regulations state that the State Government will constitute a MAT comprising a Judicial officer, a Medical expert and a Trade Union leader. An aggrieved worker or the Corporation can file an appeal against the decision of the medical board to the MAT within a period of 3 months of the decision.

The legacy of setting up Appeal Tribunals has been inherited from the British. In England, almost all disputes are settled by administrative tribunals which are internal to the scheme itself. These tribunals consist of representatives of workers and employers with an
impartial chairman appointed by the State (Choudhuri, 1966, page 135-136). In these tribunals legal formalities need not be observed and hence they are expected to render speedy justice at low costs. It is also claimed in their favour that they are more accessible to all claimants and that being composed of experts in the matter (and not merely men in the legal profession as in the case of ordinary courts), they can deal with the complicated nature of cases demanding technical knowledge and industrial experience in a more satisfactory manner than ordinary law courts. The Franks Committee (1955-57) which conducted a review of the working of such administrative tribunals in UK was most impressed with their efficiency and did not desire any structural changes (Sir Oliver Franks, 1957).

In Faridabad (and for that matter Haryana), the MAT has been a non starter essentially due to lack of political will on the part of the State Government. Despite more than 30 years since the establishment of this State, the Government has failed to set up even a single MAT in the entire State. It was learnt from the ESI HQ that in fact very few State Governments have taken any initiative to set up these statutory bodies. As a result, there are hardly any MAT’s in the country. Due to lack of response from the State Governments, the ESI Corporation too has stopped pressing them on this subject. The ESI HQ does not possess even a list of States where MAT’s are functional. However, a Senior ESI Official who has been posted in States where MAT’s were functional was full of praise for them due to the following reasons:

1) The MAT’s dealt exclusively with appeals against medical boards and hence could apply their mind freely to such cases. They were not burdened with any other work.
2) The MAT’s would function regularly on the appointed day in the RO/LO/ESI medical institution and not in law courts. Thus they were easily accessible to workers. Since lawyers are not permitted to appear before the MAT, this prevented exploitation of the workers. The worker did not have to spend a penny on the matter as he could plead his case on his own.
3) The procedure was short and decisions were communicated on the spot itself.
4) Workers interests were well protected as a Trade Union leader was always a member. Moreover, independence of the MAT was assured as the medical member was always a non ESI doctor.
In Faridabad, workers have been denied this easily accessible, inexpensive and speedy redressal machinery due to the apparent indifference of the State Government. The RO Faridabad confirmed that there is no proposal pending with the State Government regarding establishment of MAT's in the State.

**Employees' Insurance Court**

Section 54A of the ESI Act lays down that a Worker or the Corporation can file an appeal against the decision of the medical board/ MAT to the EI Court within a period of 3 months of the decision. The aim of the Legislature in permitting appeals only to EI Courts was to ensure speedy disposal of such cases. It was accordingly expected that all State Governments will set up exclusive EI Courts which deal only in cases pertaining to the ESIS. Unfortunately, the State Governments have shown no enthusiasm in the matter. Only, West Bengal has full time exclusive EI Courts (Mallick, 1995). All other States have part time EI Courts. This part time Court is usually presided over by a Senior Sub Judge (as in Faridabad). It hears all types of civil and criminal cases, like any other Court. It is called EI Court only because no other Court in Faridabad district can hear cases pertaining to the ESIS. The ESIS Review Committee (1966) found the working of these part time EI Courts most unsatisfactory as proceedings were generally prolonged, cumbersome and formal and that the Courts followed the common patterns of ordinary Civil Courts, which were not suited to a scheme of social insurance. It lamented that even simple matters took years to settle. They had advocated establishment of full time EI Courts and also necessary amendments in the Act, so that the EI Courts follow a summary procedure, with a view to give a final decision within 3 months of the Suit (Government of India, 1966, page 210). The High Powered Subcommitteee on amendments to the ESI Act (1977) went one step further (ESIC, 1978, page 166-206). It recommended that amendments be made so that issues like coverage and recovery of arrears of contribution are finally decided by the ESI Corporation itself. This would enable the EI Courts to exclusively handle appeals against medical boards and non payment of cash benefits, thus ensuring expeditious disposal of cases pertaining to workers. However, these recommendations remained only on paper. Neither, has the ESI Corporation initiated any legal amendments on the subject, nor have the State Governments complied with the request to start full time and exclusive EI Courts.
One cannot therefore expect the EI Court Faridabad to dispense quick justice to the working class. Things are so slow that 3 Cases of appeals against decisions of medical boards filed by the workers in 1994-95 have been pending till 1999 (Table 6.1). Since ESIS cases are treated at par with other civil and criminal cases in this Court, workers suffer the same harassment as any other litigant who approaches law courts in India viz delay due to lawyer’s strikes, non appearance of advocates of either party on some excuse, absence of judge, excess workload, priority given to bail applications, non appearance of witnesses, etc. The delay in the judicial process does not affect the employers or the ESI Corporation. Cases against employers primarily pertain to non payment of ESIS contributions. The longer the delay in decision, the longer the defaulting employer can hold on to the contributions. Besides, unlike the worker, he can also afford the costs of a protracted litigation. The ESI Corporation has employed a battery of legal inspectors and hires advocates on its panel to fight its cases in the EI Court. Thus, it is well equipped to handle protracted litigation.

**TABLE 6.1: STATUS REPORT OF APPEALS FILED BY WORKERS AGAINST ESIS IN EMPLOYEES' INSURANCE COURT FARIDABAD FROM 1994-95 TO 1998-99**

<table>
<thead>
<tr>
<th>Subject Wise Cases Filed</th>
<th>Cases Decided in Favour Of</th>
<th>Cases Pending*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ESIS</td>
<td>WORKER</td>
</tr>
<tr>
<td>MB EI DB OTHER CB MISC</td>
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<td></td>
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<tr>
<td>95-96 5 2 0 1@ 0 8 1 0 7</td>
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<tr>
<td>96-97 3 1 1 1&amp; 1£ 7 0 0 7</td>
<td></td>
<td></td>
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<tr>
<td>97-98 2 0 0 0 2 0 0 0 2</td>
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<tr>
<td>98-99 9 1 1 0 11 12 0 0 12</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* As on 31 Mar 1999

Legend: @ = Sickness benefit, &=non convening of medical board, £= medical negligence, ! =delay in providing advance for medical treatment MB= against decision of medical board, EI= against ESIS not admitting injury as Employment Injury, DB= not admitting Dependent Benefit, OTHER CB= not admitting other cash benefits, MISC= Miscellaneous

Source: Compiled from EI Court Case files maintained by RO Faridabad

The long delays in the EI Court force many workers to accept the decision of the medical board/ Corporation as a 'fait accomplis', for contesting a suit in the EI Court would mean spending anything between Rs 2000- 5000 as lawyer’s fees alone. They thus accept 'injustice' at the hands of the Corporation. Thus, Madho Lal, despite being awarded disability compensation much lower than what he deserved, did not contest the matter further. He had spent enough money already in protracted litigation with the ESIS, to force the latter to even consider his case for compensation. Trade Union leaders and legal
officials were in agreement that litigation in the EI Court is an expensive 'hobby' which workers can ill afford. Analysis of the findings reveals the following:

1) Table 6.1 shows that on an average only 7 workers have filed appeals annually against the ESIS in Faridabad in the last 5 years. This low number of litigations by workers in EI Courts Faridabad should not be mistaken as a sign of satisfaction. Long delay in deciding cases discourages the workers from approaching the EI Court. This aspect has already been discussed above.

2) The 3 cases decided in favour of the Corporation (and against the Workers) shown in Table 6.1, have not been on merits. One of these cases was dismissed in default as the worker was unable to pay the fees of his advocate. Legal officials pointed out that a large number of cases filed by workers get adjourned as the advocates representing the workers do not turn up due to non payment of professional fees. There is no free legal aid available to the workers in Faridabad. They thus lose out on default due to their economic condition. In the other two cases, the EI Court exhibited its lack of sensitivity towards the socio economic circumstances of a poor worker, while refusing to grant condonation of delay of barely four months in filing the cases. One of this pertains to an employee named Tasduk. Tasduk, sustained an Employment Injury on 30/7/92 while working with M/s Somany Pilingtons Ltd. He was referred to Medical College Rohtak by the ESIS, where he was treated for, "Post Traumatic Chronic Osteomyelitis left femur and tibia leading to stiffness left knee; Disability - 80%". The worker, who has been dismissed from his job, cannot even ease himself without help, cannot bend his knee and ankle and his left leg is as straight as a rod. The medical board ESI held on 15/3/95 remarked, "Injury left hand and leg; left hand malunited with fracture both bones left forearm leading to limitation of supination and pronation movement; left leg --recovered completely; Disability – 5%". The medical board proceedings were received by the worker on 21/4/95. He could have appealed within 3 months. However, he filed the same only on 30/11/97. He pleaded for condonation of delay on grounds of his poor physical condition and illiteracy. This was strongly resisted by the Corporation. The Court dismissed the worker’s appeal on this accord itself. The worker has been therefore forced to file a further appeal in the High Court in 1997. The same is pending till date. That the ESI Corporation should project such a technical plea of ‘limitation’ as a defence rather than permitting the case to be decided on merits exposes its anti worker stance. The dismissal of these two cases is also against the principles
enunciated by the MP High Court in ESIC vs Dhanubai (Smt) (51 FLR 64 (MP)). In this case the EI Court had granted condonation of delay to the worker. But the ESIC appealed against the same to the High Court. The High Court while dismissing the Corporation's appeal observed, “It is neither intended by law nor desirable for the Corporation to raise technical pleas and what is more unfortunate is that such a plea is taken by a statutory Corporation like ESI Corporation whose very existence is for the purpose of confirming certain benefits to the employees. It is further observed that even pleas regarding limitation have been raised by the Insurance Corporation before the Insurance Courts so as to defeat the claims of the respondent and suffice it to say that such pleas even if available should not be taken by the bodies like appellant ESI Corporation while dealing with social security measures”.

3) The ignorance of advocates, legal inspectors and judges about this landmark judgement has done injustice to these two workers in Faridabad. The Corporation has a large legal branch at its HQ in Delhi and in its RO Faridabad. After receiving such severe strictures by the MP High Court in 1981, it was expected that the ESI Corporation issue instructions to all its offices not to take technical pleas of ‘limitation’ before EI Courts in future. This has not been done. Contrast this with the approach taken by the Corporation on the judgement of the Supreme Court in 1996, deciding that 'accident sustained while commuting to work is not an Employment Injury' (presented earlier). Since this judgement meant 'financial savings' to the Corporation, it was widely circulated to all the RO’s with specific instructions to follow its guidelines strictly in future. This shows the tendency of the Corporation to only circulate those judgements that help in adding to its ‘coffers’.

4) Majority of the appeals by workers are against decisions of the Medical Boards (Table 6.1). In a large number of cases workers have gone to the EI Court on the plea that the disability percentage given by the medical board is much lower than that given on the disability certificate obtained by them from the local Civil Surgeon, or that the same is not in conformity with the opinion of the treating ESI doctor. The Corporation in its defence states in the Court that it is only bound by the medical board’s opinion and all other certificates are superfluous. The Civil Surgeon Faridabad is the head of all Medical and Health services in the district. It is in this capacity that he initiates the Annual Confidential Reports of even the MS’s of the two ESI Hospitals. The treating ESI doctors are made to express their opinion for the information of the medical board
on a Form prescribed by the ESIS regulations viz B.1.1.(a) (Appx 3). The Corporation has however, not thought it fit to hold a coordination meeting of the Civil Surgeon, the ESI MO’s and the members of the medical board to find out the reasons for this variance in medical opinions.

5) The judgement delivered in the case of Madho Lal by EI Court Faridabad (Appx 7) demonstrates the obstinate attitude of the Corporation to continuously fight rather than give the worker his legitimate dues. It is a severe indictment and highlights the tendency of the Corporation to deprive the workers. That this phenomenon is not confined to ESIS Faridabad alone can be seen from the Supreme Court’s observations in ESI vs Amir Hassan (AIR 1981 SC 174). Expressing serious dissatisfaction with the litigatious mentality on the part of the ESI Corporation while rejecting a Special Leave Petition filed by it against a worker, the Supreme Court observed, “One cannot appreciate the too legalistic approach in the name of some conflicting decisions to force a workman to come to the Supreme Court and that a time has come to cry a halt to this litigatious mentality on the part of a Public Corporation set up to achieve the goals enumerated in the Constitution”.

6) None of the medical board members are aware of the judgements in appeal that have gone against the Corporation in EI Court Faridabad. Analysis of Court cases is not carried out by the legal branch of the RO. They deal with each case at an individual level. Even if strictures are passed by the Court against the Corporation, these remain merely on the individual case file and are not communicated further. As a result the medical boards do not alter their style of interpretation and evaluation of ‘loss of earning capacity’ for future medical boards. So even a ‘speaking judicial order’ passed by the EI Court at Faridabad helps only the ‘individual worker’ who won the case and is of no use to his colleagues (Appendices 7 and 10). Past judgements don’t seem to act as guiding principles for future, so that litigation is minimised. The following landmark judgements of the MP High Court (discussed in detail earlier) are not in the knowledge of the members of the medical board Faridabad/ Special Medical Board for Occupational Diseases:

a) Munshi Giri vs ESIS (1988 Lab IC 320): While interpreting Schedule II of the ESI Act (Appx 1), the judges noted that the medical board should take notice of the note below Schedule 2 and give full benefit of loss of a limb or member if that portion is dysfunctional even without amputation.
b) ESIS Indore vs Smt Siyara CJG Chitre, MP (HC). Indian Factories Journal and Factories Journal Reports, Vol 94, Pt 8, 19/2/99, page 122) : The Court observed that the Special Medical Board should not be tied down by technicalities of ‘periods of continuous employment’ while awarding compensation to a case of Occupational Disease under Part C of the Third Schedule (Appx 4).

7) Rajdev Yadav’s case (awarded Nil disability despite complete hearing loss in one ear—presented earlier) shows that the Corporation makes it a prestige issue to win once a worker approaches the EI Court. In this case, the ESIC’s own Counsel had brought to the notice of the Corporation, his honest opinion that injustice had been done to the worker and so the Corporation should settle the matter out of Court. However, the executives of the ESIS exhibited a bureaucratic approach and did not accept this opinion. The Corporation is an institution built on workers’ money. Yet it is neither compassionate nor considerate towards them.

8) On some occasions, the Court summons the medical board members to render witness in the case. We found that the RO insists that the summoned member meet the ESI advocate in the latter’s chamber prior to tending his statement in the EI Court. The ESI advocate then briefs him as to what kind of statement the member is expected to make in Court. The medical board members are supposed to be independent witnesses as their opinion in a medical board cannot be over ruled even by the DGESI. This attitude of the Corporation to influence the medical board members may save the ESIS from embarrassment, but it is ethically, morally and legally incorrect. The Case Report of Mahabir Prasad will illustrate this. Mahabir Prasad was working in M/s Escorts Ltd Tractor Division, Plot No 2, Sector 13, Faridabad, as an operator since 18/6/92. He sustained injury as the job with main drill came out and hit him on his face with injury on lip, chin and lower part of jaw and teeth. He suffered fracture of the lower jaw with broken teeth. There were deep cut marks on his, lip, jaw and teeth and he had difficulty in eating food due to his injuries. The accident took place on 10/6/94. He was treated at the ESI Hospital, Sector 8. The moment he stopped getting his TDB, he was dismissed from service. His Form B.1.1.(a) filled up by the treating doctor indicated, “Injury jaw and lip with fracture tooth and mandible; wiring done; has toothache and malfunction of face”. The medical board held on 21/4/95 however gave him “Nil” disability. The worker filed an appeal before the EI Court on 22/1/96. We witnessed the recording of the opinion of a member of the medical board before the EI Court. The member was
first briefed by the ESI advocate in the latter's chamber, before proceeding to the Court. We asked the reason for this practice. We were informed that this practice has started, after the Chairman of the medical board put the ESI Counsel in an awkward position as she blurted out the truth, before the EI Court. The Chairman on a pointed query by the worker's advocate in an earlier case had told the Court that she herself only signs the papers and only the concerned specialist examines the patient during the medical board proceedings. This put the ESIS in a tight embarrassing corner as in their reply they had taken the stand that the worker was examined by all members of the medical board. Therefore, the ESIS has started this practice of ‘doctoring’ independent witnesses, so that they do not tell the truth in the Court something that could become inconvenient for the Corporation. In this case, the medical board member Dr Chugh, an Orthopaedic Surgeon was asked the reason for giving “Nil” disability, despite the serious injuries on the face of the worker. Dr Chugh replied nonchalantly, “A man works with his hands and his face. So mere disfigurement of face is no loss of earning capacity”. He further brushed aside as “irrelevant” the fact that the worker has lost his job and also that he will find it difficult to get married due to this disability. The case is still pending.

9) The Corporation takes contradictory pleas depending on the circumstances of each case. In case a worker pleads for higher compensation on the grounds that he has been dismissed from his job on account of his injury, the Corporation puts up a defence, that the same is not a ground for deciding ‘loss of earning capacity’. However, if a worker is retained by the employer despite his disability, the Corporation puts up the defence that compensation is adequate and there is no loss of earning capacity since the worker is carrying on performing his original work. The Case Report of Ram Bachan is illustrative. Ram Bachan (aged 36 years) son of Shri Ram Prasad resident of Dayal Nagar PO Amar Nagar Faridabad is working with M/s Universal Convoyer Belting Ltd 10-11 Gurukul, PO Amar Nagar Faridabad. On 17/11/89, while working on the roller, he met with an accident. His left hand along with the fabric went inside the squeeze roller, as a result of which he sustained crush injury leading to contracture of the left thumb and the left index finger. The medical board examined him on 14/9/90 and gave him a provisional disability of 10%. This was reviewed on 22/3/1991 and reduced to 1% by the same board with the remarks, “Left Thumb and Left Hand Index Finger – 1st web contracture”. The individual’s left hand and index finger were however rendered absolutely useless as a result of this contracture. Hence, as per the note below the
Second Schedule ESI (Appx 1) it amounted to total loss of the thumb and the index finger and so the individual should have got 44% (Serial 11 + Serial 33 of the Second Schedule). Aggrieved, he filed an appeal in the EI Court Faridabad. The ESIS strongly resisted the petition interalia, on the grounds that the individual has minimal loss of earning capacity as he continues to work in his same employment. After incurring heavy litigation expenses and frequent delays, the EI Court finally pronounced its verdict in favour of the individual upgrading his disability from 1% to 44% on 21/12/94. This is a speaking judgement calling upon the medical board to consider the provisions of the Note below Second Schedule prior to passing judgement on loss of earning capacity. It also dismisses as irrelevant the ESI Corporation plea that an individual who continues with the same employer after his injury is entitled to minimal compensation (Appx 10). But this judgement has only benefited Ram Bachan. The medical board in Faridabad continues to ignore the note below the Second Schedule ESI and the Corporation continues to raise frivolous objections in its replies to the EI Court, on litigations filed by workers in the EI Court. The Andhra Pradesh High Court while interpreting compensation awarded to a driver under WCA upheld the order of the Commissioner in giving 90% disability to an injured driver, even though the doctor had fixed the disability at 50% only. The Court said that as the individual suffered injuries to both, one thigh and right hand, he was incapable of driving any vehicle and hence had lost his livelihood completely viz loss of earning capacity. This the Court said is in view of subsection 2(1) of the Act which defines total disablement as “such disablement as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement (11 LLJ (1995) AP (HC)”).

10) The medical board at Faridabad however, does not even bother to find out the nature of work being performed by the individual at the time of the accident. It is thus in no position to evaluate the effect of the injury on the future earning capacity. They only apply the Second Schedule mechanically (Appx 1). The board does not appreciate that the same injury can lead to variable loss of earning capacity in different individuals, depending on the job the individual was performing prior to the injury. The medical board members would be doing a service to the working class of Faridabad if they follow this landmark judgement of the AP High Court in letter and spirit, while carrying out medical boards in the future.
11) The Corporation takes a highly technical view while deciding whether a case should be admitted as Employment Injury or otherwise. This is detrimental to the concept of Social Security. In one case in Faridabad, the Corporation refused to admit a worker’s injury as occupational on the ground that “sustaining injury while going to deposit Provident Form is employee’s work and not employer’s work”. The Corporation in this instance has not appreciated the point that an unemployed worker will never deposit a PF form. It is the duty of the management to deposit the PF form. Hence, if the worker was doing the same it was on behalf of the management. Thus the injury has arisen during and in the course of employment only. Such a worker should have been given his legitimate dues rather than being forced to agitate before the EI Court. In another case, the ESIS Faridabad denied Dependent benefit to the parents of a deceased poor worker who sustained injury in a factory covered by the ESIS. Late Umesh Kumar was working in M/s Grand Prix Fab Pvt Ltd, Plot No 82, Sector 25, Faridabad. He had taken up a contract job in the factory, which involved removing the rust from the iron sheets with his own machine @ Rs 3 per sq foot with effect from 5/9/94. This job was to be performed by him alone. As the factory was covered by ESIS, he filled up his declaration form which was forwarded to the LO in sector 24. He was allotted IP No 6394422, in token of his acceptance as an insured person under ESIS. On 7/9/94, the machine burst and the lid blew up with a gust and struck against his head severely injuring Umesh Kumar. His injury was accepted as Employment Injury by the LO. He was rushed to ESI Hospital NH3 and thereafter referred to Safdurjung Hospital, where he succumbed to his injuries on 15/1/95. After his death his dependent parents put up a claim for Dependent Benefit. As all such cases require sanction of the RO his case was forwarded to them with a positive recommendation by the LO. But the RO rejected his case on the grounds that the individual was ineligible for coverage by the ESIS. They said, “Individual is not an employee under section 2(9) of the ESI Act, as much as he was not working under contract of service and rather he was doing the job under contract for service on agreement arrived with the employer on term of labour charges”. This has forced the poor parents of the deceased workers to file a case in the EI Court against the Corporation on 8/2/96. The case is pending. Once their LO has given him an IP number, yet the RO challenged the issue of coverage after the death of the worker, even though his office had not objected to his contribution to ESIS. Their interpretation
of section 2(9) of the ESI Act is not correct in view of the following judgements of the higher judiciary:

- In Dhrangadhara Chemical Works Ltd vs the State of Saurashtra, the Supreme Court has opined that the critical test of the relationship of master and servant is the master’s right of superintendence and control of the method of doing the work and so nature or extent of the control must vary from business to business and is by its very nature inapplicable of precise definition (AIR 1957 SC 264). In this case, as the work was being supervised by the management, the relationship of master and servant was well established.

- In Kandaswami Weaving Factory vs Regional Director ESIC, the master had voice in the selection of goods to be manufactured as well as its quality and had also provided that work should be done by the workers in his own premises. It was held by the Madras High Court that it was a contract of service and not a contract for services and the ESI Act was attracted to those employees even though they might be paid at a piece rate basis (1969 Lab IC 362).

- In VP Gopal Reddi vs Public Prosecutor the Supreme Court has held that if the contract work is done in the factory and supervised by the management, then the relationship of servant and master is established (1970 II LLJ 59).

12) The ESI Corporation does not give any disability benefit in case of disfigurement of the body without damage to the limbs. In the Indian labour market where there is a huge gap between supply and demand, a disfigured person stands no chance of getting a new job. Hence, disfigurement per say should qualify for interpretation as ‘loss of earning capacity’. The statement made in the EI Court by a member of the medical board in the case of Mahabir Prasad, who had broken his jaw and teeth in an occupational accident viz “there is no loss of earning capacity as a man works with his hand and not with his teeth”, reflect the insensitivity of the ESI to workers problems.

13) The Corporation while filing its reply in the EI Court Faridabad always prays for special compensatory costs from the worker. Fortunately, the EI Court even while dismissing workers’ appeals has never awarded costs to the Corporation, as it is aware of the poor economic condition of the worker. The Supreme Court has gone a step further. Even while upholding the appeal of the Corporation it has directed the latter to pay the costs of the litigation to the worker (1996 (74) FLR 2326 (SC)). In the light of
this Supreme Court judgement, it should be mandatory for the Corporation to bear the complete costs of such litigation expenses, regardless of its outcome.

DEFAULT IN ESI CONTRIBUTIONS

Recovery proceedings are launched by the Corporation in E1 Courts, against the employers who default in paying ESI contributions. The quantum of such arrears is increasing steadily (Table 6.2).

<table>
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Source: ESI Corporation, Annual Reports & RO ESI Faridabad

55.03% of the above amount has been practically written off by the ESIS as non recoverable dues. This is because of Stay Orders by Courts, factories gone under liquidation, recovery being barred by any Act of the Central or State Government, or factories declared sick by the BIFR. In the case of Jhalani Tools Ltd Faridabad, it was observed that not only has the factory failed to pay wages to the workers but also not deposited their ESI dues. Legally, the latter constitutes Criminal Breach of Trust and conviction under the same can result in a prison sentence for the management. However, the ESI Corporation has followed the path of least resistance to protect its interests. Rather than prosecuting the management for non-payment of dues, it has chosen to deny ESI benefits to the workers of the factory on the ground that their management has not deposited ESI dues. The ESI Corporation has failed to appreciate that the onus of collecting ESI dues wrests with them and not with the worker. Can a worker who has failed to even get his legitimate wages be expected to force the management to timely deposit his ESI dues?

Till 1992, the Deputy Commissioner of the district was empowered to recover the arrears. But due to their ineffectiveness, the ESIS created its own full fledged machinery comprising Recovery Officers and Inspectors for recovery of the same. The Consultative Committee of Parliament has commented that the default in ESIS dues is a social crime and is a sign of corporate delinquency. It went on to add that, if the law enforcing agencies
failed to curb the rising violation and protect the masses, there is going to be further erosion of faith in the system. It therefore expected the Government to lose no time in deciding its response to deal with the situation. Among the corrective measures suggested include making non payment of ESIS dues an economic offence and banning defaulting units from getting loans from Public Sector undertakings and financial institutions (Min of Labour, 1994). However, neither the Government nor the ESI Corporation has taken any action on these recommendations.

CONSUMER PROTECTION ACT

The Consumer Protection Act provides a quicker redressal mechanism to the workers than the EI Courts. Since 1993, 27 cases have been filed in the Consumer Courts in Haryana against the ESIS. These essentially relate to medical negligence and non payment of entitled cash benefits. The Case of MR Gupta provides an illustrative example of how a worker got quick justice within one year from the Consumer Court. MR Gupta has been employed as an accountant by M/s Rana Industrial Engineers (Pvt) Ltd, Panchkula, since 1/8/91. His company is covered by the ESIS. He was going to the Syndicate Bank to deposit money pertaining to his company when he sustained fracture of the right hand in a road accident on 4/8/93. He was taken to the local ESI Dispensary at around 1545 hrs which was found to be closed. Thereafter, he went to the local Government Hospital viz General Hospital at Sector 6. He was advised rest from 5/8/93 to 19/8/93 by the Civil Surgeon of the District. The worker preferred a claim of Rs 900 for loss of wages for the period of rest, with the LO ESI. This was recommended and forwarded to the RO Faridabad. The RO rejected the claim on the grounds that it is not bound to accept the medical certificate of a non ESI doctor, and accordingly informed the LO in 1995.

Aggrieved, Gupta, filed a suit against the RO Faridabad in the District Consumer Court, Panchkula under the Consumer Protection Act in Jan 1997, demanding costs of treatment, loss of wages and costs of litigation. The Consumer Court decided the case in favour of Gupta (on 3/12/97) and recorded that the RO had been found gravely deficient in providing service. It awarded costs of treatment of Rs 2000, loss of salary of Rs 900 and Rs 500 as costs of harassment to the worker. The Court also passed severe strictures on the RO for the following:
1) Rejecting the Civil surgeon's certificate, despite the provisions of Rule 53 of the ESI Regulations, that permit acceptance of alternative evidence.

2) Not considering the fact that the individual was forced to go to a non ESI Government Hospital as the only local ESI medical institution viz ESI Dispensary was closed.

3) Taking 4 years to settle a trivial case.

The RO Faridabad filed an appeal in the State Consumer Redressal Commission which was dismissed on 28/10/98. In this case even the appeals filed in higher forums by the ESIS were disposed of within reasonable time.

The Corporation has however not taken these indictments by Consumer Courts in the right spirit. Instead of pulling up its socks so that quality of services rendered are improved, it has chosen a path of confrontation. There is no ambiguity that the Consumer Protection Act is applicable to the ESIS, as it is not a free service. Workers pay contribution to get their entitled benefits. Nonetheless, the Corporation has decided to challenge the applicability of this Act to the ESIS by filing a Special Leave Petition in the Supreme Court (Appx 6). This is a classical example of using worker’s money against them. Should the Supreme Court decide in favour of the Corporation (though unlikely), this channel of expeditious and cheap justice will be permanently closed to the working class.

WORKMEN'S COMPENSATION ACT IN FARIDABAD

The WCA is applicable to only those factories and establishments, which are not covered by the ESIS Faridabad. Proceedings under the WCA are conducted in the offices of the four Labour Officers of the Haryana Government located in Faridabad. These Labour Officers are designated as 'Commissioners under the WCA'. They function under the administrative control of a Deputy Labour Commissioner who is located in Faridabad.

The aim of conducting WCA proceedings in a quasi judicial forum (unlike regular Courts) was to ensure quick and speedy justice, as formal proceedings are to be dispensed with in this forum. However, in Faridabad it takes 3-4 years for final adjudication on a case under WCA. The Dy Labour Commissioner informed that the employees commonly took the following pleas to defeat the petition of the disabled worker:

1) That the injured/deceased worker was not his employee,
2) The injury/death took place outside factory premises and hence are not an Employment Injury.

The onus of proving the above rests with the injured worker or the deceased's widow. We were told by lawyers and by workers during our User Survey that this becomes a Herculean task in the case of a casual/contract labour as most of them are not taken by the employer on his muster rolls. Moreover, in such cases other workers do not dare stand up as witnesses for fear of being dismissed by the employer. Industrial units not covered by the ESIS are also so tiny that there are no Trade Unions among the workers. The WCA Court has to thus do a detailed cross examination of witnesses, which is done by the advocates of either party. The proceedings thus become akin to any proceeding in a normal court of Law. This delays the compensation process considerably. We can thus see that while the employers live a luxurious life due to the sweat and toil of the labouring masses, they can go to any length to deny legitimate compensation to him in the case of an Employment Injury.

It was also observed in Faridabad that the Labour Officers designated as Commissioners under WCA and the advocates were also responsible for delaying adjudication proceedings. All lawyers and Labour Officers must be definitely aware that the WCA is not applicable to workers covered by the ESIS. Still, one found that in certain cases like those of Ram Rattan and Rajdev Yadav, advocates advised ESIS covered workers, to file a case before the Labour Officers under WCA against the opinion of the ESI medical board. In case the advocates have tendered wrong legal advice to the client, the Labour Officers can transfer these proceedings immediately to the EI Court. However, they behave like full fledged judges. Superfluous notices are issued to the ESIS, whose legal officers appear and file replies contesting the jurisdiction of the Labour Officer to try such cases. The case is then dismissed or withdrawn by the worker and filed afresh before the EI Court. This leads to avoidable wastage of time and financial loss to the worker. It also gives one the impression that the entire adjudication process in Faridabad does precious little to protect workers rights.
ROLE OF HARYANA LABOUR DEPARTMENT

The functioning of the Factory wing of the State Labour Department has been discussed in Chapter IV. We now consider briefly the role played by the Legal wing. The Labour Commissioner has two Joint Labour Commissioners to assist him on the legal side. Faridabad district has a Deputy Labour Commissioner and four Labour Officers. The role of the latter in WCA proceedings has already been discussed in the previous section. 16 Labour Inspectors comprise the lowermost rung of this hierarchy and are responsible for implementation of all the Labour Laws (with the exception of the Factories Act) in the District.

The Legal wing exists to ensure that the workers get humane conditions of work and are not exploited by their masters. The approach of the Labour Officials in Faridabad is however extremely bureaucratic. The Case of Jhalani Tools Ltd which has been compiled from an NGO called People's Union for Democratic Rights (PUDR, 1997) and our discussion with the management, workers, the Dy Labour Commissioner and Deputy Commissioner, Faridabad is illustrative enough.

Jhalani Tools Ltd is a well-known company, which makes hand tools. The company started its Faridabad operations in 1960. Following mass retrenchment in 1984 the company today has 2183 registered, permanent workers who have served the company for at least 19 years. These workers have not been paid any wages for the last 19 months; and so have been reduced to pulling rickshaws, setting up thelas of petty merchandise, or depending insecurely for survival on other family members. Details of defaults by the company are as follows:

- Non-payment of wages: Wages have not been paid to 2183 workers between March 1996 and September 1997. The average amount gained by the company at the workers’ expense adds up to more than 12 crores.
- Non-payment of bonus: 2183 workers have not been bonus for 2 years. This benefits the company by more than 30 lacs.
- Non-payment of ESI dues: The workers have complained to the Regional Director, Employees State Insurance Corporation that despite having ESI cards they get no medical facilities at ESI hospitals for 3 years now. “On being asked the officials say that the company has not deposited dues”.

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• Non-payment of PF: The current union calculates that Provident Fund amounts have not been deposited since May 1994. PF dues are also missing for 5 years in the mid-eighties. (This is partially confirmed by the company's annual report for 1995-96). According to Labour Department officials, challans have been issued against Jhalani Tools in this regard.

• Non-payment of Gratuity: Workers allege that the company has not paid service gratuity due to them for many years. This too has been confirmed by Labour Department officials.

However, it is the issue of non-payment of wages that is central to the current deadlock prevailing in the Faridabad plant. It is also the issue that bring out the complex role played by various mechanisms of governance and justice, including even trade unions, in helping the company to extract the maximum possible from its workers.

The history of the relationships between workers and management; workers and their unions, since the early eighties, seem to have been problematic. The company has played a visible role furthering, manipulating and gaining from this.

Over the year the unions in Jhalani Tools have not been chosen through election. Instead, barring the odd exception, groups have staked their claim to leadership by collecting in their favour signatures of a simply majority of workers, and sometimes by sheer muscle power. The groups that thus come to power are called "ad hoc committees". It is such groups that negotiate with the management on behalf of workers and formalise labour-management agreements. The Gedore/Jhalani ad hoc committees have mostly been affiliated with CITU (Centre of Indian Trade Union) and sometimes with INTUC (Indian National Trade Union Congress). An example of the manipulative role that Jhalani Tools management has played in the functioning of these ad hoc committees is in the matter of union chanda (contribution). The management deducts the chanda directly out of the workers salaries and hands over a lumpsum to the committee in charge.

The most controversial year in the company's history was probably 1984. In its drive towards automation the management decided on massive retrenchment. In Faridabad as many as 1500 workers were retrenched in one year. According to the company these
workers had opted for the Voluntary Retirement Scheme (VRS). But according to the workers and the press, the company used brute force, the complicity of the then CITU Union and the help of armed police to terrorise the workers into resigning. The presence of police chowki within factory gates in 1984 speaks for itself. Union leaders are alleged to have been directly involved in drawing up lists of workers to be targeted and in aggressive tactics used against the workers. (The President and General Secretary of this union were eventually expelled by CITU’s Delhi Committee in 1985.). Notably, the company, having gained its ends in 1984, today in all its statements and letters to authorities, glosses over that year as the year of “Voluntary Retirement.”

An instance of management-union leaders’ collusion appears to be the 1989 long term agreement which workers today describe as a “terrible agreement”. At that time they were given no idea as to the specific clauses it contained. After the agreement had been signed, at a gate meeting, the leaders read out a certain version of the agreement. The very next day they confessed to individual workers that they had withheld information about three crucial clauses so as to avoid the eruption of workers protest. These 1989 clauses set the precedent for all later settlements. The main point was the linkage of wages to production targets. In 1989, it was agreed that the workers would be given wages only after they produced 200 tons of goods. Secondly, the company refused to take responsibility if there was shortfall in production due to shortage of raw materials and electricity. Thirdly, the company could switch around workers from one job to another, irrespective of their skills.

The impact of the first and second clauses proved to be lethal to workers interests. For example, in May 1992 wages were reduced for non-achievement of targeted production, even though this was due to erratic electric supply. Electricity shortage in effect thus became workers responsibility! The electricity problem grew to such an extent that, according to the management [letter to Deputy Commissioner, 17 October 1986], “there had been long periods of 100% power cuts from 1993 onwards”. Yet in the agreement signed in 1993, there was no attempt to take into account the electricity problem. At the same time the production targets were extended by 25%.
The latest agreement signed on 6th June 1997 once again links wages to production but it nowhere takes into account the lack of raw materials. At the time of signing, the ad hoc committee showed the Deputy Labour Commissioner (Dy LC) authorising signatures from workers in what the Dy LC calls “an irregular format”. Later he received complaint letters from as many as 1600 workers denying that they backed this agreement. The Dy LC formally declared it null and void (circular, 30 July 1997). The Jhalani Tools management, however, is still trying to uphold this officially invalidated agreement. The invalidation of the agreement is explained away as the “pressurising” of the Dy LC by a few disruptive workers.

The Company had a temporary period of ‘sickness’ in 1986. However, it has recovered as, the Annual Report for 1996 states that the company has been consistently earning profits for the last six years and that the net worth of the company is now positive. But whenever the Jhalani Tools management has to answer for workers problem this background of sickness is heavily invoked. The company insists that the workers are mainly responsible for the company’s losses and cites go slows, stoppage of despatch and carelessness in handling material by workers as a cause of heavy damages. The logic of the financial crisis is used to compel workers into agreements such as that of December 1995, in which the ad hoc committee agreed that workers would accept only 50% wages till conditions improved. And, as we shall now discuss, by explaining the present crisis in terms of workers ‘non-co-operation’ and misdeeds the management absolves itself of all responsibility for giving workers their dues.

The three agreements of 1989, 1993 and 1996 (and various interim mini agreements) established the linkage of payment of wages to specified production targets. Simultaneously, by 1996, lack of electricity or generated power, of raw material, and non-maintenance of old machinery were entrenched problems. So was the tradition of late wage payments. For example, wages given in March 1996 were for work done in November 1995. Similarly wages given in May 1996 were for work done in January 1996. The current problem relates to wages for the period March 1996 to September 1997 which, on various grounds, the company refuses to pay.
March 1996 and part of May 1996 were times of no production because of intermittent work stoppage due to workers' anger with the then ad hoc committees. There were resultant leadership changes. Workers did report for duty in April, part of May, and June to August. Lack of raw material remained a serious problem. In this period the management made statements that they had no cash to disburse. In July a date was announced hopes were raised but no wages were paid.

According to the current ad hoc committee, in August 1996, production upto 200 tons was ready, with only 5 tons or so lacking. But the management contends that the shortfall was actually of 50 tons. With the management refusing to pay six month due wages, on the grounds of this shortage, the workers committee decided to stop despatch of goods at the beginning of September 1996. In retaliation, the management got the electricity connection cut so that no production could take place any way. This stalemate lasted from September 1996 to January 1997.

Work was resumed in January 1997 after a settlement was reached between the ad hoc committee and the management via an interim memorandum of understanding. Instead of wages, this settlement announced “advance payment” for the next four months. About Rs 8000/- was given to each worker as advance. This was cold comfort to workers as the management announced that losses of the company from September to January would be ‘recovered’ from workers’ back wages and that this ‘recovery’ would continue till the loss was compensated. The recovery was thus to be affected from wages that had not been paid in the first place and from allowances and benefits that had not been paid for years. For workers, it meant that there was no hope of subsequent wages either. For the management, the issue of wages seemed to be taken care of.

Thus, barring the advance, no wages were paid throughout 1997 even though the workers reported for duty. On 6th June 1997 another agreement was negotiated demanding a minimum 100 hours worth of production before wages would be paid. As noted above, this was invalidated by the Dy LC. Matters reached a stalemate as the management’s proposals continued to revolve around this agreement.
Meanwhile from 24th July to end of August 1997, the management illegally terminated the jobs of about 100 workers. The mandatory enquiry into the charges against them was not conducted. The dismissal notices cite “serious misconduct” and state that “since the atmosphere in and around the factories is totally surcharged it is not possible to conduct any enquiry against you...you are dismissed with immediate effect.” This is violative of the Supreme Court’s principles enunciated in Bombay Municipality vs PS Mavalanker, where the Court has laid down that no worker can be dismissed without an enquiry (AIR 1978 SC 1380). Through this tactic it appears that the management has simultaneously got rid of the more vocal workers and created an atmosphere of insecurity to pressurise the rest of them. Many workers have appealed in the Labour Court against this blatantly illegal order of the Company. But it will take at least 5 years for the cases to be decided. Even if decided in the worker’s favour, it is unlikely that the management will take back these workers, as it shows scant regard for the adjudication machinery (as can be seen by its refusal to implement the orders of the Dy LC).

The nature of the agreements signed by the management and the unions, and unwillingly borne by the workers, lies at the centre of the problem for the past two years. It is clear that under the norm of wages linked to specific production targets, there is the potential situation of production shortfalls due to external factors. And the responsibility for external factors has been shifted onto the workers.

This has meant that the workers spend month without wages. It becomes possible for a permanent worker with 20 years of service behind him to not even get the statutory minimum wages. This situation is sometimes explained by the management, and even by the Deputy Labour Commissioner, in terms of “no work-no pay”. But the truth is that the workers have been reporting for work and producing as much as external conditions allow. Thus, a recent production report signed by a supervisor shows in an 8 hour shift, most workers have put in 2 hours of work and for the remaining 6 hours there was “lack of material”. This is a situation more akin to “no production targets-no pay”

Another attempt to shift responsibility for external factors onto the workers is evident from the interim memo of understanding of January 1997, according to which it was agreed that workers would be paid in terms of despatch. While ‘production’ refers to
the goods produced, 'despatch' refers to goods actually taken out of the factory for sale. Thus it is possible that only a part of the production is despatched in a given period of time. According to the agreement 17% of the despatch value was to be distributed among the workers. This distances wages from the actual amount of work put in by the workers. The agreement went even further than linking wage payment to production targets and sought to link wage payment to the ability of the company to sell its goods.

The Chief Labour Officer dealing with this issue in Faridabad is the Deputy Labour Commissioner. According to him such a problem can be dealt with in two ways. First, there is the Payment of Wages Act, 1936, under which a company can be fined for not paying wages to its workers. However, this Act applies only to those companies whose workers earn less than Rs.1600 per month and the Jhalani workers do not fall into this category. On the other hand the Jhalani Tools workers point out the case of another company, Hitkari Potteries, that was 'challaned' for non-payment despite its workers earning more than Rs. 1600 a month. This is confirmed at the Dy LC’s office and provides a clear instance of differential application of the law. Moreover, since the minimum wages in Haryana are above Rs 1600, does the Dy Labour Commissioner suggest that Haryana has no 'workers'?

A second possibility is for the workers to formally make a 'dispute' of the matter and approach a Labour Court under the Industrial Disputes Act. The Dy LC says he cannot help in this matter since the contesting versions given by different parties necessitate the gathering of proper evidence, which only a Court can do.

The bottom-line in every statement of various officials involved is that the workers must move the Labour Court. They even give off the record assurances that the court verdict would certainly be in the workers' favour. An unavoidable question arises. Why has the Jhalani management, who is said to be sure to lose in a Labour Court, not faced any punitive action from the labour department (except challans from the Provident Fund department) for all of 19 months? The workers disbelieve such assurances and understand them as the bureaucracy's attempts to avoid having to deal with their case. This is not surprising since over the last few months these authorities have sent the workers to seek
help from sources as diverse as the General Manager of the District Industrial Centre, Faridabad, and the local Grievance Committee constituted by the town’s eminent persons.

On the Health front too the workers are badly off. In this factory they are exposed to Chrome acid gas. Worker pointed out that 6 workers have died in the last 10 years due to gas poisoning. But the ESI doctors have written the cause of death as “Cardiorespiratory arrest”. A large number of workers complain of respiratory problems due to inhalation of chrome and nickel acid, but are invariably diagnosed as Tuberculosis or Chronic Bronchitis or Bronchial Asthma by the ESI doctors. Moreover, destruction of the nasal septum and contact dermatitis due to exposure to chromium are common Occupational Diseases occurring in this industrial unit, however, as per the factory management, the Certifying Surgeon and the ESIS no case of Occupational Disease has ever been reported from this factory till date.

As things stand today the Jhalani Tools workers find themselves in a beleaguered state. Yet another ad hoc committee has been formed recently which is waiting for the management to initiate a fresh round of negotiations. The administrative machinery claims not to be able to respond to their problem and pushes them towards court. And courts provide an expensive, time consuming option that seems to be no option at all. For Jhalani Tools workers, will a backlog of unpaid wages, an absence of Provident Fund or Gratuity to fall back on, ill health due to chromium exposure and prolonged litigation with no guarantee of results, ever compensate for a lifetime of labour?

Thus, the adjudicating machinery created for workers welfare, denies legitimate rights even to ‘starving’ workers, under the garb of technical limitations. The idea is to push workers to litigate in Labour Courts, where they can keep waiting for years. This suit the management as the Labour Courts in Faridabad take a minimum of five years to decide any issue. Till then the workers and their families will continue to live in penury and misery.

The Haryana Labour Department has also constituted a Haryana Labour Welfare Board. This Board was created in 1970 under Section 10 of the Punjab Labour Welfare Policy Act 1965. The Board is financed by the unpaid wages of workers, which are
collected by the Haryana Government. The fund has been gradually increasing in size. In 1991, it had Rs 1, 17, 83179 in its coffers. On an average around Rs 17 lacs are added yearly to this fund. This is used to run Labour Welfare activities in the State (Labour Department Haryana, Annual Administrative Reports). Seeing the healthy financial state of this Board the Haryana Government decided in 1993, to give assistance to industrial workers in the State in case of Employment Injury, based on certification by a Government Hospital (Table 6.3).

TABLE 6.3: SCALE OF FINANCIAL ASSISTANCE TO BE PROVIDED TO INDUSTRIAL WORKERS IN CASE OF EMPLOYMENT INJURY BY HARYANA LABOUR WELFARE BOARD

<table>
<thead>
<tr>
<th>PERCENTAGE OF DISABILITY</th>
<th>FINANCIAL ASSISTANCE (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-25</td>
<td>5000</td>
</tr>
<tr>
<td>26-50</td>
<td>6000</td>
</tr>
<tr>
<td>51-75</td>
<td>7500</td>
</tr>
<tr>
<td>76-100</td>
<td>10,000</td>
</tr>
</tbody>
</table>

Source: Labour Department Haryana, Annual Administrative Reports

Despite the large number of workers sustaining occupational injuries in Faridabad alone, no worker has received financial assistance from this fund in Haryana under the above Scheme. Two reasons have been identified for this. Firstly, the procedure for claiming this money is too cumbersome and it has to be initiated by the employer. As a result even 100% disabled workers have not got this benefit. The second reason is lack of adequate publicity about this Scheme. We did not come across a single worker in Faridabad who was aware of the same. Even the ESIS officials did not know about the existence of the Scheme. If the Government is really serious about the implementation of this Scheme it should coordinate with the ESIS, so that workers get this one time assistance along with their first instalment of Permanent Disability Benefit. Similarly, coordination with the Factory Inspectorate can help in extending the benefits to non ESI covered workers, since the former receives all accident reports in the district. Otherwise, this Labour Welfare Board Scheme will be reduced to yet another political gimmick.

OUTCOME OF PROSECUTIONS UNDER THE FACTORIES ACT

The Factory Inspectorate launches prosecutions for violation of Safety and Health Regulations under the Factories Act, against the errant employer, in the Court of the Judicial Magistrate Faridabad. This does not mean that the employer will be adequately punished. Normally cases take 5-10 years to be decided. Even if the errant industrialist is convicted he is let off with a fine. The Sr Asst Dir ISH lamented that even in cases where it
is proved that the death of the worker(s) was due to wilful neglect on the part of the management, no jail sentence is awarded by the Court. As a result, the provision for imprisonment made in the Factories Act remains only on paper and the deterrent impact of this legislation gets nullified. Managements have unprincipled yet sound economic logic. The cost of paying a fine (if at all convicted) is much less than the amount spent on providing safe working conditions for the workers.

IMPLEMENTATION OF COURT ORDERS

Our Case Reports presented at various places, demonstrate the scant respect shown by industrialists to orders of the Labour Court Faridabad. In this subsection we discuss the impact of a landmark judgement of the Supreme Court on workers' health in Faridabad. A Public Interest Litigation was filed in the Supreme Court, in 1986 by the Consumer Education Research Centre, a NGO based in Delhi, seeking relief for workers employed in asbestos industries across the country (Rao, 1995). The petition placed before the Court the appalling health condition of these workers. It specifically mentioned interalia, that one asbestos unit in Faridabad had 50% of its workers suffering from asbestosis (The Telegraph Calcutta, 4/2/95). The Court was also informed that the permissible exposure limits fixed by the Government in asbestos units were not in tune with international standards (The Business Standard Bombay, 7/2/95). Asbestosis has been a Scheduled occupational disease under the ESI, WCA and the Factories Acts for over two decades. Yet it was only on the intervention of a voluntary organisation that the issue came to be brought to the attention of the courts (ESI Corporation, 1997).

In 1995, the Supreme Court finally passed its judgement on the matter. Its directions included:

1) Rs 1 lac compensation to be paid to all workers suffering from asbestosis in mines and factories. This benefit will be extended to workers who have since retired/ left the job also.

2) All asbestos units will maintain health records of their workers for 40 years and for 15 years in the case of retired employees. This is to enable them to contain compensation under the WCA/ESIS.

3) All workers of these units will be subjected to a 'membrane filter test' to facilitate detection of asbestosis.
4) The Central and State Governments will review the standards of permissible exposure limits to the workers in tune with the prevailing international standards. These will thereafter be reviewed after every ten years.

This judgement was expected to benefit 11000 workers engaged in 74 asbestos industries spread over 9 states and 1061 workers employed in 30 asbestos mines across the country. This included the workers employed in 4 asbestos units located in Faridabad, the largest of them being Hyderabad Asbestosis (now Hyderabad Industries). On ground however, practically nothing happened in Faridabad atleast. Doctors of ESIS Faridabad and the Certifying Surgeon are not even aware of this judgement. No comprehensive medical examination of these workers was carried out either by the ESIS or by the Certifying Surgeon. The CLI Mumbai Study (discussed in Chapter V) remained a pure academic one with no follow up action whatsoever. No worker has been awarded compensation in Faridabad for asbestosis. The Central Government has taken no action to revise the permissible exposure limits to asbestos in such units. They continue to be 2 fibres/cc whereas International standards (fixed by ILO) are 1 fibre/cc for chrysolite type and 0.2 fibre/cc for crocidolite type (Commercial Law Publications, 1998; Bhatnagar, 1995). Even in case the Union Government revises them, such a revision is unlikely to benefit workers in Faridabad, as the equipment for monitoring, in the State Industrial Hygiene Lab has undergone disuse atrophy.

Asbestos is a deadly material and these factories are banned in the West (The Telegraph Calcutta, 4/2/95). The raw material is imported from Brazil in containers that are sealed twice (Faridabad Mazdoor Samachar, Feb 1999). Asbestos units in Faridabad have found a novel method of circumventing the Supreme Court order. Hyderabad Industries has started retrenching permanent workers. Maximum work is now being undertaken by contract labour so that the company does not have to maintain any health records or get medical examinations conducted. Though a large number of workers of this unit complain of cough, chest pain and dermatitis but they have to continue to work under the contractor's terms as new jobs are difficult to come by (Faridabad Mazdoor Samachar, Jan 1999).

Though the Supreme Court while delivering this judgement observed that "the workers are not a marketable commodity to be purchased by the owners of capital", yet the
Government, the ESI Corporation and the management show scant regard for the Apex Court. Workers unions do not take up these issues on a war footing as in the current phase of industrial recession where liberalisation has become the new economic demi-god, mass retrenchment of permanent workers and replacing them with contract labour is the order of the day. We have already given an illustrative example of the way workers even in registered factories covered by ESIS are denied minimum wages. The contract labour are still considered more fortunate than their colleagues in Jhalani Tool, as the latter are not paid any wages at all for several months. Thus, Trade Unions have their hands full agitating for bare ‘survival’ of the workers. Under these circumstances, Occupational Health related issues are bound to get relegated to the background.

AMENDMENTS TO THE ESI ACT

We now discuss three specific amendments in the ESI Act initiated by the ESI Corporation as fallout of pro worker judgements rendered by the higher judiciary.

1) As per the ESI Act, workers’ getting a PDB claim whose capitalised value works out to less than Rs 10,000 (awarded upto Rs 1.50 per day), can get the benefit commuted and thus draw a lump sum amount. Prior, to 1988, the Corporation used to take an undertaking from such workers that they would not appeal against the verdict of the medical board. The Courts struck down the validity of these undertakings and adjudicated on appeals filed by some of the workers who had availed of the provision of commutation (ESIC, 1978). The ESI Corporation promptly got the Act amended in 1989, so that this right of appeal in such cases is taken away. In Faridabad we came across one worker who is likely to be adversely affected by this amendment in the ESI Act. Rajinder Singh was given a disability of only 4% by the medical board despite sustaining serious injury on his right hand. Since his compensation worked out to only Rs 1.12 per day and he had a large family to support he opted for commutation and got a one time lump sum compensation of Rs 5869 from the ESIS. However, aggrieved by the injustice of the medical board he filed an appeal in the EI Court Faridabad. The Corporation has hotly contested the validity of the appeal on the ground of amendment in the ESI Act, debarring such appeals. The poor worker will in all probability lose his case on account of this amendment. We have already discussed in Chapter V that all eligible workers of Faridabad get their compensation commuted. This is due to hard
economic realities and not because they are satisfied with the decision of the medical board.

2) Till, 1989, Entry 32 of Part II of the Second Schedule ESI Act (the Schedule for compensation of Occupational diseases) read “Loss of vision of one eye without complications or disfigurement of eyeball, the other being normal is to be assessed at 30%”. However, ESI medical boards often ignored this specific provision and granted less than 30% to workers who had partial loss of vision of one eye. Those workers who preferred appeals against the medical boards in Courts got their disability upgraded to 30%, as the Courts were of the view that due to the clear provisions in the Second Schedule, all workers having one sided partial loss of vision could not be assessed below this percentage (1989) 58 FLR 762 (Cal); 1967 (II0 LLJ 68; 1981 Lab IC 1300). The ESI Corporation did not appreciate this view of the Indian judiciary. It therefore stage managed an amendment to the ESI Act wherein a new entry 32 A was inserted in the Second Schedule. This curtailed the percentage awarded to such cases to a mere 10% (Appx 2). This amendment has had an adverse effect on workers compensation claims. We found in Faridabad that all the 7 workers in the last 5 years with near total blindness in one eye have got only 10% disability. An eye is the most important faculty for a worker. Giving him only 10% for near total loss of vision of one eye is prima facie unjust. However, due to the amendment in the Act, all appeals are likely to be dismissed.

3) Prior to 1966, there was only the provision that any workman to whom the ESI Act applies was entitled to disablement/ dependent benefit under this Act in lieu of compensation or damages under the WCA, but in accordance with the terms and conditions laid down in the Act. The other obligations and liabilities of an employer to his employees as laid down in the WCA however, continued to apply. Thus, mere coverage by the ESIS did not debar him from claiming damages or compensation under WCA for the employment injury sustained by him due to the negligence of the employer. The worker was thus allowed to claim damages from his employer based on tort, in addition to the benefit admissible to him from the ESIS. This interpretation of the statue was upheld by the Punjab High Court in Regional Director vs Breweries (AIR 1958 (Punj) 136). This prompted the ESI Corporation to initiate an amendment to the ESI Act. According to the amendment incorporated in the Act in 1966, an IP covered by ESIS is now debarred from receiving or recovering compensation or
damages from anybody else under any other law. Though this amendment has not benefited the ESI in any manner, but it permits the employer to escape total liability under tort. Now an employer will not have to pay a penny to the IP, even if it is proved beyond reasonable doubt that the employment injury/ death are due to wilful negligence of the employer. This indicates that the ESIS is in effect not for workers welfare but an ‘Employer’s State Insurance Scheme’?

ABILITY OF THE LEGAL SYSTEM TO PROVIDE JUSTICE

We shall now analyse the strength and weaknesses of these legislative means and their capability to provide justice to the working class. Putting our data together it brings out the strength and weaknesses of the legislative system and its ability to provide justice to the working class. The aim of replacing the WCA with the ESI was that procedural delays in providing compensation and monetary benefits to workers, suffering from occupational diseases and injuries should be minimised. However, we have observed in Faridabad that there is no perceptible change. The Government of Haryana has not established any Medical Appellate Tribunal in the State. Exclusive EI Courts do not exist. The so called EI Courts handle all normal civil and criminal litigation in addition to EI cases. The procedure followed in the case of ESI cases is the same as that followed in any other case. There is no difference between the procedures followed in cases under WCA and ESI. Therefore in most cases, the worker becomes a victim of “Justice delayed is justice denied”.

In the cases under Consumer Protection Act, we observed that the cases are decided more expeditiously vis-à-vis cases with EI Courts/ Labour Commissioner/ Chief Judicial Magistrate. But the ESIS is attempting to thwart this machinery by challenging the applicability of the Consumer Protection Act in the Supreme Court. As normal court procedures are followed, the infamous long delays in our legal system cast it shadow on cases under the ESI Act, WCA and Factories Act also. While the Corporation and the industrialist due their superior economic might can afford these delays, the worker is often pushed to the point of penury. The slow pace of the legal machinery seems to have become an instrument of denying justice to the working class.

Apart from the delays, due to the rigid procedures followed under the ESI and WCA, workers can only approach the Court through a lawyer. This leads to miscarriage of
justice as workers cannot afford to pay fees in advance to their lawyers. Thus the adjudication process denies easy access to the workers.

We also find that all the powerful parties in the law suits are afflicted with inherent biases against the workers. For example:

The Government: It makes no attempt to speed up the adjudication process. On the contrary with 'economic liberalisation', being the current buzzword, it wants to curtail the rights of the workers as it feels that this will enhance productivity. No wonder the 2nd Labour Commission has hardly any workers representative and its terms of reference are worded in a manner to help the industrialist (VVGiri NLI, 2000). Not to be outdone, State Governments are competing with each other in advertising and setting up Economic Protection Zones where no labour laws are applicable (PRIA, 1999; Indian Labour Conference, 1999; The Economic Times Mumbai, 9/3/2000). The message is very clear. The Government does not mind trampling on workers rights to attract capital.

The Industrialist: The industrialist lobby has always felt that proper implementation of labour laws leads to a rise in cost of production. They therefore pressurise Governments to 'liberalize' labour laws. The industrialist is also not too worried if the statute book is thrown at him. He knows how to take advantage of the protracted delays in the judicial system. This is because he has the 'resources' to manipulate the system to his advantage.

The ESI Corporation: The ESI Corporation treats every litigant worker as an 'enemy' and uses its institutional might to crush the worker. We have seen numerous Case Reports in this Chapter wherein, the Corporation contested cases against the workers simply on 'technical' or so called 'legalistic' grounds. There has been no scope of compassion or sympathy for the aggrieved worker. This attitude of the Corporation does not befit a Social security institution.

The Judiciary: The Judiciary too must take the blame for not attempting to speed up the legal adjudication machinery for the working class. However, it is creditable on the part of the judiciary that at all levels their interpretations of industrial legislations have largely been in favour of the working class. Having said that one must add that the judiciary has been rather 'soft' on erring industrialists. Even in the case of the most heinous violation of safety laws, the managements have been let off with only a fine in Faridabad district. Thus, the provision of imprisonment given in the Factories Act for violation of Safety and Health
norms has remained confined to the statute book. Law has thus ceased to have a deterrent effect on industrialists.

To sum up, EI Courts in Faridabad function no differently from ordinary Courts. The protracted and expensive litigation proceedings in these Courts force the workers to keep away from them. In the process, they accept ‘injustice’ at the hands of the Corporation. The ESIS on its part opposes vehemently each case filed by a worker. Despite, this, the Law Courts have generally been liberal in interpreting the regulations in favour of the worker. However, the benefits of these interpretations remain restricted to the individual worker. This is because the Corporation deals with each Court case as an individual case and does not initiate measures to extend the benefit of a decision to all the workers in general. When some of these ‘pro-worker’ interpretations become too inconvenient, the Corporation resorts to amendments of the statue to restore status quo ante. In case however, a rare judicial interpretation goes in favour of the Corporation and against the worker, the same is promptly made universally applicable across the country. While this attitude may help the Corporation in amassing huge amounts of assets but the same is unbecoming of a Social Security institution, which boasts of working for the benefit of the working class. Our data infact shows that these Corporations are gradually becoming tools for employers to control workers and save themselves from penalty and punishment.
REFERENCES


1967 (II) LLJ 68. 1968 Lab IC 481.

1969 Lab IC 362.

1970 II LLJ 59.

1981 Lab IC 1300.

1981: 51 FLR 64 (MP). ESIC vs Dhanubai (Smt).

1988 ACJ 932 MP. Munshi Giri vs ESIC 1988 Lab IC 320:


AIR 1957 SC 264; (1956) 11 FJR 439; (1957) 1 LLJ 447.

AIR 1958 (Punj) 136. RD vs Breweries.


Labour Department (Haryana), Chandigarh. Annual Administrative Reports.


Sir Oliver Franks (1957). Report of the Commissioner on Administrative Tribunals under the Chairmanship of Sir Oliver Franks (Cmd 1957, No. 218, para 71).

The Business Standard, Bombay. SC orders Rs 1 lac compensation for asbestosis, 7/2/95, pp 6.


The Telegraph, Calcutta. Health Insurance for Asbestos Workers, 4/2/95, pp 4


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