Chapter III: Induction and Employment.

Section I: Induction.

Section II: Regulation of Employment.

Section III: Employment of Women and Children.
Chapter III  Induction and Employment.

Section I : Induction 1: We shall now consider the training of employees and their induction. 'Induction' in fact is the process by which a worker is introduced to his work. The I. L. O. observes:

'In order to facilitate and expedite the integration of the newly recruited employee in the enterprise and the group with which he is to work, managements should adopt a well thought out induction programme. Induction procedures are intended to give the new comer all information he needs to know about work and life in the new enterprise. Furthermore, they should create an atmosphere which will help the new comer to become quickly familiar with his new surroundings and to feel at home.'

The old practice that recruit should report to the head of the branch who assigns some work and left there severly alone was a wasteful practice. No effort was made to discover his latent qualities. Since the worker will have to learn by working he commits costly mistakes. It was not realised that induction is the first step in training. Its objects are:

First, to build up the worker’s confidence in the Company and in himself, so that he can become an efficient employee.

Second, to promote a feeling of 'belonging' and loyalty to the Company.

Third, to give the employees information and knowledge of the Company and its organisation.  

Fourth, to furnish the worker information relating to the condition of work.

'Careful introduction to his job will enable a worker to adjust himself to the job more rapidly.' Unfortunately there was no induction in tea industry for a long time.

Introduction to the Company, the department and the job can be carried out quite informally in a small garden either by the Manager or by the Proprietor and in a large garden, a formal induction may be necessary, dealing with a group of new workers. The information that should be supplied to the new workers may be as follows:

1. The Company and its products.
2. The geography of the establishment.
3. The structure of the organisation and functions of the various branches.
4. Terms and Conditions of employment, amenities and welfare facilities available.
5. Standing orders including grievance and disciplinary procedures.
6. Accident prevention.
7. Personnel policies and sources of information.
8. Working routines and production.
9. Employees' own department and job, and how they fit into the general organisation.

and sometimes a wider subject like —

2. Report of the National Commission on Labour iChapter 8, paragraph 8.33, p. 86.
3. Sengupta, R.M., Editor, Personnel Management in India, p. 209
(1) Citizens' rights and responsibilities and the co-operative movement, etc. are included.

The course should be handled by senior executives. In addition to talks, the new employees should be taken on a tour of the establishment.

**Follow-up Measures:** A good recruitment scheme is incomplete without a follow-up to see whether the selections made have been wise, and, if not, wherein lies the defect. Sometimes a recruit may be a square peg in a round hole. A confidential report should be prepared for all workers so that it may be used at the time of confirmation. If the report is not good the employee should be warned and if necessary by showing the report. If the report is good it will encourage him to do well. A discussion also gives him a chance to explain any difficulty that he is experiencing, and to have it set right.

**Training:** It is of three kinds:

1. Training of the General Workers
2. Training of the Clerical and other Subordinate staff.
3. Training of the Executive Employees.

**Training of Workers:** Training for workers on plantations depends on the types of operation performed in the garden. Normally, the work is divided into two parts, field work and factory work. Each includes a number of operations which require different degrees of skill. In field work, the categories of operations can be distinguished with corresponding skills. There are a number of operations, agricultural in nature, such as land clearing, preparation of the soil, planting, weeding, simple harvesting operations, etc., which do not call for additional
training since most of the workers are already familiar with them. Another type of operation requiring a different kind of experience is plucking. A third type of operation is connected with the use of field machinery, such as tractors for ploughing and cultivation, and weed-spraying machinery. In the factory, machinery of different degrees of complexity is usually employed and workers need various kinds of training.

It is generally stated that most of the field work on plantations is of an unskilled nature and does not require any special training. Therefore, new workers in the estate are immediately assigned such jobs as ordinary field work, weeding, land clearing, and other simple agricultural operations. On the other hand, in certain operations, such as pruning and skilful ordinary factory work and operating or driving simple equipment, workers are given a certain amount of training for the efficient performance of the operations. This type of work is generally considered semi-skilled and the process of training is carried on while the workers are on the job. For more complicated operations, such as the work of supervisors, craftsmen, drivers, and operations of field and factory machinery, certain skills are required and training is thus imperative.

It appears that there is practically no training for the unskilled worker, very little for semiskilled and various kinds of training for skilled workers which is mainly connected with the use of machinery.

Self-training of the workers is relied upon. The little skill needed can easily be picked up. New workers are either put
to work directly or given some kind of instruction. The only safeguard against bad work is effective supervision. Effective training must result in eliminating waste of time and effort, raise the crop abundantly, improve its quality, and introduce improved processes. There is also need to pass on to the lowest level the results of experiments and research in working methods and make labour take more interest in the work by explaining the know-how of the processes involved. Training in the lowest rungs on the job does not pose any problem if, the managerial and the supervisory staff possess the required experience and training. It cannot be said that all estates possess such a staff of trained personnel.

In the case of third category, a fair amount of instruction is given to the workers while on the job, depending on the complexity of the operation and the machinery involved. In this case, in certain jobs, apprentices are entertained.

The need for training the general workers has been emphasized by the Labour Investigation Committee of 1946. The Five Year Programme on Labour adopted by the government in 1946 suggested the organisation of an industrial training and apprenticeship scheme on a large scale with a view to improving the productive and earning capacity of workers and enabling them to qualify for promotion to higher grades. The need for expansion of training facilities persisted with the advent of planning. The subsequent plans, which were designed to have an...

industrial bias, emphasised as a corollary, the need for expansion of training facilities. The National Commission on Labour, 1969, said:

"Vocational training imparts the necessary skills required for a job as well as it raises the level of these skills for vertical mobility of workers. It does not end with pre-job training, but continues on the job as well. Induction programmes and promotion policies that form part of personnel management have a close link with training."

But, as noted earlier, in the tea industry such pre-employment training and post employment training to the ordinary workers is not given due importance and, therefore, the workers have not been making much improvement in skill and technique which is so vital for all round development.

*Training of Clerical and Subordinate Staff:* In the case of clerical staff, the educational background is considered sufficient for picking up the amount of skill needed. In various jobs, however, on-the-job training on methods of work may easily lead to increased efficiency. Tradition is often the enemy of innovation but progress is not possible without a happy combination of both.

Training is essential in tea industry as it is elsewhere. Training is essential not only for efficiency but also for broadening the vision of the employee. A person has to be trained for the performance of the job for which he has been recruited. He has to be made familiar with the skill and...
technique of the job. Training must create decisions because no organisation can work if employees depend on moment-to-moment instructions. It is generally argued that no such independent decisions need be taken by the subordinate personnel employed in the industry and hence the experience acquired through in-job services is sufficient for them and as such no formal training is necessary. But even for these personnel proper training is necessary if the industry is to improve its profitability and administrative efficiency. For a brief discussion of the need for such a training we divide the clerical and the other subordinate staff members in the following groups according to their placement:

1. Office staff.
2. Field staff
3. Factory staff
4. Medical staff, and
5. Staff members at sundry branches like learners, apprentice, sardars, chowkidars etc.

The members appointed to work in the establishment sections should be given the preliminary training in office administration together with some knowledge of office organisation and commercial practices. He should be given training in basic clerical techniques, in specialised organisational techniques

6. Bhambri, C.P., Public Administration (Theory & Practice) p. 373
and in the theory and practice of management. 'Take care of the penny and the pound will take its own care' is an apt saying and the economic condition of the industry will improve tremendously if the inefficiency arising out of erroneous handling of official matters are plugged at the lowest level.

Irregularities and wastage are committed for lack of knowledge on the part of the clerks in the preparation and submission of obligatory returns and statements to be sent to the various Government departments regularly. Such irregularities cause hardship to the workers. For example, the pension claims of the retiring workers are often sent to wrong destinations and in an incomplete manner which results in delay in the disposal and payment.

The industry should train its staff members in these matters and the Departments concerned should render necessary assistance in this matter. For example, if the Provident Fund Department and the Labour Department of the Government started some sort of 'Orientation Courses' to train the concerned garden clerks such irregularities may not be committed. The industry should support and if necessary, incur small expenditure, in such matters. The other Government Departments like the Central Excise Department which have close relations with the industry should start such periodic training schemes for the benefit of all concerned.

Training of field and factory staff is necessary not solely for the job which lies immediately at hand. Training must be directed not only at enabling an individual to perform his present work more efficiently, but also making him fit for a
other duties and at developing his capacity for higher work and greater responsibilities wherever necessary. The Industry sometimes depute promising field staff to the T.R.A. management for training in modern plantation practices. But the practice is an exception rather than a rule and such training schemes of the T.R.A are now being gradually abolished. Further, the employees in the field and the factories should also be trained on the elementary office practices as far as practicable.

The medical staff should be trained up by the Medical Officer and should be made to realise the importance of the great humanitarian services expected of them. Behavioural pattern of even the Sardars and Chowkidars may be much improved by rendering a course of training which will also give them a sense of importance and responsibility which is vital for the industry.

Even these ends are not enough. A large number of people have inevitably to spend most of their working hours upon tasks of a routine character, and with this human problem in the background training plans, to be successful, must pay substantial regard to staff morale. The 'Orientation Courses' suggested above, besides rendering the formal kind of training, may also bring the employees in personal contact with their counterparts in different gardens and thus widen the scope for broadening their outlook. It also provides 'in-service-training'.

7. Assheton Committee Report, 1944, para 16.
to those who are already in service. An employee gets informal training when he actually comes into contact with files, papers and offices. He gets the scope to learn many things about his job when he actually does it. It is the duty of the superior officers to render necessary guidance to make the training complete and self-sufficient. Further there should be intra-departmental transfer at reasonable intervals so that he can learn the working of the whole organisation. Different gardens may also adopt transfer schemes in this connection. It is to be noted that unless a new recruit is helped by the old and experienced employees of the garden, he can learn nothing. If informal training is to succeed in its objectives, superior officers should take great interest in the work of the new recruits.

Training of Executive Employees :- The chief executive in a tea garden is the Manager and assisted by his Assistant Managers and guided by the Superintendent or the General Managers, if there be one, he is the supreme authority in regard to the day to day working of the estate. The training of the manager is most essential if he has to administer the garden well. A new recruit to a tea garden in the Executive cadre is generally posted as an Assistant Manager who works under the guidance of the Manager of the garden and learns his job. The Tocklai

8. There are exceptions only when the Manager is posted on personal or private considerations i.e., as one having relationship with the proprietors, in which case in-experienced persons are posted with an experienced person as his assistant. Further in some gardens the post of an 'Agent' is created to supervise the work of the manager.
Experimental station has provision for training the managerial staff in plantation? The following table shows the number of persons trained by the centre during recent years.

Table 19: Managerial and other Employees trained by

<table>
<thead>
<tr>
<th>Year</th>
<th>One year training</th>
<th>Course in Vegetative propagation</th>
<th>Six months' Course</th>
<th>Three Months' Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>1962</td>
<td>8 (1 from Iran)</td>
<td>3</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>5</td>
<td>4</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>9 (1 from Nepal)</td>
<td>3</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>9</td>
<td>3</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>9</td>
<td>6</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>9</td>
<td>7</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>8 (1 from Nepal)</td>
<td>1</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>9</td>
<td>5</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>10 (1 from Mauritius &amp; 1 from Sikkim)</td>
<td>8</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>10 (2 from Mauritius)</td>
<td>8</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>NIL</td>
<td>NIL</td>
<td>17</td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>NIL</td>
<td>NIL</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>NIL (4 months' course attended by trainees including 1 from Mauritius, 1 from Tea Board, 1 from Nepal)</td>
<td>NIL</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

9. The T.R.A. started its scientific department in 1900 at the Indian Museum, Calcutta, and then shifted to Hailekha T.E. in Assam in 1904 which was finally shifted to its present site near Jorhat in 1911 and since then this Scientific Department has been known as the Teaklai Experimental Station. In addition to the primary function of doing research work on tea this centre started the training programmes in about 1947.

10. When a Parliamentary delegation recently visited the T.R.A. station a question was raised: to how far the benefits of research were utilised by the tea gardens and whether all the gardens subscribed to the station. It was also asked if prior to seeking an appointment in tea in the Executive cadre any scientific knowledge in propagation, culture & manufacture of tea had been prescribed. The answers were not satisfactory. (Assam Tribune 24.11.1973)

The one-year training course in Tea Culture at Tocklai was discontinued with effect from 1 January, 1972 in view of the fact that the Assam Agricultural University at Jorhat started an undergraduate course on Tea Husbandry and Tea Technology. The six months' short-term training in vegetative propagation was also discontinued from 1 January, 1972. Vegetative propagation was a new technique when the course was started, but now such a long duration course is considered not necessary. The three-month's course is still being conducted having two courses in a calendar year. The first course is from 1st April to 30th June and the second course is from 1st September to 30th November each year. Further the T.R.A. has started a four months' course on Tea Culture in 1974 in which employees of Tea Board and persons from foreign countries are trained. Besides these courses short-term lecture courses on topics of importance are run every year for planters.

Further, some agency house gardens sometimes send their young assistants to foreign countries to learn mainly the administrative practices which is considered useful for the industry. There is also the practice of deputing the managerial personnel to the various firms of 'Tea Brokers' where they learn the trade of tea marketing as well as Tea Testing. This aspect of training is, however, less developed in Assam.

The Medical Officers, who are now taken as Executive employees do not have any in-service training and they are not encouraged to undertake any further studies in their profession. Periodic training and refresher courses to the garden doctors are very essential.
Management Training: At present there is no scientific means for training the managerial and other executive employees working in the tea gardens of Assam. There is a clear need for institutional facilities for training in management courses in the North-Eastern region generally and Assam particularly. So long traditional management has been holding the field in the tea gardens of Assam. This traditional system can be profitably utilized as a nucleus for building up a modern management cadre. The Gauhati University has introduced Business Management Course. Even then it cannot be an adequate answer to the need of a full-fledged institutional set-up for training in management. What is needed is an Institution of Management like the ones in Ahmedabad or Calcutta. If an Institute of Management is set up in Gauhati it will serve not only the requirements of Assam but also the rest of the entire North-Eastern region. Should, however, a full-fledged Institute of Management be not immediately feasible, an attempt should be made to start a branch of the Indian Institute of Management in Assam which will also provide a suitable forum for providing in-service training to the Executive personnel serving the industry in Assam.

Probation and Appointment: Probation is the period of service rendered by an employee after recruitment and before he is confirmed in the post. A probationer is one who is provisionally employed to fill a permanent vacancy. He is confirmed in the post only if he completes the period of probation successfully.

An employee becomes permanent when once he is confirmed in his post. Even if he is not confirmed he cannot be discharged at any time or that he may be denied other privileges. Under the L.U. Act, a workman who has put in 240 days continuous service, whether designated permanent, temporary or Casual, cannot be dismissed with
except by retrenchment. Similarly a workman who has put in the minimum period of service prescribed under the P.F. Act is entitled to join the Provident Fund even if the employer has not formally made him permanent. So also a woman worker who has served for the qualifying period as per the M.B. Act cannot be denied maternity benefit on the ground that the employer has not made her permanent.

Sometimes, a worker is not confirmed for a long time. But this is an exception rather than the rule. The well-managed gardens always confirm the workers as soon as they complete the minimum period of probationary service which is generally six months.

Mode of Appointment of a Probationer: While making an appointment the Management stipulates that the services of the probationer is likely to be dispensed with at any time during the period of probation without notice and without assigning any reason.

Automatic Confirmation: It has been held that a probationer would continue as a probationer even after the period of six months unless his services are terminated or he is confirmed by the end of the period.

When by oversight or some reason the management does not take any action in the matter before the expiry of the probationary period, it does not comply that the probationer is permitted to continue as a probationer for any length of time. The order of appointment may provide for the automatic termination

of service on the expiry of the stipulated period in case the probationer is not confirmed or his probation is not extended in writing in the meantime. It is reasonable to conclude that a probationary appointment does not automatically stand terminated on the expiry of the Probationary period and during the probationary period the services of a probationer can be dispensed with as in the case of a permanent employee.

**Acting Managers**: One special feature of probationary appointment in the Executive personnel serving the tea industry is the creation of Acting Managers who are by implication of the designation, work on probation. Often the Managers are kept acting for a number of years and in many cases they leave service before they are confirmed by the employers. Although it may be useful to keep a new manager acting for a limited period it is harmful to keep him as such for an indefinite period. He should be confirmed as soon as his probationary period is over. The administration of the personnel in a tea garden rests on the Manager and therefore, it is necessary to create confidence in him by confirming him in time.

**Promotion and Upgrading**: Promotion is the term generally used for the advancement of an employee to a job carrying better terms and conditions, and therefore, higher status. Upgrading is used to imply an increase of pay on the same job. Transfer from one job to another may not necessarily imply

---

promotion, and even when it gives a higher pay this is sometimes counterbalanced by changes in other conditions, such as working hours. Thus, the transferred worker does not feel he has been promoted nor that the change is for better.

Whenever there is a vacancy in a higher job, sound personnel policy requires that it should be filled by promotion from within if possible. If all such vacancies are filled from outside, there is no inducement for the existing staff to improve their efficiency. There should be proportional reservation of vacancies to be filled up from within the organisation.

Seniority is not the only criterion in selecting the workers for promotion. A worker does not necessarily become skilful or efficient by the number of years of service. Efficiency must be the basis of promotion. Besides efficiency suitability for the higher post is also a very material consideration for promotion. Seniority comes only when all other factors are satisfactory.

When a new post is created in an establishment, those in service cannot claim promotion to that post. It is well within the rights of the Management to appoint an outsider. Even where the promotion is set aside as malicious, the Industrial Tribunal cannot itself decide the question; it can only direct the employer to decide the question afresh with due consideration to the claims of the superseded employees. 14

In the tea gardens of Assam there was no fixed system

---

of promotion, policy. The ordinary workers have very little prospects of promotion. Therefore it is suggested that the lines of promotion should be clear so that a worker may know the possibilities of promotion. Secondly management must lay down the conditions of promotion. A concrete promotion policy may include the following principles:

First, Normally promotions shall be within the organisation.
Second, ability as well as seniority will be taken into account in making promotions.
Third, Clear indication of the lines of promotion.
Fourth, all promotees should be placed on probation; in case the person is not found suitable he may be reverted to his original post.

Trade Unions frequently claimed the right to have some say in promotions, but as noted earlier the Industrial Courts have hitherto held that promotion is a management function, though promotion which involved transfer to another plantation or location has sometimes been found to be victimisation. It may be noted, however, that the Major Engineering Award in Calcutta in 1950 introduced a novel form of grading with increments in slabs. Within each slab the increment is given automatically year by year, but for upgrading from one slab to another the Tribunal declared that a local board should be set up consisting of the manager and other senior officials. The Tribunal added that it envisaged a time when there should be a representative of the workmen on this
board, though it did not think that the time had yet come. The issue of the Union's claim to have a say in upgrading and promotion continue to be alive.¹⁶

**Service or Registration Cards** — It is of great assistance in deciding promotions if there is an annual rating of all the employees recorded in their 'Service Books';¹⁷ but, the difficulty of annual rating is how to make it sufficiently objective. Some favour rating on a points system, such as those devised for merit rating; others feel a general report or a report under specific headings is better, but all agree that a rating by a single superior is open to criticism. Rating by two or more superiors, either separately or in a group, seems to be the answer, but it is not always easy to achieve in practice, for there may be only one man who is really in a position to report on a subordinate's work.

But non-observance of any system of rating and non-maintenance of any form of service book for the workers in the tea industry is an important drawback which prevent an employee from proper assessment for promotion.¹⁸ The Industry should:

16. In a recent interview with the writer at Tezpur on 5th February, 1975 Sr. B. C. Bhagawati, President of INTUC, also emphasized the necessity of the participation of the workers so that they may have some say in such policy decisions.

17. Labour Investigation Committee (1946): Main Report pp 112-113

18. This aspect was discussed in the 24th sitting of the S.L.G. at Shillong and confirmed in the following words: "It was considered necessary to maintain a periodic record of the value and efficiency of an employee's work, as was also done in the case of Government service. Managers changed from time to time and unless such record was kept, an employee could not fairly be considered for promotion nor could disciplinary action, if necessary, be fairly assessed. Government of Assam Labour Department Letter No: L.C/24/65/3759-77 dated 14.6.1966.
immediately start the practice of proper maintenance of service records so that the eligible workers are promoted to higher ranks.

This practice should be adopted in the case of the Executive personnel as well, where no scientific promotion policy is generally followed. Although the promotion and upgrading of the Assistant Managers are generally based on merit-reports submitted by their immediate superiors, the process is not always accurate and correct. The practice of upgrading the status and pay of a garden manager only on the basis of the quantity of tea produced in a plantation in a particular year is not a scientific process. Although this may be the chief criterion on the basis of which the annual commission payable to a Manager may be fixed, this cannot be a sound basis of promotions.

Graded and Incremental Promotion\(^1^9\): In the tea industry barring a few places, there is generally neither graded nor incremental promotion. For supervisory and skilled work incremental promotions are sometimes given. The most common complaints regarding promotions, whether graded or incremental, are that in several cases the initial salaries as well as the periodic increments are small and that in some cases the increments come to a dead stop after the maximum in the scale is reached. Occasionally even annual or biennial increments, where these are given are not automatic but depend on the discretion of the manager. Likewise, in regard to promotions from one grade to another, numerous complaints arise. During the course of investigation the employees in many gardens have complained about the limited scope of promotions and about corruption and favouritism in this regard. It is alleged

that in case of the clerical staff the plea that promotions are
given solely on merit is a convenient cloak behind which
corruption and favouritism are fife. The National Commission on
Labour laid down certain principles in regard to promotions.
The Commission recommended that in the lower rungs, particularly
among the operative and clerical categories, seniority should be
the basis for promotion. In respect of technical, supervisory and
administrative personnel, seniority cum-merit should be the
criterion. The Commission further recommended that for higher
managerial, technical and administrative positions, merit alone
should be the guiding factor. 20

Transfer: Sometimes, it is expressly stipulated in the
appointment order that the employee shall be liable to be
transferred to any place where the employer is carrying on his
business or may, in future, extend his business activities. Such
transfers may or may not be accompanied with promotion in the
status of the employee. Thus it is generally recognised that an
employee has, in the absence of any provision to the contrary in
the contract of employment, an inherent right to transfer a
workman from one place to another or from one section to another.

Transfer of Plantation Workers between Factory and Field:
Plantation labours are liable to be transferred from factory to
the field and vice versa according to the exigencies of work. The
total wages paid to the general workers in a plantation are
related to the work done and not to the individual. Therefore, any

reduction in the wages of a worker consequent upon a transfer cannot be regarded as an invalidating circumstance. While upholding the principle of interchangeability, one should be discreet in ordering transfer from the factory to the field or from the field to the factory so as not to disturb workers who have been continuously working in the factory or the field for years, merely on the ground of interchangeability.

**Legal aspects of transfer:** It is entirely for the management to distribute and place its employees at different places to be in charge of different works in such a way as to derive the best advantage. It is in the course of administration and for the benefit of the establishment that the management passes orders of transfer. In respect of the tea industry there is no specific provision in the Standing Orders regarding their transfer in the establishment.

It is certainly not at all desirable nor possible for a Tribunal to take upon itself the powers and duties of administration which the management of a Company undoubtedly has in this respect. The Supreme Court has held that the Industrial Tribunal should be very careful before they interfere with the orders made in the discharge of the management function in the matter of transfer of employees. It has also been held by the Supreme Court that the argument in that 'the appellant company did not give any reason for the transfer though there was hue and cry against it seems to us to be wholly beside the point.'


It, therefore, follows that it is for the person who challenges a transfer to establish his case, and not for the employer to justify the transfer. At the same time, the management must show that the transfer was made in the ordinary course of business. Specific provision in the appointment order that the appointee shall be liable to be transferred at the discretion of the employer to any other place where the business of the employer is carried on, or where the employer may start his business or to a new concern or from one department or section to another is necessary.

Withdrawal and Abandonment of Service – Withdrawal may take place for a number of reasons. They may be due to retirement, voluntary resignation, redundancy, unsatisfactory work and misconduct. An employer may terminate the services of any employee by discharge or dismissal or by retrenchment. An employee may also sever his connections with his employers. Separation of the employees from their services may also be brought about by death.

Voluntary Resignation – Abandonment of service by the garden workers is very common at all times. Abandonment may be due to various factors, employment elsewhere, to escape punishment for misconduct and wilful negligence. In all such cases, before striking the name of the employee from the rolls or issuing discharge orders, the worker is called upon, in writing, to resume

duty on or before a specified date warning him that he would be deemed to have voluntarily abandoned his employment if he failed to do so. It would be unreasonable to charge-sheet the worker and hold an enquiry on technical ground that absence without leave is a misconduct. If the employee has severed his connections with the employer, there is no point in the employer dismissing him except perhaps to regularise his records by removing the name of the worker. Non-compliance with a transfer order and subsequent absence also amounts to abandonment of service. Continued refusal to comply with a transfer order can be reasonably taken as evidence of voluntary abandonment of service. Abandonment of service also arises under the Standing Orders which provide for termination of service on a sense without leave or overstay beyond a specified number of days.

Rate of Resignation: It is apparent from the tables given below that resignations are greater in number.  

24. Regarding the legal complications of such definitions the leading cases may be referred to as under, 1959-1 LLJ 446
1969-2 LLJ 152.

25. The sampled gardens for this purpose are Manmohinipur, Belsiri, Gionga and Sengri with a total employment of 9 Executive (Govenanted), employees, 78 staff, 96 sub-staff and 3129 general workers (including resident, Non-resident Fattoo and Casual workers).
Table 20: Number of outgoing employees in sampled gardens

(a) General Workers:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No</th>
<th>Resignation</th>
<th>Death</th>
<th>Dismissal</th>
<th>Retirement</th>
<th>Transfer</th>
<th>Expatriation</th>
<th>Abscon</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Of Outgo</td>
<td>&amp; Name</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ing work</td>
<td>cut</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1960</td>
<td>241</td>
<td>201</td>
<td>15</td>
<td>9</td>
<td>14</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1961</td>
<td>218</td>
<td>182</td>
<td>10</td>
<td>5</td>
<td>20</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1962</td>
<td>227</td>
<td>186</td>
<td>15</td>
<td>6</td>
<td>17</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>199</td>
<td>163</td>
<td>17</td>
<td>7</td>
<td>9</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1964</td>
<td>161</td>
<td>120</td>
<td>14</td>
<td>9</td>
<td>15</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>171</td>
<td>153</td>
<td>6</td>
<td>6</td>
<td>3</td>
<td>-</td>
<td>3</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>293</td>
<td>264</td>
<td>15</td>
<td>10</td>
<td>8</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>236</td>
<td>200</td>
<td>13</td>
<td>12</td>
<td>9</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>175</td>
<td>142</td>
<td>12</td>
<td>11</td>
<td>7</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>133</td>
<td>95</td>
<td>16</td>
<td>6</td>
<td>12</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>165</td>
<td>133</td>
<td>5</td>
<td>9</td>
<td>6</td>
<td>-</td>
<td>12</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1971</td>
<td>106</td>
<td>67</td>
<td>14</td>
<td>17</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1972</td>
<td>119</td>
<td>98</td>
<td>8</td>
<td>5</td>
<td>4</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>1973</td>
<td>112</td>
<td>82</td>
<td>12</td>
<td>10</td>
<td>5</td>
<td>1</td>
<td>-</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>1974</td>
<td>179</td>
<td>124</td>
<td>16</td>
<td>13</td>
<td>23</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2840</td>
<td>2210</td>
<td>188</td>
<td>133</td>
<td>159</td>
<td>18</td>
<td>19</td>
<td>13</td>
<td></td>
</tr>
</tbody>
</table>

26. The Writer is grateful to the Managers of the sampled gardens for supplying these particulars. ** Includes 58 cases of unauthorised absence leading to dismissal from service.
<table>
<thead>
<tr>
<th>Year</th>
<th>Total No Resignation</th>
<th>Death of Outgo &amp; Name cut.</th>
<th>Death seal ment</th>
<th>Trans mitter</th>
<th>Expans ion</th>
<th>Abandon</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1961</td>
<td>3</td>
<td>-</td>
<td>2</td>
<td>-</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1962</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1963</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1964</td>
<td>4</td>
<td>3</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1965</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1966</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1967</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1968</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1969</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>1970</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1971</td>
<td>6</td>
<td>1</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1972</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1973</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>1974</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>46</td>
<td>15</td>
<td>4</td>
<td>5</td>
<td>17</td>
<td>4</td>
</tr>
</tbody>
</table>

A critical review of the cases of withdrawal thus shows that the cases of resignation account for more than 77 percent in the case of general workers and 32 percent in the case of staff members.

During our period of review only one Manager of Singri T.E.
resigned on personal grounds. Although it is very difficult to ascertain the reasons which prompt a worker to resign his service, it is found that such resignations are sometimes done by the workers with a view to withdraw their name from the P.F. membership for early drawing of their accumulated money. With the introduction of the Gratuity Scheme with effect from 16 September, 1972 and consequent financial assurances, the workers sometimes find it useful to resign their job and receive the various dues which become payable on their leaving service. In certain cases the employers are found to encourage such resignations as a means of reducing the labour force. When a worker resigns his job on the ground of ill health it amounts to voluntary retirement but it is not always treated as such. It is treated as a case of resignation apparently due to avoiding the financial benefits which the employer would be required to pay to an outgoing employee.

The staff members resign their job mainly on two reasons. First, on health or other personal reasons and second, to escape dismissal threatened by the employers for misconduct. An executive employee resigns his job on getting better chances elsewhere or for misunderstanding with his employers regarding his efficiency and terms and conditions of employment.


Retrenchment and Lay Off: Retrenchment is defined in the Industrial Disputes Act as follows:

'Retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include:
(a) Voluntary retirement of the workman,
(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf or
(c) Termination of the service of a workman on the ground of continued ill health.

In spite of the very wide definition, the Supreme Court has held that retrenchment only means the discharge of surplus staff. The termination of service of a worker on account of the closure or transfer of an undertaking is not retrenchment and no retrenchment compensation as such is payable to workers concerned, although they are entitled to compensation at the same rate under the special provisions contained in Sections 25 FF and 25 FFF of the I.D. Act. As per provisions laid down in the I.D.(Amendment) Act, 1976, previous permission of the competent authority is necessary to lay off any workman other than a badli workman or a casual workman.

Retrenchment presupposes the continuance of the industry. It also assumes that but for the retrenchment, the workers would have continued in employment. Retrenchment would be justified for reorganising the business or for rationalisation; it may become necessary for effecting economy or for earning higher profits. A Tribunal cannot say that the retrenchment is unnecessary because losses have not been actually incurred. It is tantamount to saying that the right of private defence does not arise until
one is fatally stabbed by the assailant. The right to effect retrenchment cannot normally be challenged, but when there is a dispute about the validity of retrenchment, the impugned retrenchment must be shown as justified on proper reasons, that is to say it was not capricious or without rhyme or reason. Reasonable retrenchment is a matter within the discretion of the management. The I.D. (Amendment) Act, 1976 has put up stringent pre-conditions to prevent irregular retrenchment. In 1953 the I.D. Act was amended to include provision for the Payment of compensation in respect of retrenched labour.

**Rates of Compensation:** Generally the retrenched workers have to be paid retrenchment compensation at the rate of fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

'Average pay' means the average of the wages payable to a workman -

1. In the case of monthly paid workman, three calendar months,
2. In the case ofweekly paid workmen, four complete weeks,
3. In the case of daily paid worker, twelve full working days,

preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.
Whatever be the rates at which retrenchment compensation was paid they are generally fixed up by negotiations from time to time.

Procedure of retrenchment: In retrenching an employee the following procedure is followed:

1. A list is prepared of all workers on the basis of the principle of 'last come, first go' and the list is notified on the notice board at least seven days before the date of retrenchment.

2. The worker to be retrenched is given one month's written notice giving the reasons or one month's salary in lieu of such notice.

3. Notice of retrenchment in the form prescribed under the rules is sent to the government within three days, that is, to the Labour Secretary to the government by registered post. Copies of the notices are also provided to the Labour Commissioner and the Conciliation Officer concerned.

Lay Off: Lay off means the failure, refusal or inability of an employer, on account of shortage of coal, power, or raw materials or the accumulation of stocks, or the breakdown of machinery, or for any other reason, to give employment to a workman whose name is borne on the muster-rolls and who has not been retrenched. As per provision of the P.L. Act, the Employer is to notify the Labour Commissioner about the commencement and termination of lay off.

Distinction between Lay Off and Lock-out: In the case of lay off owing to the reasons specified in the definition, the employer is unable to give employment to any one or more workmen
due to reasons beyond the control of the employers. In the case of lock-out the employer closes the place of business and locks out the workers for reasons which have no relevance to the causes specified in the definition of lay-off.

Lock-out is a weapon employed by the employer to compel the worker to see his point of view and accept his demands. Thus the nature of the two concepts is entirely different, and so are their consequences. In the case of lay-off, compensation at the specified rate has to be paid except as otherwise provided in the Act in Section 28 B(iii). There is no such statutory liability to pay compensation at the specified rate to workers locked out. In the case of lock-out, the liability to pay wages or any compensation in lieu thereof would depend upon the question whether the lock-out was legal and justified.

Provisions in the Standing Orders: In the tea industry the cases of formal lay-off are very rare. However, there are elaborate provisions for temporary closure of business and the rights and liabilities of the employer and workmen arising therefrom.

Clauses 8(a) and 8(b) with its sub clauses of the Standing Orders provide as under:

(a) (i) The Manager may at any time in the event of fire, catastrophe, breakdown of machinery, stoppage of power or supply, epidemic, civil commotion, strike, extreme climatic conditions or other causes beyond his control, close down either the factory or field work or both without notice.

(ii) In the event of such stoppages during working hours, the workmen affected shall be notified as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workmen shall not ordinarily be
required to remain for more than two hours after the commencement of stoppage. If the period of detention does not exceed one hour, the workmen so detained shall be paid for the period of detention. If the period of detention exceeds one hour, the workmen so detained shall be entitled to receive wages for the whole time during which they are detained as a result of the stoppage. In the case of piece rate workers, the average daily earning for the previous months shall be taken to be the daily wage. Whenever practicable, reasonable notice shall be given of resumption of normal work.

(iii) In cases where workmen are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be. When, however, the workmen are to be laid off for an indefinite long period, their services may be terminated after giving them due notice or pay in lieu thereof.

(b) When either factory or field work has been closed down for the above reasons, the Manager shall order resumption as soon as possible after the cause of the stoppage has ceased to exist or as soon as it is otherwise practicable, provided that it appears to the Manager that a sufficient number of workers are present and willing to resume work.

Lay off compensation: Lay off compensation is payable in the case of permanent workers laid off from service. A casual worker is not entitled to lay off compensation. No compensation will, however, be payable to workmen—
(1) If he refuses to accept any alternative employment in the establishment from which he had been laid off or in any other establishment of the employer situated within a radius of 5 miles of the establishment to which he belongs.

(ii) If the worker does not present himself for work at the appointed time, during normal working hours at least once a day. Even during lay off the employer is bound to maintain a muster roll and to provide for the marking of attendance by the workers. While laying off workers, they may be notified to present themselves at the establishment at a specified time and to sign the muster-roll. If a worker refuses to do so, he shall not be entitled to lay off compensation. The compensation is payable only to those workers who have completed not less than one year's continuous service (i.e., 240 days in a period of twelve months) under the employer.

Rate of Compensation: Lay off compensation payable for each day of lay off is 50 percent of the basic wages and D.A. that would have been payable to a worker if he had not been laid off. No compensation is payable for intervening weekly holidays during the period of lay off. Under Section 25-C, as amended by the Industrial Disputes (Amendment) Act of 1965, compensation is payable for the entire period of lay off except when it is limited to 45 days in a period of twelve months, by an agreement to that effect made between the employer and workmen.

It is noteworthy that, as noted above, the right to lay-off compensation has to be determined by the provisions of the I.D. Act. A Tribunal has no authority to grant compensation outside the provisions of the Act or at rates higher than the statutory rates. He is not expected to improve upon the statutory
provisions according to his own notions of social justice or equity?

**Disciplinary Measures** - Every organisation has its laws, rules and regulations governing the conduct of its employees. The employees may at times break these rules and therefore action against them is to be taken. But no worker shall be subjected to any penalty curtailing prospective chances of employment except for a proved offence and in accordance with definite provisions laid down. In 1946, the Labour Investigation Committee laid down that -

'It is far better that discipline should be assured by engendering a sense of mutual co-operation and helpfulness between the workers and the management but even where this is lacking for any reason, the next best principle is to suit the degree of severity of disciplinary measures to the degree of offence committed by the worker and, as far as possible, to avoid the severest penalty of dismissal or suspension.'

**Definition of Misconduct** - The Standing Orders contain a list of acts and omissions which constitute misconduct. The list is by no means exhaustive. The right to take disciplinary action vested in the employer is not limited to the acts of misconduct enumerated in the Standing Orders. A misconduct does not cease to be one simply because it does not find a place in

---

29. 22 FJR 79 ; 1962-2-LJ 667.
30. Standing Orders Labour Investigation Committee (Main Report) p. 119
31. Standing Orders for the Tea Estates, Clauses 10(a) 10(b) & 10 (b).
the list given in the Standing Orders.\(^{32}\)

Ge-slow: 'Ge-Slow' which is a picturesque description of deliberate delaying of production by workmen result in actual loss of crop. 'Ge-Slow' is likely to be much more harmful than total cessation of work by strike. For, while during a strike machinery does not work during the go-slow the machinery is kept going at a reduced speed which is often extremely damaging to machinery itself. Therefore, ge-slow has always been considered a serious type of misconduct.\(^{33}\) Fortunately such type of misconduct is very rare in the tea estates in Assam and it appears that the simple and honest workers serving the industry do not know such complex procedures of ventilating their grievances.

**Principles of Punishment:** In the earlier days of the industry there was no scientific methods of punishment. Inhuman physical torture was inflicted to a delinquent worker and staff members were insulted and discharged from service without any rhyme or reason. Imprisonment was provided as a penalty for continued refusal by an immigrant labourer to work or for absence exceeding seven days and employers were empowered by the Bengal

---

\(^{32}\) More omission of a particular type of misconduct in the Standing Orders would not entitle Labour Court to completely shut its eyes to the misconduct and to hold dismissal order as unjustified only for that reason. It should consider whether the particular misconduct would justify dismissal.

In Kasejwan T.S. Vs Presiding Officer, Labour Court, the Gauhati High Court held that though the misconduct alleged does not find a place in the Standing Orders, a duty is cast upon the Labour Court to consider whether the misconduct invites punishment, for the Standing Orders cannot by any stretch of imagination be said to be exhaustive. (1974 Lab I.C. 372)

The Planters' Chronicle, June 1 1974, p.231.

\(^{33}\) 1961-2-IIJ. 644.
Act III of 1863 to arrest absconding labourers without warrant. The term 'absconder' came into regular use in tea gardens and to an outsider it sometimes seemed to denote an unduly proprietary attitude to labour. Thus penal provisions put effective control and the Manager was, moreover, clad in the authority of the ruling race during the hey day of British power. However, the Industry quickly realised the human aspect of the problem and introduced scientific system of control.

**Principles of Natural Justice:** Before elaborating the various methods of punishment it is essential to discuss about the principle of 'natural justice'. The procedure of punishment or termination of service must be based on principles of 'natural justice', which again are in conformity with the principles of a welfare state. To ensure natural justice the industrial courts have evolved a procedure of departmental enquiry based on the rules governing discipline.

**Show Cause Notice:** It is a fundamental principle of natural justice that no person should be punished without a hearing. The first step in taking disciplinary action is to draft the Show Cause Notice. The purpose of the show cause notice, giving brief details of the charge and written in the language known to the accused is to bring home to the accused the nature of the allegations made against him. It is not enough to serve the show cause notice on the accused; there should be convincing evidence to establish that the notice was actually served on him.

---

34. These matters are discussed elaborately in a later chapter.
36. 1957-1-LLJ 87.
When the registered letters are not accepted the show cause notice may also be published in a local newspaper. Every care should be taken to comply with the following formalities in conducting an enquiry.

(1) The accused should be allowed to be present throughout the enquiry.

(2) The witnesses should be examined in the presence of the accused and he should be allowed to cross-examine the witnesses cited against him.

(3) The accused should be allowed to examine the witnesses on his side.

(4) If he refuses to cross-examine any witness cited against him or to examine witnesses on his side, the fact should be recorded in the enquiry proceedings.

(5) The accused and witness should sign every page containing their statement of deposition and refusals to do so should be recorded in the proceeding.

(6) The accused should be examined after examination of the witnesses cited against him and of those produced on his side.

(7) There should be a neutral observer throughout the proceedings and his signature may also be obtained on the pages of the proceedings.

(8) In case the enquiry has to be adjourned, the date, time and place for proceeding with the enquiry may be recorded at the end of the day's proceedings and get signed by the accused and any refusal to do so should be recorded and fresh notice served on him.
It is not necessary that the employer himself should conduct the enquiry. It is open to him to engage a lawyer or any other person for the purpose. In the absence of any special individual bias attributed to a particular officer or employer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. Where the Disciplinary Authority and the Enquiry Committee are different, the Supreme Court has held that a change in the personnel of the Committee cannot be regarded as violative of the principles of natural justice. It is however, considered desirable that the enquiry officer should not draw/his personal knowledge in taking the decision in a domestic enquiry.

Methods of punishment :- The usual disciplinary measures and the methods of punishment are :-

(1) Dismissal
(2) Suspension or forced leave.
(3) Imposition of fines.

Apart from these, there may be other less recognised modes of punishment like -

(4) Informal notice and warning,
(5) Reprimand, with or without entry in record.
(6) Requirements of overtime.
(7) Loss of seniority rights or delay in salary increment.

Judicial prosecutions as a method of punishment is resorted to only in the extreme cases of misconduct and conviction in the court naturally lead to the dismissal of the person concerned from service. Besides, in such cases the employee faces pecuniary punishment in the form of forfeiture of the employers' share of P.F. dues, non-payment of portions of gratuity dues and reduced rates of pension payable to such an employee.
(1) Dismissal and discharge: These are the most extreme forms of punishment and are liable to be abused, especially in tea industry and other such industries where jobbery in one form or other exists and where supply of labour is easily forthcoming. There is no doubt that dismissal gives the employer an opportunity to fleece the workers. Moreover, it has been stated by the trade unions that this form of punishment is most frequently used against workers who were involved in union activities. A slight distinction, however, is to be made between discharge and dismissal. Discharge can take the place of dismissal as a disciplinary measure, but it is less vindictive, as it may not make re-employment difficult. Moreover, discharge also takes place very often for other reasons, such as completion of work etc. On the other hand, dismissal is more extreme form of punishment involving the possibility of a worker's record being used against him at the time of re-employment. In the tea industry there are constant complaints that dismissal of workers take place on flimsy grounds. Good faith is a decisive consideration in industrial adjudication regarding disciplinary action taken against workers. This is a special feature of industrial adjudication as compared with civil and criminal proceedings. 

37. In the 26th Session of the S.L.C., held on 13.12.66 the Labour representatives complained against dismissal of workers in many cases for being absent for a day or two only and said that this had been made more difficult by the recent orders of Managers preventing a worker from approaching the manager direct for leave. They thought that this was a vital problem to the society in as much as instead of having more employment it was going to face reduction in employment. (Proceedings of the S.L.D., 26th Session, p.4 Letter No SLC 6/64/239-68 dated 24.1.67.)
Victimisation, which has been very common in the industry is now an exception. Victimisation means one of two things. The first is where the workman concerned is innocent and yet he is being punished because he has in some way displeased the employer, as for example, by being an active member of the union which was acting prejudicially to the interests of the employer. In other words, the punishment is meted out not for any misconduct as the employer would desire to make out, but really with some ulterior motive. The second case is where an employee has committed an offence, but he is given a punishment quite out of proportion to the gravity of the offence simply because he has incurred the displeasure of the employer in a similar manner. But such victimisation is not very easy in the industry as the Industrial Courts, on appeal, interfere in such cases and the injustice done, if any, is set aside. Victimisation and unfair labour practice are like twins which cling together. The Supreme Court has repeatedly pointed out that though individual industrial adjudication can and must protect industrial employees from victimisation, a finding as to malafides or victimisation or unfair labour practice should be drawn only where evidence has been led to justify it; such a finding should not be made either in casual manner or light heartedly. 38

In its latest ruling on the termination of service by Employers, the Supreme Court ruled that the employer must declare the ground for his action in terminating the services of an employee

in case he challenges the termination as 'malafide,colourable or an act of victimisation or unfair labour practice.' The Court further ruled that simply sacking the employee with one month's salary without assigning any reason,charges or holding any inquiry necessitating that action was not enough nor was it enough for the employer to say that his services were terminated because he had lost his confidence in the employee. The disclosure of grounds of termination of service of an employee was necessary that the impugned action of the employer may be tested judicially.

Suspension:—The Manager in a tea garden in Assam, may, when a worker is charged with misconduct, direct that such worker be suspended pending investigation by the Manager into the charge of misconduct and during the period of suspension the worker shall be entitled to receive an allowance of not less than one-half of his wages.If the charge of misconduct is not proved the worker is entitled to full wage for the period of suspension?

The practice of suspending workers for offences does not seem to be much in vogue in the tea industry. Generally a warning is given, and if the offence is repeated and the worker does not mend his ways, he is simply discharged. Although the exact figures are not available staff members are sometimes put under suspension for various offences specially those concerning moral torpitude, misappropriation etc.

39. Standing Orders for the Tea Plantations in Assam Clause 9(a)
Until recently there was no statutory provision regarding the payment of wages or any allowance to a worker suspended pending an enquiry. In 1967, the Model standing Orders prescribed under the Industrial Employment (Standing Orders) Act was amended to provide for payment of subsistence allowance to a worker suspended pending an enquiry. It is interesting to note that such provisions are already made in the tea industry as noted above and made effective from 12.9.1951 (i.e., the date of enforcement of the standing orders). No fixed period of suspension, however, is provided for in the Standing Orders. It will be in the interest of the Employers to put a ceiling on the period of suspension from service.

**Fines** - Formerly, the workers were fined for a second. At present, fines as a measure of punishment is seldom resorted to. The payment of Wages Act under Section 8 also puts restrictions on the liberty of the employers to deduct fines from workers as a measure of punishment.

**Other Methods** - Apart from the above disciplinary measures, reduction of wage rates and reduction of grade are also prevalent. Such type of punishment is however, seldom resorted to in the case of general workers in the tea gardens. But punishment in the form of fines or stoppage of annual increment or reduction in rank is used in the case of the staff members. A reduction of grade may have the same effect as reduction of wage rates, so far as the employee is concerned, but, if the worker newly
allowed to the employee is less onerous or less skillful, there can be no corresponding gain to the employer. Degrading of this kind may, therefore, be less objectionable but as like other measures of discipline, it is not controlled by standing orders, it is likely to be abused. In particular it is worth consideration whether this measure should not be restricted to definite period so as not to penalise the employee permanently.

**Termination of Service** — Termination of service may, therefore, be for variety of reasons: retirement, unsuitability for the job, physical or mental disability, long sickness, redundancy or serious misconduct. The Standing Orders applicable to the tea estates provide the necessary guidelines to a Manager to terminate the services of an employee for one or more of the reasons mentioned above. The worker also is required to inform the Manager, in advance, if he wants to quit service on his own accord, where the employment of any worker is terminated the wages earned by him and other dues, if any, shall be paid before the expiry of the working day on which the employment is terminated.

**Retirement and Superannuation** — Retirement is the most normal form of separation of an employee from his employer. This may take place on attaining age, or disability. The superannuation benefits are of three kinds: The contributory p.p., Gratuity, and the Non-contributory Pension introduced under the A.T.P.P.P.F. Scheme Act. We shall discuss these schemes in a later chapter in greater details as we feel that on the successful implementation of these schemes depends the success of administering the personnel employed in the industry.
Age of retirement and Superannuation: The age of retirement is not one of the items scheduled in the Industrial Employment (Standing Orders) Act and so it does not figure in the Central Model Standing Orders, although the states of Bombay and West Bengal have included it in their requirements. But no such specific instructions are there in the Standing Orders applicable in the tea estates of Assam.

Age as per Pension Scheme: Payment of Pensionary benefits is related to (i) the age of retirement, (ii) the period of qualifying service and (iii) wages earned. The age of retirement has not been fixed. It was considered necessary to keep the question of age open and to fix the age of retirement in consultation with the employers and employees. At one time the age was fixed at 60 years. But the Board of Trustees A.T.P.P.F. Scheme, being of the view that the expression 'on reaching the age of 60 years in service' in Paragraph 5 of the Pension Scheme being likely to create complications in as much as there is no fixed age of retirement for worker in the tea gardens in Assam and, as such, it was not considered expedient to fix the retiring age at 60 years in the Pension Scheme. This matter was discussed at a meeting of the Board of Trustees held on 25.10.1967 where it was decided that the expression 'on reaching the age of 60 years in service' should be replaced by the vague expression 'on reaching the age of retirement'. This decision was ratified at a meeting of the S.L.C. on 27.2.1968.


The various labour unions have shown themselves anxious to fix the age for superannuation in order to provide vacancies for the new recruits and opportunities for promotion, but the workers appear to be opposed to any limitation on the age of retirement.

Provisions in the Gratuity Act, 1972: As no retirement age is prescribed in the Standing Orders, it may therefore be possible to negotiate an agreement on the subject. The payment of Gratuity Act, 1972 however, clarifies the position by defining the terms 'retirement' and 'superannuation' and by fixing the age at 58. 'Retirement' means termination of the service of an employee otherwise than on superannuation. 'Superannuation' in relation to an employee means -(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and (ii) in any other case, the attainment by the employee of the age of fifty eight year.42

Local decisions: Where no age of retirement or Superannuation is laid down the decision of the Supreme Court may provide the necessary guidelines. In fixing the age of retirement several factors have to be taken into consideration, namely the (i) nature of work done, (ii) the wages paid, (iii) the retirement benefits and other amenities available, (iv) the climatic conditions, under which the employees have to work, (v) the age of superannuation fixed in comparable industries in the same region, (vi) the past

42. Ramanujam, G. Payment of Gratuity Act. p. 47
practice of industry in the matter of retiring employees and such other factors. According to the Supreme Court, the most important factor to be taken into consideration is the trend in the particular area.

The Supreme Court in a recent decision observed that the present day tendency was to fix the age of superannuation at 60 years. The Court felt that the work of the operatives was particularly arduous or hazardous where workmen might lose efficiency earlier. The Industrial Court or the Certifying Officer should inspect the conditions of work to come to the conclusion whether the age of superannuation should be left at 55 years or whether it should be raised to 60 years.

**Physical or Mental Disability or Long Sickness** - Sometimes, though the age of an employee may be in doubt, it is obvious that he cannot continue to work on account of physical or mental weakness or disability. This calls for medical examination. In the case of long and disabling sickness it may also be necessary to retire a person on medical grounds. But it is complained that sometimes the employers take advantage in this respect and resort to forcible retirement on medical grounds.

To create the proper work environment and to ascertain the goodwill


44. Proceedings of the 30th Session of the S.L.C. held on 28-7-1969 p.8 Speech of Sri P. Goswami, ACMS, placed Sri Goswami stated that since the last few years the gardens mostly in the membership of the Assam Branch ITA had been retiring substantial number of workers on medical grounds. He stated that there were instances where fit workers have been discharged and named Rajnal Tal, Kathalguri Tal, etc., as instances. He suggested that retiring age must be fixed. (Labour dept. Letter NO. 13018-33 dated 24-9-1969).
of its employees such unfair practices, if done as alleged, should be stopped by the Employers. As decided by the 30th session of the S.L.C., the matter should always be entrusted to Committee of three doctors not under the management of the garden concerned but residing in the neighbourhood who should settle all cases of disputes arising out of discharge on medical grounds.

Fixation of the age of retirement is necessary to remove all misunderstanding in this respect although it is difficult to do so in the case of at least the ordinary workers in the absence of any birth register. These difficulties are as old as the industry but these should not in any way prevent the employers to keep proper records of their workers. Such records are all the more important now to calculate the financial benefits due to an employee under the gratuity scheme. So that there can be no deprivation on this score, the government should institute special census of the tea garden workers so that ignorance and lack of bio-data do not stand in the way of a worker getting full benefits of the various welfare measures initiated by government.

After the introduction of the Pension Scheme by the Board of Trustees it is now obligatory for each plantation to maintain the record of age and membership in the P.F. of all their employees. These records are to be made available to all officers of the organisation for inspection.

46. Gill, T.S., Brochure on 'Pension including Family Pension' p. 5.
Section II: Regulation of Employment: We shall now try to analyse two main points: Employment Contracts and the nature of employment of general workers under the plantations system.

Employment Contracts: The nature of plantation cultivation makes it necessary to have, on the one hand, a regularly available labour force (normally resident) and, on the other hand, a supplementary labour supply to meet the seasonal requirements of the crop or peak production period. Both long-term and short-term employment are, therefore, prevalent in the tea gardens. The two classes of labour are Indentured and Contract Labour and Non-contract labour. The former term covers workers hired for working in the tea gardens of Assam over the last century and up to the middle of the present century which has created a class of well-established labour population in the state. The second term applied to engagement of short duration for the day, the week, an indefinite period or for the accomplishment of a limited task. They are sometimes engaged directly and are called casual workers or they work for the garden on specified jobs under the control of a contractor employed by the garden for the purpose. Although the casual workers now a days enjoys some privileges, the agreements for service are generally not in writing. In practice and under common law and custom however, the oral character of such agreements does not prevent their being regarded as valid and enforceable.

Indentured and Contract Labour: Unlike other large scale industries plantations in Assam were worked with imported labour. In 1883, for instance, out of an adult labour force of 1,57,622 persons only 8,088 or 5 percent were supplied by Assam, the remaining 1,49,414 or 95 percent were imported. Even in 1928-1929 out of
Although akin to agriculture, a plantation has peculiarities of its own: first, it is generally a large-scale capitalistic enterprise and, therefore, partakes of the nature of modern an organised industry; second, it is often located in isolated places away from populous communities and thus dependent on imported labour; third, labourers often have to live on a plantation, or in its vicinity, which is generally the property of the planters; finally, most of the plantations have been financed and manned by foreign capitalists, who wanted to have a hold on their labourers. All these factors, more or less, contributed to the development of the indenture system or contract labour under penal sanction.

In 1877, there were 46,765 indentured workers or Act-labourers as they were officially called, in Assam tea gardens, and rising as high as 1,48,192 in 1897, the number decreased to 5,061 in 1915-16. It will be seen that of the total number of workers in Assam, 41 percent were Act workers in 1877 and rising as high as 46 percent in 1884; it decreased to 37 percent in 1897, and to 8 percent in 1915-16.

47. Assam Labour Reports 1883 p.26 ; 1928-29 statistics.
Act Labourers in Assam Tea Gardens

(Shown at specified period)

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Adult Labourers</th>
<th>Act Labourers</th>
<th>Percentage of Total Labourers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Man</td>
<td>Women</td>
<td>Total</td>
</tr>
<tr>
<td>1877</td>
<td>1,10,675</td>
<td>23,109</td>
<td>21,656</td>
</tr>
<tr>
<td>1884</td>
<td>1,81,501</td>
<td>48,634</td>
<td>35,117</td>
</tr>
<tr>
<td>1897</td>
<td>3,99,975</td>
<td>79,136</td>
<td>69,056</td>
</tr>
<tr>
<td>1915-16</td>
<td>5,69,770</td>
<td>2,910</td>
<td>2,152</td>
</tr>
</tbody>
</table>

As might be expected, the number of these Act-Workers, as compared with non-Act Workers, was much larger in the beginning and gradually began to decline. This decline began long before the indenture system was abolished. The chief reasons for this decline were; first, the growth in settlement of Assam tea garden workers making labour supply more and more secure; second, restriction of the contract system by successive legislative measures gradually reduced the number of Act-labourers; third, gradual increase in transportation facilities and the free-movement of labour also contributed to the gradual decline of contract labour; finally, the increasing dependence of the planters upon the Workmen’s Breach of Contract Act of 1859 was also partly responsible for the gradual decrease in the number of indentured labourers.

As regards the number of workers employed on Assam plantations under Act XIII of 1859, there is no separate record prior to 1894, when from 70,000 to 80,000 labourers were estimated to be working under the Act. In 1920-21, there were 2,70,443 such workers. In 1921-22 the number rose to 2,78,242 consisting of

49. Assam Labour Report, 1894 p.35.
50. Assam Labour Enquiry Committee Report 1921-22 p.83
1,90,022 in the Assam Valley and 88,220 in Surma Valley. The Act of 1889 was abolished on April 1, 1926 and although with its abolition the contract labour came to an end, 1,17,978 workers were still under contract in the Assam Valley up to 3rd March of that year.51

Terms of Labour Contract: Thus the system of contract has been developed under two series of legislation, namely—

(i) the Workmen's Breach of Contract Act of 1859 and the relevant sections of the I.P.C., and

(ii) Plantations Legislations, or Labour and Emigration Acts for Assam tea gardens since 1863, the former leading to the Contract system under penal sanction and the latter to the Indenture system.

The object of the Breach of Contract Act of 1859 was to safeguard the employers against "the fraudulent breach of contract on the part of the artificers, workmen and labourers, who received money in advance on account of work which they had contracted to perform." As noted already the planters started to take advantage of this Act in the sixties and its provisions were often mixed with those under plantation Acts. The most important terms in favour of the employers under this Act were—

Firstly, verbal contracts were legal, whether they could be verified or redeemed. On most of the plantations a record of

51. Assam Labour Reports, 1926 p.3
verbally contracts was, however, invariably kept either in the garden cash book or advance registers, or the register for the advancement of money and the labourers' thumb impression was generally added to the entry.

Second, although the contract was generally limited to a period of 313 days, it was often extended to 939 days. Thirdly a labour could be prosecuted and imprisoned for breaking his agreement, though it contained no compensating provision for his protection.

Among the features more or less favourable to labourers were— (1) Under the original Act the employer had no power to arrest without warrant.

(2) The Magistrate was granted a wide discretion as to the reasonableness for the non-performance of the contract and the amount of punishment to be inflicted and

(3) When a labourer was once sentenced to imprisonment, he was no longer liable to prosecution in respect of the contract under this Act.

The Amendment of Act XIII of 1859 by Act XII of 1920 brought about certain changes, the most important of which were the following—

(a) Agreements could be oral as before, but the entry on advance register and thumb impressions were made the proofs. The cases were valid only on an advance of money not exceeding Rs300.

(b) The term of contract was limited to only 313 days and complaints by employers had to be made within three months of the neglect or refusal on the part of the workers.
(c) The Magistrate was granted discretionary power to enforce inequitable contracts, to order for the repayment of advance or the performance of the contracts and to pay compensation in the case of false, frivolous and vexatious complaints.¹²

In addition to the contracts executed under the Workmen's Breach of Contract Act, a large number of workers were employed on plantations under ordinary civil contract enforced under Section 492 of the I.P.C. In 1893, for instance, 5,122 labourers were imported into various districts under this system of contract. The use of this system was, however, restricted to a few districts only.¹³

The indenture system on Assam tea gardens was first legally recognised by the Act of 1863, and elaborated by the Act of 1865. Among the most important terms favourable to the employers were: first, a labourer was liable to a fine, including, in some cases, the forfeiture of his wages, for absence, negligence of duty or idleness; he was also liable to 14 days' imprisonment for seven days' absence, for second conviction with three months of the first offence. Second, the employer was empowered to arrest an absconding labourer without warrant if he was found in the same district and not in the service of another employer. But the employer was bound to hand over the labourer so arrested to a police officer or magistrate within 48 hours on pain of a fine of Rs. 500. Third, the penalty for desertion was three months' rigorous imprisonment and the period of absence through

¹². Act No XIII of 1859 as modified up to Nov 1, 1920. With the abolition of Workmen's Breach of Contract Act from April 1, 1926, contract labour came to an end.

¹³. Assam Labour Reports, 1895 p.32; 1897 pp.16-18.
imprisonment was to be added to the term of contract. Fourth, any person enticing away, harbouring or employing a labourer under contract was liable to a fine of Rs. 500. Fifth, the terms of redemption of a contract were fixed at Rs. 120, or, if the contract had less than two years to run, at a sum equivalent to the minimum rate of wages for the unexpired term.

Among the provisions for safeguarding the interests of the labourer, the most important were the following:—

1. The period of contract was limited to from three to five years, the rate of wages was fixed, every estate was to maintain a hospital, and, if any estate employed over 300 labourers, also a medical officer appointed by Government.
2. A protector of labour was appointed with the power to suspend, and even to cancel, a contract on the ground of temporary or permanent unfitness through disease or accident. The duties of a protector were afterwards transferred over to an inspector. The employer was bound to notify a protector of the fact that a labourer in his service wished to make complaints. His failure to comply made an employer liable to pay fine up to Rs. 500.
3. Compensation was awarded to the labourer in case his wages were two months in arrear, and a contract could be cancelled in case of non-payment for six months or ill-treatment by employers.

By the Act of 1870, some modifications were made in the above terms, of which the most important were the following:—

1. The terms of contract were to be made in writing, including the period of service, amount of wages in money and the price at which rice was to be sold.
(2) The maximum period of contract was retained at 3 years, and the hours of work were limited to nine hours a day and to six days a week.

(3) The transport of labour except in the case of the recruits numbering more than 20 persons, and by garden sardars, was to be regulated.

(4) Indolence could not be made a ground for punishing the Labourer, but for desertion a labourer could be imprisoned for one month for the first offence, two months for the second offence, and three months for the third offence. Contracts could, however, be cancelled when a labourer's imprisonment amounted to six months in all.

(5) The labourer was to get three months' wages if the contract was suspended or cancelled.

(6) Provisions were made for defining the nature of housing, water-supply and sanitary arrangements.

The most important changes brought about by the subsequent Acts were as under:

The Act of 1873 provided that no contract made in recruiting districts otherwise than under the Act should be binding for more than one year.

By the Act of 1882, contracts might be executed in labour districts, but a copy of the contract had to be forwarded to the inspector of the plantations who, if necessary, could cancel the contract or refuse the schedule of the task. Moreover, the labourer absent owing to sickness was to receive one and a half anna a day, but if such absence exceeded 30 days in any one year the excess days were to be added to the period of contract.
By the amendment of 1901, no woman was allowed to bind herself by labour contract if her husband or guardian objected. It was also provided that for the first six months of residence at the garden the labourer was entitled to receive full wages on completion of half the task unless the inspectors in charge certified that he was physically fit to perform the whole task.

Following the recommendation of the Assam Labour Enquiry Committee of 1906, the Government of India issued orders abolishing the right of private arrest. Moreover, a labourer could be put under contract only in the recruiting districts, and if he was brought to Assam as a free emigrant, he could no longer be placed under contract by the existing law, nor could a time-expired labourer be put under contract. The indenture system came to an end by 1915. Since many employers took advantage of the Act of 1859 as having a hold on the workers, it was not until the abolition of the above Act in 1926 that indenture as a legal system was finally abolished in India.

**Local Contracts** :- Besides the contract under the other two systems of legislation, which could be executed either in recruiting districts or at Dhubri in Assam, there was also the local contracts which had already existed in the districts of Sylhet and Cachar, and which was sanctioned by the Act of 1882. The objects of the local contracts were as follows :-

(1) Providing the planter with the system of penal contract instead of civil contract, so that he might have better control over his labour force.
(ii) Securing to the planter a uniform system of contract and to the labourers a uniform system of protection.

(iii) Encouragement to free immigration into Assam.

Local contracts as a method for the establishment of free immigration failed to materialise. The Assam Labour Enquiry Committee of 1906 recommended its withdrawal on the following grounds:

(a) First, free immigration was impossible unless there was also free labour;

(b) Second, if an emigrant was to be put under agreement, it was better done in his own village, where he was still a free agent and among his own people and could appear before a magistrate who knew his language.

(c) Finally, it was felt that there was no necessity for a local contract, as Act XIII of 1859 was sufficient to take its place.⁵⁴

Public Supervision of Contracts: — The need for supervision is obvious; it is not too much to say that the success of a system of contracts which presupposes effective freedom of choice on the part of the worker depends on the conscientiousness with which the function of control is exercised by Government officials. Official intervention not only at the commencement of the contract, but also by recording of the contract, provides for contingencies where the state, the employer or the worker may require proof of the existence and terms of the contract.

The local contracts could be executed either without the intervention of a Government officer or in the presence of such

officer. A majority of the local contracts were executed without the intervention of Government. It afforded long term contracts on the one hand and avoided the trouble of sending absconding labourers to magistrates. The advantages of contracts in the presence of a Government officer were obvious, but planters scarcely took advantage of the system until 1893. In that year it was laid down that all the local contracts for more than one year should be executed in the presence of an officer. Since planters preferred contracts for longer periods, they resorted to this provision. Most of the labourers getting local contracts were time-expired labourers. The duration of this contract generally varied from one to three years.

Local contracts without the intervention of the inspector were disadvantageous to the labourers. The terms of contract were not explained to them before they were entered into. Any objection raised by them might have been listened to. Moreover, the labourers coming to Assam from different parts of the country were often unable to understand the language in which contracts were entered in Assam. In order to mitigate these difficulties, provision was made that such contracts should be verified by inspectors, who were empowered to cancel contracts executed without conformity to law. But as the actual work of verification was very difficult, because tea gardens were scattered, inspectors were few in number, and mustering all the labourers for inspection on

55. As for example in 1884, out of 25,457 local contracts, 24,333 or 96 percent, were executed under section 111.
56. Assam Labour Report, 1883 pp 4, 5
the day fixed by an inspector was difficult. The Government, however, made it criminal on the part of planters if they did not comply with the request of the inspectors, and there was gradual progress in the work of verification. In 1892, for example, 99 percent of all such contracts were verified.

**Termination of Contracts**: Along with the conclusion of new contracts, considerable number of terminations also took place every year. These terminations took place for various reasons.

**First. Expiry or efflux of time**: Since all contracts were gradually entered into for three to five years, all labourers employed under plantation legislation had to renew their contracts periodically.

**Second. Cancellation**: Cancellation was generally brought about either with the consent of one or both the parties or because of defects in the matter of recruitment or contract. Cancellation could also be on the ground of physical incapacity, irregularity in recruitment, or unhealthiness of gardens. In the last case the labourers of one garden could be transferred to another if the latter belonged to the same company and were located in the same labour district.

**Third. Redemption**: The cases where the labourers were able to redeem their contracts were, however, very few in number. Contracts for one year might be redeemed on the payment of Rs.12, and every two years on the payment of Rs.48. Most of the labourers were seldom able to pay even such a small cash amount in case they wanted redemption.

57. Ibid, 1893 p.25.
Fourth. Dissolution by Mutual Consent: It involved, however, some of the most difficult problems. With a view to reducing the death rate in their gardens, or to escape their obligations towards sickly and unsatisfactory labourers, planters were liable to exercise undue influence to secure the consent of labourers to such terminations.\textsuperscript{59}

From 1886 to 1897 for instance, while the number of such contract rose from 77,477 to 1,48,192 or doubled, the dissolution of contracts rose from 155 to 2,250, that is increased by 15 times. Several inspectors, therefore, refused to recognise such terminations unless effected through Government agencies. Government however, refused to place such a dissolution on a legal basis.\textsuperscript{60}

The most common cause of dissolution was the renewal of contracts under Act XIII of 1859. It was a common practice in some of the gardens in Assam to cancel the original agreement on the expiry of the first three years of a four year contract, and to substitute a fresh contract for the remaining term of the original period, the extra rupee per month which the labourer would have received for the fourth year of the contract being given in a lump sum as a bonus. This bonus often enabled the labourer to purchase cattle and other livestock, which added very considerably to his means of livelihood and to his bodily comfort.\textsuperscript{61}

\textsuperscript{59} Ibid, 1889, p. 15; 1897, p. 21.
\textsuperscript{60} Ibid, 1891, p. 21
\textsuperscript{61} Ibid, 1895, p. 39.
Whether such a procedure was really beneficial to labourers was considered by the Government of Assam in 1900. In some cases the bonus given compensated the labourers for the loss of increase in monthly payment which they would have earned, but some of the provisions which conferred advantages upon labourers in respect of rice, sick allowance etc were no longer binding on the employers. Labourers lost the higher rate of pay in the last year of their original contract and although they received the bonus they would have got a bonus all the same if they had renewed it after the end of their original contracts.62

Cancellation of contract on the ground of physical disability often involved repatriation, which formed one of the most important provisions of plantation legislation. Under sections 158-162 of Act VI of 1901, for instance, it was provided that all labourers permanently incapacitated for the performance of work on plantations, whether engaged under the contract or not, and all those who were fraudulently recruited, were entitled to repatriation.

Overview: Thus contract employment in its early stages presented many undesirable features. In course of time the nature of contract changed and it has gradually been transformed into a more reciprocal agreement in which the employers started assuming the obligation to protect the interest of the worker for assuring service. Furthermore, the limitations on the freedom of the workers have decreased; the length of the contract has been gradually reduced, especially for the imported workers; the

62. Ibid, 1900 p. 7
possibility of terminating the contract before its legal expiry has been extended; the range and severity of the penal sanctions have been restricted, and later abolished; finally the long-term contract has gone into disuse mainly because workers have become accustomed to seeking employment without the intervention of the recruiter and because they have by themselves created a separate class of wage-earners from which the tea estates in the state can easily draw their required manpower.

Non-Contract Employment: The term 'non-contract employment' refers to short-term agreements for service mostly on oral basis. Although legally valid, oral contracts suffer from the defect that their terms are not easily ascertainable and therefore place the worker at a disadvantage in relation to his employer.

The seasonal nature of the industry makes it imperative for the tea planters to seek temporary help at certain times of the year and this gives rise to the need of 'non-contract' employment. Its main feature is, it is casual and seasonal in character, though in essence it is contractual even if the engagement is only for a day. The present day use of the words 'contract labour' refer to this type of irregular employment as contrasted with the permanent set of workers who work in the plantations. Casual workers are employed by the planters directly whereas the contract employment is indirect and done through contractors.

Under non-contract employment, whether on a time or task basis, labour does not as a rule enjoy all the amenities,
concessions and other protective measures that are extended to the permanent workers. The hiring of service for particular periods of time or for the accomplishment of a definite task in practice does not usually carry with it, to the same degree, the rights and obligations which the permanent workers enjoy. Such seasonal workers frequently derive their principal income from the traditional occupations such as farming, handicrafts etc and in many cases these workers remain unemployed. In other words although they do not have any primary source of livelihood, plantation employment is often the secondary occupation. In spite of the fact that some of the seasonal work on plantations extends over a fairly long period of time, labour is engaged on casual basis. This means economy to the employers but it creates a situation so far as the livelihood of the workers is concerned. As noted before, the legal protection of workers under such employment is unsatisfactory. Although there is a tendency to correct this situation by legislation regulating the conditions of work of 'non-contract' employment and by the improvement in conditions that are made by employers to attract and retain such labour, it remains true that conditions are often less advantageous than those of permanent employment.

It is a question of vital importance to the worker to know in advance the nature of employment he is undertaking. On the other hand employers have an equal interest in stabilising their labour force and therefore are obliged to devise ways and means of regulating the employment of at least their resident labour in such a way as will neither considerably diminish the earnings of labour nor increase the cost of production.
S.L. Committees: A Contract Labour Committee was constituted under the chairmanship of the Labour Commissioner, Assam. On 13.12.66 it was decided that the Committee on Contract Labour should be broken up into Zonal Committees with the Assistant Labour Commissioner of respective Zones as Chairman to look into the matter. Subsequently the suggestion for the inclusion of 3 ABITA's representatives in the Committees instead of one branch representative has been accepted.

The aim of these committees was to look into the complaints of employment of Contract and Casual Labour in the place of permanent workers. However, these committees were mostly ineffective. The labour representatives have always been complaining that the number of regular workers had decreased while there had been tremendous increase in the employment of Casual and Contract labourers in the gardens. This practice, it is complained, is creating an alarming situation and a strike was threatened on this issue which was postponed at the request of the Chief Minister. But the Employers' representatives say that the Management had been forced to employ casual labour due to large scale absenteeism.

64. Proceedings of the S.L.C. 26th Session (Letter No SLC/16/66/2253), Speech of Advisor, I.T.A. Calcutta.
66. Ibid, Speech of Sri C. Sinha, Secretary, TACL, Jorhat.
that the Workers very often resign and get their names cut for withdrawal of P.F. money and that the workers have a general tendency to leave service and the number of P.F. settlement in a year is more than the total fall in employment.

Statistical Support: In view of such conflicting opinions expressed by the employers and the employed, it was considered necessary to review the matter by verifying the employment position in 20 sampled gardens and the position is found as shown in the following table. From this table, it appears that while the number of permanent workers has decreased, the number of Casual and temporary workers has shown a steep rise from 25,519 in 1974 to 51,702 in 1974. The figure for the year 1974 however, includes about 15,000 workers working under contractors employed for specific jobs like felling trees, building quarters, or maintenance of roads etc.

<table>
<thead>
<tr>
<th>Year</th>
<th>Garden Labour (Permanent)</th>
<th>Outside Labour (Permanent)</th>
<th>Outside Labour (Temporary)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1928</td>
<td>4,68,596</td>
<td>33,396</td>
<td>42,201</td>
<td>5,54,193</td>
</tr>
<tr>
<td>1948</td>
<td>4,38,880</td>
<td>28,113</td>
<td>25,519</td>
<td>4,92,512</td>
</tr>
<tr>
<td>1971</td>
<td>3,70,341</td>
<td>29,511</td>
<td>49,580</td>
<td>4,49,432</td>
</tr>
<tr>
<td>1974</td>
<td>4,10,046</td>
<td>18,775</td>
<td>1,51,702</td>
<td>4,80,523</td>
</tr>
</tbody>
</table>

67. Ibid, Speech of Sri S.N.Phukan, Secretary, IDIA, Jorhat, quoting figures that decrease in employment was only to the extent of 7 workers per garden and that in 1966, though 20 thousand P.F. claims were settled, the fall in the employment was by 10 thousand only.

68. Ibid


The 1928 figure is exclusive of Contract labour and 1948 figure is exclusive of labourers under Contractor. The 1974 figure, computed on the basis of particulars obtained from 20 sampled gardens, is only provisional and includes about 15,000 labourers working under contractors.
Though it is not possible to come to a definite conclusion that there had been reduction in the number of regular workers, statistical evidence shows that there was reduction in recent years. Most of the casual workers come from neighbouring villages and are in many cases children of the labourers who were working formerly in tea estates.

Thus although employment of casual labour is well recognised and generally objected to, it is taken exception when it is continually employed for long periods to circumvent the provisions of law, which confer benefits to permanent workers. Casual labour is thus denied leave with wages, maternity and sickness benefits because under the Factories Act, 1948 annual leave with wages is admissible only to those workers who work for 240 days or more. Under the Plantations Labour Act, 1951 no woman is entitled to maternity benefit unless she actually works in a plantation for a period of not less than 150 days in twelve months immediately preceding the date of expected delivery. The Assam Tea Plantations P.F. Act, 1955 is applicable only to those workers who have put in 120 days of continuous service in a period of six months.

These provisions were availed of by the unscrupulous employers. They maintained casual labour in large numbers. In some cases, the employers arbitrarily terminated the services of casual workers to prevent them from completing the prescribed period of service and thus deprived them of the statutory benefits. In many

in the interest of the industry as well as the workers it is essential to regulate the conditions of casual labour. The National Commission on Labour recommended that casual labour should be restricted to work which is truly of a casual nature and it should be employed only where regular workers cannot be employed. For this purpose, every enterprise should determine well in advance the strength of its labour force, both permanent and temporary, in consultation with representatives of labour. Wherever possible there should be a standing order which should, against the 'normal' strength of the enterprise concerned, fix the strength of casual labour. The practice of discontinuing employment of a casual worker for short periods and again re-employing him to debar him from enjoying the benefits of a permanent worker is pernicious. Even when the employment is discontinued for a short period and the worker is re-employed, this short period should not be treated as a break in service. It is also considered necessary that when a casual worker has completed a stipulated period of service, he should be allowed the same benefits which a permanent worker enjoys.

**Definition of 'Contract Labour'** — Contract labour is different from 'direct labour'. Direct labour is borne on the pay roll of the establishment and wages are paid directly. Contract labour, by

and large is neither borne on pay-roll nor is paid directly. The advantages of contract labour are - First, it ensures production at a lower cost. Second, benefits such as leave wages, P.F., bonus are/extended to contract labour. Third, the overhead cost and the administrative burden in maintaining the accounts of the individual workers are eliminated. Contract labour can broadly be divided into two categories, those employed on job contracts, and others on labour contract. Large gardens give out contract of jobs or of particular operations on lump-sum payments. The Contractor engages his own workers. The Contractor may be an outsider or a senior worker of the garden like the sardar.

The Whitely Commission recommended the abolition of contract labour by implication. The Bihar Labour Enquiry Committee condemned the practice of recruitment of labour through contractors because they said: 'the contractors ordinarily lack a sense of moral obligation towards labour which the employers or the managers are expected to have, and therefore, do not often hesitate to exploit the helpless position of labour in their charge.'

These recommendations resulted in enlarging the definition of 'Worker' in the Factories Act (1948) and the P.L. Act (1951). The contract labour, in some cases is entitled to the benefits of working conditions and hours of work admissible to the labour directly employed. The Second Plan stressed the need for improvement in the working conditions of contract labour and pointed out that in the case of contract labour "the major problems relate to the regulations of their working conditions and ensuring them continuous employment."

72. Bihar Labour Enquiry Committee Report, p. 36.
Conditions of work of contract labours are not satisfactory. Working hours are irregular and longer. The period for which payments are made vary from one day to six months. There is also wide disparity in the wages and working conditions between direct and contract labour. There is no security of employment; the job ends with the contract. They no doubt get weekly rest like the direct labour under the Factories Act, 1948. But leave with wages and housing facilities are not available to contract labour. Housing benefits are available under the E.S.I. Scheme but the tea estates in Assam are not covered by this scheme. Similarly, facilities under the A.T.P.P.F. Scheme Act are not available to contract labour because they do not fulfil the qualifying conditions of regular and continuous employment.

As against these unsatisfactory conditions of service of the contract workers, the Contractors however, occupy a disadvantageous position first, uncertainty about the work they have to do, second, the dispersed areas in which they have to get work done, and finally it is costly to provide all amenities to labour.

The Contract Labour (Regulation and Abolition) Act 1970:— With a view to removing the disabilities of contract labour a Bill for regulation and abolition of employment of contract labour was introduced in the Lok Sabha on July 31, 1967.

Main Provisions of the Act:— This Act seeks to regulate the employment of Contract Labour in certain establishments, to provide for its abolition in certain circumstances and for matters connected therewith.

Every establishment to which this Act applies has to register itself, and every contractor has to obtain a licence.
The Act also provide for canteens, rest-rooms, latrines and urinals the supply of portable water and for first aid facilities under sections 16, 17 and 18. The provisions of these sections are similar to those provided under Sections 18, 19, 42, 45, 46 and 47 of the Factories Act, 1948.

Under the Act principal employer is made responsible for the payment of wages to the contractor's workers. He is also bound to ensure that the amenities stipulated in the Act are made available to the workers employed by the contractor. Under the Act, the Government is empowered to prohibit the employment of contract labour in any establishment in consultation with the State Advisory Board.

Judicial decisions: Courts have always discouraged the practice of employment of contract labour, particularly when the work is perennial and must go on from day to day; incidental and necessary for the work of the factory; sufficient to employ a considerable number of whole-time workmen. These awards also came out against the system of 'middlemen.'

Section III: Employment of Women and Children: One of the most important features of plantation industries is that female labour constitutes a significant part of plantations work.

The Position in retrospect: In 1877, the total strength of the labour force, including both the actual workers and their dependants was 1,57,219 of which the total female labour force was 50,752.
The actual position was as follows:

Table 22: Number of Female Workers (at specified periods)

<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>Women</th>
<th>Children</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1877</td>
<td>59,923</td>
<td>50,752</td>
<td>46,544</td>
<td>1,57,219</td>
</tr>
<tr>
<td>1900</td>
<td>2,04,492</td>
<td>2,05,603</td>
<td>2,52,376</td>
<td>6,62,471</td>
</tr>
<tr>
<td>1919-20</td>
<td>3,23,731</td>
<td>3,05,850</td>
<td>4,80,850</td>
<td>11,10,364</td>
</tr>
<tr>
<td>1928-29</td>
<td>3,33,962</td>
<td>2,81,507</td>
<td>4,52,183</td>
<td>10,67,662</td>
</tr>
</tbody>
</table>

Thus in 1928-29 over 45 percent of the total adult population were women. When the indenture system was prevalent, a fair proportion of women were also indentured labourers. Thus out of 148,102 adult indentured labourers on Assam tea gardens in 1897, 69,056 or 46 percent were women.

Emigration of Women: The proportions of men to women varied from time to time. At first most of the recruits were men. In 1861, only 10 percent of the emigrants were women. But as time went on, the proportion of women increased. The reason for such a small proportion of women in the earlier years was due to the fact that the journey was too long, the final destination unknown and the opportunity for women were scarce. The garden sardars generally brought family batches with a larger proportion of women and children so that they might settle down in Assam. Contractors' recruits, on the other hand, were of different type. They were mostly single men and women consisting of a large number of "the waifs"

73. Adapted from Assam Labour Reports for the years indicated. The figures indicate the average annual strength. The figure for 1928-29 indicates the number at the end of the year.

and strays of the population*. On the other hand, a large number of women among emigrants was often due to the malpractices in recruitment. Women were more easily duped than men and were more readily caught by the wily recruiters, who often made a living by every act of deception.\textsuperscript{75}

**Predominance of Women and Children:** The number of women and children on Assam tea gardens, especially that of the latter, has increased faster than that of men. Thus, from 1877 to 1928-29 while the number of men increased from 59,923 to 333,962 or little over five times, that of women increased from 50,752 to 281,507 or about six times, that of children from 46,544 to 452,183, or about nine times. With this increase with the total number of workers the proportion of the woman and children actually working in the gardens also increased accordingly.

The reason for the proportionately larger increase in the case of women and children is that as the industry became more stabilised and conditions of work improved more workers brought their families with them to live on the tea gardens. The system of recruitment and increasing transportation facilities provided have also affected the position. Moreover, as the number of domiciled labourers increased, the number of children also naturally increased.

There are several reasons for the proportionately large number of women workers on plantations:–

In the first place, being akin to agriculture, plantations are more congenial to women than other organised industries.

\textsuperscript{75} Ibid. pp. 36-37,
such as factories\textsuperscript{76} and mines.

In the second place, the very fact that the labourers not only work but also generally live on plantations or in the vicinity gives women a chance to work on them.\textsuperscript{77}

In the third place, the system of labour contracts based on the principle of utilising every able-bodied persons in the family for labour and of fixing the wage rates accordingly, compelled women to seek employment in order to balance the family budget. Although the contract system has now been abolished, this is the reason that the system of wage rates and the custom of women's labour still remain.

As in the case of women, the number of children on plantations is also proportionately larger than that in factories or mines. Thus, in 1928-29, out of a total annual labour force of 1,046,441 on Assam tea gardens, 4,46,150 or about 43 percent, were children. Of these children only 93,378 or 20 percent, were working. The number of children according to the average daily strength was, however, only 64,686, or 14 percent of the total child population on the gardens.

The reason for a large proportion of children on plantation is obvious. Most of the children have to live on plantations with

\textsuperscript{76} Although the plantation work involved work in the factory as well, the female workers are engaged in plucking leaves and only in very light works in the factory, subject to the restrictions imposed in the various legislative measures, women workers are employed. For example, out of 3,97,367 workers in 1971, only 5370 female workers were made to work in the factory. (Tea Statistics 1972-73 pp. 114-115)

\textsuperscript{77} Industrial Labour in Indian(ILO) pp. 35-36.
their parents, either one or both of whom may be employed on tea gardens. The lack of educational facilities in India has been one of the most fundamental reasons for a large number of children being employed in all occupations and plantations labour in Assam is no exception. The nature of plantation work also makes child labour profitable to planters. In a child lies the potential worker and the planters like to train up the young hands for future employment and by this the garden gets work at lesser cost. Moreover, the extreme poverty of the people and the low wages of adult labour easily induce the parents to take advantage of the wages of their children.

Present pattern of employment of women: The employment of women in plantations has remained more or less stable and has in fact increased in recent years. It was as follows:

Table 23: Employment of Women and Children in Assam gardens

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Workers</th>
<th>Number of Women</th>
<th>Number of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(at specified dates)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
<td>Number</td>
</tr>
<tr>
<td>---------</td>
<td>--------</td>
<td>------------</td>
<td>--------</td>
</tr>
<tr>
<td>1938</td>
<td>3,99,320</td>
<td>1,61,134</td>
<td>40.5</td>
</tr>
<tr>
<td>1945-46</td>
<td>3,64,238</td>
<td>1,43,234</td>
<td>39.4</td>
</tr>
<tr>
<td>1949-50</td>
<td>4,03,795</td>
<td>1,61,529</td>
<td>40.0</td>
</tr>
<tr>
<td>1969</td>
<td>3,86,351</td>
<td>1,74,501</td>
<td>45.2</td>
</tr>
<tr>
<td>1971</td>
<td>3,97,367</td>
<td>1,77,673</td>
<td>44.7</td>
</tr>
<tr>
<td>1974**</td>
<td>3,98,065</td>
<td>1,77,569</td>
<td>44.7</td>
</tr>
</tbody>
</table>

78. This point is confirmed by Mr. I.N. Khanna, the Manager of Doolahat T.E. North Lakhimpur, [Acrea 1092] on 6.3.1975 when he says that out of about 61 vacancies in 1975 the garden plans to appoint about 30 adult workers and the balance to be made up by appointing 62 children (double the number of vacancy taking two children to make one adult unit). This according to Mr. Khanna ensures better service at lower cost and does not also clash with the S.L.C. agreement to maintain the status quo in the number of workers as it stood on 1st January, 1969.


** Figures computed on the basis of information collected from 20 sampled gardens.
In Dibrugarh district which incidentally is the largest tea producing district in Assam, the number of women appears to be more. Out of 1,36,118 workers on books for the period ending on 31.12.1972 in the district there were 65,865 women workers and 14,034 children representing respectively 48.4 percent and 10.3 percent of the total strength of workers on that date. Women were employed in large numbers for obvious reasons.

First, the suitability of women for several operations in plantations. Second, the plantations work is more akin to agriculture to which women have been accustomed for a long time. Third, non-availability of local labour for long time for work in the estates necessitating the importation of family units. Fourth, the comparative immunity of the industry from the technological changes elsewhere adversely affecting the employment of women. Lastly, for the reason that the additional cost of protective legislation for women is offset in this industry by the suitability of women for work in plantations.

From the table given above it appears that the percentage of female workers has remained around 45 registering a rise over the figures for the year 1950 and the earlier years. While trying to establish the reason for such increased employment of female workers it is seen that the number of resignation tendered by the female workers is much less than that of their male

80. Memorandum submitted before the Joint Select Committee of the Parliament during its visit to Assam from October 30 to November 9, 1973 by the A.C.K.S. & A.C.M.S. Dibrugarh. Annexure:

counterparts. The special feminine grace, diligence and patience may be the possible reason for such steady habits among the mostly illiterate female workers serving the tea estates of Assam.

Further as most of the female workers are engaged in the field the adverse effect of technological changes and mechanisation have been ineffective in the case of the women workers. Probably under a consideration that the women workers are not fit to be utilised in all the activities of a tea garden work that they are paid at a lower rate than the male workers. This discrimination in wages for equal amount of work is, however, not desirable and the recent meeting of the State Labour Ministers held at New Delhi on 28 September 1974 has rightly decided to advise the state governments to take step to remove such differences. For a rational distribution of the women labour in the economic activities of the estate it will be desirable to give preference to women as well for training in those works for which they have special aptitudes. Although however, in the tea gardens the wages of women workers have been lower than those of men, the differences have tended to narrow down in recent years mainly due to two reasons;

Firstly, due to fixation of statutory minimum wages under the M.W. Act and Secondly, due to standardisation of wages for different jobs through the operation of the Industrial Relations Machinery.

82. Assam Tribune dt 29.9.74.
Employment of Children: The various legislative measures prohibiting the employment of tender aged boys and girls may be the possible reason for the decline in the number of children which has registered a steep fall from 17.5 percent in 1938 to about 9 percent in 1974. To oblige the legislative measures the young workers are now divided into two distinct groups—(a) Adolescent i.e. those who have completed their fifteenth year of age but have not completed eighteenth year to be adults and (b) Children, who have not completed their fifteenth year of age but have completed the twelfth year to be eligible for employment under the P.L. Act. The number of children shown in the table for the years 1969, 1971 and 1974 includes 13,669, 11,325 and 19,901 adolescents respectively. As noted earlier, so far as the various provisions of the recent legislative measures permit, the employers like to employ the young children available in the garden. This has contributed to the increase in the number of children employed in the estates. While it is certain that the recent legislative measures have controlled the growth of irregular employment of children, it is difficult to say definitely whether the sudden fall of such employment to about 8 percent in the year 1969 and the publication of the National Labour Commission Report towards the middle of the same year is simply a coincidence.83

83. The Report was signed on August 28, 1969.
The gradual reduction in the employment of child labour since independence, according to the National Commission on Labour, are partly due to the expansion of educational facilities and also due to relatively better enforcement of statutory provisions relating to child labour. It is observed by the Commission that quite often it is the feeling of sympathy rather than the desire to exploit which weigh with the employers in employing child workers. Ironically enough, it is the same feeling which makes the inspecting officers to take a lenient view of breaches of the legal provisions in this regard. This is, therefore, more of an economic problem. Under the excuse of preparing a boy or a girl for taking up productive employment as he reaches adulthood a small child is engaged to train his fingers in the required skill.

In the tea gardens, it is not generally a question of training as the children are utilised in such odd jobs like picking insects from the tea bushes. It is reported by many managers that unless the children are thus trained and engaged at a very early age, their adaptation later would be difficult. But in a welfare state we do not feel that such appointments should be encouraged at the cost of education. The AEKS and the ACMS also do not like that children should be employed in the garden.

It is noted that if the education of a child is a casualty in the process, it is the poverty of the parents which is to blame.

For them an uneducated child is an asset; desire to be educated becomes a double liability because of First loss of earnings if the child does not work and Second expenditure on education howsoever small.

Thus the employment of child labour in the tea gardens has to be considered in the greater perspective keeping in view the ideals of the nation as a welfare state. In the words of the N.C.L.86

'The employment of children is indeed more of an economic problem than anything else. Nevertheless, we consider denial of opportunity to children for their proper physical development and education to be an issue of a serious nature, keeping in view the larger interests of the society. While the economic difficulties are real, a way has to be found to give the child the necessary education in his more receptive years. We feel this can be ensured by fixing the employment hours of children so as to enable them to attend to schooling. Where the number of children is adequate, the employers, with the assistance of the State Governments, should make arrangements to combine work with education.'

Whatever be the loss to the industry or whatever be the economic consequences the children in the tea gardens must be given proper education and should not be made a wage-earner from the very prime of their life.