CHAPTER-VII

MODEL LABOUR LEGISLATION-
SUGGESTIONS FOR A NEW LABOUR
DISPUTE RESOLUTION LAW FOR
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1. A summary of the discussions in the preceding chapters

In chapter II the historical origins of labour legislations in India was traced to the British era of governance. Though initially reluctant the British Government, had to give in to the cry for the enactment of pro-labour legislations, not only by the Indian social workers like N.M.Lokhanday but also by the British manufacturers. The result was that several legislations relating to factories were enacted. The report of the Royal Commission on Labour, headed by J.H.Whitley appointed by the British Government of India brought about many labour reforms in India. The enactment of legislations such as the Workmen's Compensation Act, 1923, the Payment of wages Act, 1936, the Industrial Disputes Act, 1947 etc., were possible as a result of the sustained campaign by the workers and a few social workers. The post-colonial period, witnessed the passing of several labour legislations as thanks giving measure for the support of the workers in the
freedom movement and also to fulfil the promised made in the Constitution of independent India. The 1980’s presented a cause for change in the industrial relations policy of the government of India. In the background of the new economic policy, labour legislations, especially the Industrial Disputes Act, 1947, proved to be incapable of handling the changed economic scenario. Summing up the situation, in chapter II, it was concluded that, unfettered freedom to the employers in the guise of flexibility of labour law would destroy level playing field for the labour, which could impair collective bargaining process, eliminate trade unions of workers and undermine industrial democracy.

In chapter III the similarities between the Industrial Disputes Act, 1947 and the Commonwealth Conciliation and Arbitration Act, 1904 was noted. The provisions of the Conciliation and Arbitration Act, 1904 were compared with the Industrial Disputes Act, 1947 and it was concluded that the machinery for industrial dispute resolution in India was almost similar to that of the Conciliation and Arbitration Act, 1904. The approach of the judiciary in India to the problem of resolving labour disputes was traced to be similar to the approach adopted by the Australian courts. In this regard,
several decisions of the Australian and the Indian courts were analysed. It was submitted that the Australian system of labour dispute settlement concentrated on conciliation and compulsory arbitration, whereas in India it is conciliation and compulsory adjudication. Further, it was argued that since India had borrowed the system of labour dispute settlement machinery from Australia and that since Australia had completely overhauled the legislation relating to labour disputes settlement, it was time that India also followed suit.

In chapter IV the contributions of the Supreme Court of India towards evolving a new and dynamic labour law system was discussed by analysing landmark decisions of the court relating to various labour laws. The response of the court to the plight of the exploited worker was highlighted in various decisions of the court. It was concluded that the wealth of industrial jurisprudence consisted of the decisions of the Supreme Court of India.

Chapter V presented some of the most important features of the Workplace Relations Act, 1996. The various machinery created for the settlement of labour disputes
were critically appreciated. New authorities, unheard of in previous Federal legislations in Australia contained in the Act, such as the Employment Advocate, Certified Agreements and Australian Workplace Agreements were analysed with a view for its possible incorporation in the proposed labour dispute resolution legislation for India.

Various efforts made by the government in India to reform the industrial system in India were analysed in the previous chapter. The legislative steps for labour reform and recommendations of National Commission on Labour were discussed before presenting model legislation for labour dispute resolution in India.

Under the existing system of labour dispute resolution, the ultimate remedy lies in its reference to a court for adjudication. The mechanism and procedure for the reference and resolution of the dispute are laid down in the Industrial Dispute Act, 1947. Even if it is accepted that the Industrial Disputes Act of, 1947, has preserved industrial harmony in India, it cannot confer a fair model for the effective settlement of Industrial dispute in this era of globalised and liberalised economy. The lack of harmony among employers and employees will lead
to a restless industrial environment, which itself will pull the economy to the backward direction. So there, lays the primary importance to think of model labour law legislation on dispute resolution.

2. Some ways of processing disputes and addressing conflict

The way people or groups process or resolve disputes - or attempt to make decisions - are, generally speaking, consensual, adjudicative or legislative in nature, although some so-called "hybrid" processes combine features of these approaches.¹

Consensual dispute resolution means that the disputants themselves decide the process and the outcome. Consensual dispute resolution processes include negotiation, facilitation, mediation (including public policy negotiation.)

Adjudicative dispute resolution means that a third-party makes a binding decision for the parties. Adjudicative approaches include arbitration and court adjudication.

¹http://www.peacemakers.ca/publications/ADRdefinitions.html
Legislative approaches to dispute resolution focus on rule making by a group, organization, formal legislative body, or ruler. Disputes over the interpretation or application of rules may be resolved through consensual or adjudicative means, and in some cases through coercion or force.

Though the present research concerns itself with comparing the similarities between the labour dispute settlement process in India and Australia, it would be interesting to know how some of the smaller countries in central and eastern European countries settle labour disputes. It appears that the Australian experience of combining arbitration with conciliation has influenced the making of new Labour Legislation in the former Communist States.

The central and eastern European countries which are to join the EU in May 2004 have recast their industrial relations systems during the period of political and economic transformation since the late 1980s. One important aspect of these changes has been the establishment of new mechanisms for resolving individual and collective labour disputes and for regulating strikes. This comparative study examines these
mechanisms and rules in four of the countries concerned—Hungary, Poland, Slovakia and Slovenia—and provides an overview of recent trends in industrial action.

It examines the way in which labour disputes, both individual and collective, are resolved in four countries which are due to join the European Union in May 2004—Hungary, Poland, Slovakia and Slovenia.

The four central and eastern European countries considered here have all undergone political and economic transformation since the collapse of their former state socialist regimes and/or their independence in the late 1980s and early 1990s. The aim of this comparative study is to look at several important interlinked aspects of the industrial relations systems which have emerged in these countries over this period—the legal and collectively agreed mechanisms whereby individual and collective disputes related to work are resolved, and the regulation of strike action and its development in practice.

Regulations and practices in the field of dispute settlement are seen as telling factors in terms of the balance of power between employers and employees, and of the role that trade unions play as 'intermediary
organisations' in this relationship, protecting the interests of employees. Another reason for examining dispute resolution and regulation is that much of the growing literature on industrial relations in central and eastern European countries focuses on the institution-building process since the transition process began, centring on the work of the social partners in newly created national-level bodies, or on collective bargaining in the traditional sense.

Another aspect of dispute-resolution mechanism is that its development in central and Eastern Europe can be seen in the light of these countries' progress towards democracy and ultimately joining the EU. Under these countries' previous state-socialist regimes, labour disputes - and especially collective disputes and strikes - were in most cases banned (in spite of formal recognition of the right to strike) and their existence denied or validity challenged should they occur. The development of mechanisms to recognise and regulate such disputes is arguably part of the process towards the 'stability of institutions guaranteeing democracy, the
rule of law [and] human rights', required as a criterion for EU membership.²

There are currently no specific EU Treaty provisions or legislation on dispute resolution and strikes, which must be implemented by candidate countries (indeed Article 137.6 of the current European Community Treaty essentially bans EU legislation on the right to strike or impose lock-outs). Nevertheless, the current EU Treaty states that the Union is founded on the 'principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law', while the Charter of Fundamental Rights of the European Union, which was approved by the European Council (EU0011278N) and European Parliament in 2000 (EU0012284N) gives workers and employers, or their respective organisations, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action. The draft Treaty establishing a Constitution for Europe presented by the European Convention to the European Council in June 2003 proposes

²http://www.eiro.eurofound.eu.int/2003/01/study/
incorporating the Charter of Fundamental Rights into the Treaty, giving it legally binding status.  

2.1 Individual dispute settlement

Claims arising from individual disputes over the application of employment and labour law (e.g. over the existence, terms or termination of employment contracts) are heard by specialised labour courts in Poland, Hungary, and Slovenia. Most of the costs of such labour court procedures are paid by the state, except in certain cases where employers must cover part of the expenses. Slovakia is an exception, as individual labour disputes are considered as Civil Code cases and are handled by the civil courts. Table 1 below indicates the number of labour court cases in recent years in the two countries for which information is available - Hungary and Slovenia

http://european-convention.eu.int/docs/Treaty/cv00850.en03.
Table 1. No. of labour court cases (Labour courts of first instance only), 1999-2001. (Source: www.eiro.eurofound.eu.int.)

<table>
<thead>
<tr>
<th>Country</th>
<th>2001</th>
<th>2000</th>
<th>1999</th>
</tr>
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<tbody>
<tr>
<td>Hungary</td>
<td>26,099</td>
<td>23,732</td>
<td>11,490</td>
</tr>
<tr>
<td>Slovenia</td>
<td>5,175</td>
<td>5,699</td>
<td>7,636</td>
</tr>
</tbody>
</table>

A common problem in all countries examined is that litigation in the courts over individual labour disputes is an extremely time-consuming process. In Hungary, such a case, including the possible rounds of appeals, may last for several years, with approximately 10% of cases lasting longer than one year. Similar delays are reported from Slovenia. In Slovakia, civil courts are currently overloaded with non-labour cases, and the settlement of individual labour disputes thus usually takes several months or years. The social partners, and especially trade unions, have criticised the slow procedures in Slovenia, Slovakia and Hungary.¹

2.2 Pre-court procedures

Before individual labour disputes get to the courts, all four countries provide, or used to provide, for some

¹Andras Toth and Laszlo Neumann, Institute of Political Science, Hungarian Academy of Science, www.eiro.eurofound.eu.int/2003/01/study/TN301101s.
form of pre-court procedure, involving workplace-level conciliation. The political transition has brought about fundamental changes in these procedures.

In Hungary, the 1967 Labour Code entitled trade unions to take a decisive part in the mandatory pre-labour court procedure for handling disputes over individual rights. Workplace-level grievance boards (munkaügyi döntőbizottságok), run by unions, were the juridical forums of first instance in such disputes. Nevertheless, due to the intertwined links among company management, unions and the ruling party during the state socialist period, it was widely questioned whose interests trade unions really represented. Thus, the post-socialist modification of rules pertaining to the world of work sought to re-establish the contractual freedom of employees and employers and to limit the intermediary role of unions.

The 1992 Labour Code thus repealed the mandatory workplace-level grievance boards, and included only a brief passage concerning a pre-court conciliation procedure between the employer and the employee. It stipulated that, within 15 days of the employer taking a measure allegedly injuring the rights of an employee,
the employee had the right to initiate steps and demand a conciliation process in writing. This conciliation process was a precondition for filing a lawsuit. If, however, the conciliation did not produce an agreement within eight days, the employee was free to file a suit. The requirement for this company-level pre-litigation conciliation procedure was repealed in 1999. The modified procedure now makes it compulsory for the parties to hold a conciliation meeting at the labour court before the litigation is allowed to begin. Nevertheless, the Labour Code still contains a provision which authorises a collective agreement, or a joint decision of the parties, to provide for conciliation at company level in order to seek an agreement. If, however, the conciliation fails, the claimant has the right to file a suit in the labour court by the statutory deadline.

A similar development has taken place in Slovakia. State socialist trade unions used to set up arbitration committees to deal with individual disputes at workplace level. Following the transition, arbitration committees were abolished, and the Labour Code has not established a new procedure for the pre-court settlement of individual disputes at workplace level. However, before
a lawsuit starts, the employee concerned is required to make some attempts to settle the dispute, and may make a complaint to his or her supervisor, who is required to respond. Nonetheless, Slovakia differs from Hungary in that the matter may be referred to the public authorities by an employee if the complaint is not resolved satisfactorily by the employer. Complaints may thus be submitted to the Ministry of Labour, Social Affairs and Family (Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky, MPSVR SR) by any person who believes that their legal rights or interests have been breached, and there is a need for the intervention of a public authority. In recent years, 400 to 480 such complaints have been submitted to the Ministry each year. Since 2001, the National Labour Inspectorate (Národný inspektorát práce) has also been authorised to address employee complaints. In Slovenia too, the statutory rules do not provide rules on the pre-litigation conciliation of individual rights disputes, except for state and local government administration employees.

In Poland, the law requires that both the employer and the employee should make efforts to resolve any disputes in connection with employment in an amicable manner.
Before going to court, employees have the right to demand that their case is heard by a special conciliation committee, provided that such a committee exists at the workplace. The conciliation committee is convened jointly by the employer and the local trade union. If there is no union present at the workplace, the employer convenes the committee by itself, with the approval of the employees - though the law does not specify how to obtain such approval.

2.3 Role of trade unions, bargaining and labour inspectorates

In Slovakia and Hungary, the role of trade unions in pre-court dispute-resolution procedures has been narrowed to providing consultation and some legal advice for employees involved. In the absence of legal regulations and well-established traditions, there is no solid pattern of grievance procedures with trade union involvement at Hungarian workplaces. Case studies of workplace-level industrial relations have found that only a few of the larger companies have established internal conciliation procedures. In these companies, however, management tends to involve works councils rather than trade unions, to facilitate in-house
solutions. In Slovakia, as in Hungary, collective agreements do not institutionalise dispute-resolution mechanisms.

In Slovenia, the method of resolving individual labour disputes may be regulated by an agreement between works council and management or by a collective agreement between a trade union and employer. Unions may represent members in out-of-court procedures and judicial dispute-resolution proceedings, and in some such cases have the right to lodge a formal objection with the employer, which may influence the latter's decision. However, without the authorisation of an employee, a trade union cannot take an individual labour dispute to court. The Slovenian regulations also give the Labour Inspectorate substantial authority to intervene in cases of breaches of legal regulations. For example, the Inspectorate is authorised to intervene, with the effect of temporarily suspending a termination of a contract of employment, if it finds that the termination is unlawful and that the employer's decision would cause irreparable damage to the employee. If an employer does not respond to a worker's claim within a time limit, either side may suggest the intervention of a labour inspector for the purpose of mediation.
In Poland, various 'social organisations', including trade unions, are entitled to bring cases against employers on behalf of employees. The State Labour Inspectorate (Panstwowa Inspekcja Pracy) is also authorised to take the employer to court in cases of termination of employment, as well as to represent employees in the course of such proceedings. In workplace conciliation proceedings, the general rule is that trade unions may represent the interests only of their members. A union may represent a non-union member only if authorised to do so by that person. It is a legal duty of unions to protect the individual employment rights of their members and also of those non-union members who have authorised them to do so (and this authorisation is accepted by the union).

2.4 Collective dispute settlement Procedures

All four countries examined have procedures for the resolution of collective labour disputes, laid down in legislation and/or collective agreements. These procedures differ in a number of ways. Notably, a distinction is made in some cases between: disputes of right/legal disputes, which relate to breaches of legal or collectively agreed provisions, or disagreements over
the interpretation of these provisions; and disputes of interest, which relate essentially to matters not covered by law or agreements, and typically arise during negotiations over new collective agreements.

2.4.1 Hungary

In Hungary, the concept of collective labour dispute was introduced in 1989, after the disintegration of the state socialist regime. According to the 1992 Labour Code, the parties to a collective labour dispute can be the employer and the works council, or the employer (or employers' association) and a trade union. By definition, any dispute between these parties falls under the legal category of 'collective dispute.' The Hungarian Labour Code differentiates between collective disputes of interest and legal disputes. In case of a dispute of interest, a negotiation process begins when a written statement is handed over to the opposite party. The parties must maintain negotiations for at least seven days and during that period they are required to refrain from any action that could jeopardise the prospects for reaching an agreement. During this seven-day cooling off period, the employer must not implement the proposed measure which was the cause of the dispute.
In order to resolve the conflict, the parties may resort to mediation by joint request. The mediator must be a person not involved in the conflict. If mediation is used, the seven-day cooling off period may be extended by up to five more days to enable the provision of the information requested by the mediator. The mediator drafts a statement to the parties to inform them about the state of the negotiation process and describe their respective positions. The parties have the right to refer the case, by mutual agreement, to an arbitrator, who will issue an interest-resolution award. Any agreement reached during the negotiation process and any arbitration award are considered legally as a binding collective agreement.

Hungarian collective agreements often include fairly extensive provisions on the handling of collective labour disputes. About half of all collective agreements contain regulations on internal dispute settlement, and 28% of company collective agreements set up some kind of dispute-resolution committee. The majority of multi-employer collective agreements also include some mechanism to solve workplace-level collective disputes. In practice, however, this 'meso-level' machinery is rarely used.
Separate Labour Code provisions address collective legal disputes - i.e. disputes over the rights specified in the law or in collective agreements or works agreements between trade unions or works councils on the one side and employers on the other. The law stipulates the same procedure for collective and individual legal disputes. The legal term 'collective labour dispute' does not encompass disputes over individual employee rights, even though many workers may be similarly affected by the issue at dispute.

2.4.2 Poland

In Poland, the 1982 Act on Trade Unions made it mandatory to use a lengthy dispute-resolution procedure, involving negotiation, conciliation and (voluntary) arbitration with a view to avoiding potential strikes. Following the transition to democracy, the 1991 Act on Settlement of Collective Labour Disputes substantially simplified the collective dispute-resolution procedure. The Act distinguishes between collective disputes concerning rights and union freedoms and those involving the interests of groups of employees. Thus, according to the Act, a collective dispute is a conflict between employees and their employer over employment conditions,
remuneration and/or social benefits (disputes concerning interests), or over union freedoms and union organisational rights (dispute concerning rights). The Act grants authority only to trade unions to represent the collective interests of employees in disputes. Consequently, employees in non-unionised workplaces are not legally permitted to resort to collective action, but are allowed to appeal to an external trade union organisation, requesting protection of their interests. However, the Act does not regulate how to determine which trade union is entitled to represent employees if more than one union exists at the workplace. Thus, in such cases collective disputes may be initiated by each trade union separately, or by a joint initiative. All the organisational levels of trade unions are authorised to represent employee interests in collective disputes, irrespective of whether or not they have legal personality.

The procedure for resolving collective labour disputes comprises the following stages:

- a dispute is initiated when a trade union lodges with the employer claims which may constitute the subject of a collective dispute;
• the parties are required to hold negotiations which may result either in agreement or the drafting and signing of a 'protocol of differences';

• If the first stage ends in a protocol of differences, the dispute proceeds to a second stage - mediation. The parties may either appoint a mediator of their own accord or apply for one to be nominated from an official list;

• Mediation may lead to an agreement. If, however, it fails (or if no negotiations commenced within 14 days of the dispute's initiation), the trade union may call a strike, or the parties may agree to refer the matter to a jointly chosen arbitrator; and

• Where a dispute is referred to arbitration, the arbitrator's decision will be binding upon the parties as long as neither party disagreed with this outcome prior to referring the dispute.

2.4.3 Slovakia

In Slovakia, the Collective Bargaining Act, as amended, defines how collective disputes between employers and trade unions can arise, regulates the conduct of industrial action, and provides for mediation and arbitration procedures in advance of any action. The
parties involved in collective disputes are sectoral or company-level trade unions and sectoral employers’ organisations or enterprise management (i.e. collective disputes can arise at both the branch/sector and enterprise/organisation level). Unlike in Hungary, in Slovakia there are no separate procedures for disputes over rights and interests. Collective disputes may concern the conclusion of a collective agreement or the fulfilment of commitments originating from such an agreement. However, both disputes regarding rights arising from existing agreements and disputes of interests over the conclusion of a new collective agreement must pass through mediation and, if no settlement is reached, also through arbitration (see below under 'Arbitration, mediation and conciliation').

Collective agreements, in general, regulate the basic rules for the contracting parties to follow when a dispute occurs while a collective agreement is in force. Company-level disputes are in most cases settled at the local level. The Ministry of Labour, Social Affairs and Family may become involved in collective disputes when the parties ask for the appointment of a mediator or an arbitrator. Parties in dispute may also ask for voluntary consultations with the Ministry.
2.4.4 Slovenia

As in Slovakia, in Slovenia the statutory rules do not currently differentiate between collective legal disputes/disputes of right and disputes over interests (though legislation introducing such a distinction has been drafted). A collective labour dispute is defined as a dispute over the employment conditions of an employer's workers, and the parties to such a dispute are those which can formally influence the regulation of these employment conditions. The major difference between the Slovenian regulation and that of other countries considered is that Slovenian law grants the right to initiate a collective labour dispute to any formal or informal worker organisation which can prove that it legitimately represents the common interests of a group of workers. The law provides that collective agreements may include provisions on arbitration to resolve collective labour disputes. Furthermore, legislation requires that in disputes over the conclusion of a collective agreement, an arbitration council set up by the parties will decide on the contentious matters. Thus many collective agreements provide for dispute-resolution procedures involving conciliation and arbitration (see below under...
'Arbitration, mediation and conciliation'). Collective labour disputes may also be resolved before the labour courts. Resolution of collective labour disputes relating to employee participation in decision-making is regulated by a specific law.

2.5. Arbitration, mediation and conciliation

As noted in the previous section, in all four countries, some combination of arbitration, mediation and/or conciliation plays a part in the resolution of collective labour disputes. This may be voluntary or obligatory, may be based on legislative or collectively agreed provisions, and the external third parties concerned may be either public bodies or individuals.

2.5.1 Hungary

The Hungarian Labour Code provides for voluntary use of mediation and arbitration in collective labour disputes (see above under 'Procedures'). It is mandatory, however, to turn to an arbitrator in case of disputes:

- between the employer and the trade union concerning the right of the latter to post its statements at the workplace, and to use the premises of the employer for carrying out interest-representation activities;
between the employer and the works council concerning the amount of support that the former must provide in order to permit the latter to carry out its functions; and

between the employer and the works council concerning the use of that part of the company social fund which is earmarked for particular purposes by the company's collective agreement, and the privatisation or contracting-out of social facilities.

In 1996, the national tripartite body set up the Labour Mediation and Arbitration Service (Munkaügyi Közvetítő és Döntőbirói Szolgálat, MKDSZ). The mission of MKDSZ is to facilitate reaching an agreement in collective labour disputes so as to maintain social peace and develop harmonious industrial relations at company, sectoral and intersectoral levels. MKDSZ was set up with the help of an EU PHARE project and received widespread support from other national arbitration and mediation services, especially in the USA and the UK, as well as from international organisations. MKDSZ's main function is to provide a list of trained mediators and arbitrators who are to be assigned to labour disputes upon the joint request of the parties. Arbitrators and mediators are appointed for five-year terms by the national tripartite
body. The president and secretary of MKDSZ are appointed by the Minister of Employment and Labour on the joint proposal of the social partners. MKDSZ reports annually to the national tripartite body. Nevertheless, MKDSZ is fully autonomous in its operations, and the arbitrators and mediators too act fully independently. Until now, the number of cases referred to MKDSZ has been fairly low. Between June 1996 and December 2001 it mediated in 40 cases and issued an arbitration award in four cases; the majority in both categories were medium-sized enterprises or public service or public administration institutions. All cases handled by MKDSZ ended with the agreement of the parties in conflict. While it has several times tried unsuccessfully to extend its authority to being able to provide third-party conciliation in individual legal disputes, MKDSZ is not currently authorised to provide conciliation, mediation or arbitration services in the pre-court reconciliation process of individual legal cases (see above under 'Individual dispute settlement').

2.5.2 Poland

In Poland, mediation is obligatory in collective labour disputes (see above under 'Procedures'). A mediator is
designated jointly by the parties to the dispute. The person chosen to serve as mediator should be generally acknowledged as trustworthy and neutral: in practice, they are respected people such as members of parliament, senators, ministers, regional officials, State Labour Inspectorate personnel, or members of the clergy. The parties to a dispute may also select a mediator from a list maintained by the Ministry of Labour and Social Policy (Ministerstwo Pracy i Polityki Społecznej, MPiPS), which is drawn up by the Ministry in agreement with the national-level social partner confederations. If the parties to a collective dispute do not agree on the mediator within five days, the MPiPS chooses one from the list upon the request of one of the parties. The methods used by mediators in assisting in the resolution of disputes are not regulated by law. In the event that one of the parties to a dispute fails to meet obligations undertaken in the course of the mediation proceedings, there is no legal basis for enforcing compliance by way of administrative decisions or court injunctions.

Arbitration is not regulated by law, but may be agreed by the parties to a dispute. In such cases, the parties choose an arbitrator jointly as well as agreeing on the
procedural rules and the binding or otherwise status of the arbitrator's ruling.

2.5.3 Slovakia

Slovakian law provides for mediation and arbitration in collective labour disputes. In the event of deadlock in collective bargaining, mediation may be requested jointly by the parties, but only after at least 60 days have passed since the submission by one of the bargaining parties of a written proposal to conclude a new collective agreement and open the negotiations. Any adult citizen, or a legal entity, may act as a mediator if included on an official list of mediators (the same applies for arbitrators). If parties fail to agree on a mediator, either party may apply to the Ministry of Labour, Social Affairs and Family to appoint a mediator from the list maintained by the Ministry. The two parties share the mediator's costs and remuneration in equal proportions. The mediator must provide a written proposal for resolution of the dispute within 15 days of the date the dispute is referred. Mediation is deemed to have failed if the dispute is not settled within 30 days, though the parties may agree on a longer period at each stage.
If mediation fails, the parties may agree to refer the dispute to arbitration. If the parties do not agree, the Ministry, at the request of any of the contractual parties, may appoint an arbitrator, if the dispute concerns the interpretation of an existing agreement, or in cases of concluding a collective agreement where strike action is forbidden due to the nature of the work (e.g. in the civil and public services). Arbitrators may be appointed only by the Ministry from the Ministry's list, and cannot be the same person as the mediator. The arbitrator's ruling must be delivered within 15 days after their appointment, and the costs of arbitration are borne by the Ministry. Either party may appeal to the civil courts against the arbitrator's ruling within 15 days after the arbitrator's decision has been delivered; otherwise, the ruling is legally binding. In the event that the arbitrator's ruling is ruled invalid, the same arbitrator will deal with the case again. If this is impossible, the Ministry appoints another arbitrator.

The total number of registered mediation cases grew until 1998, but since then has declined. The majority of disputes have arisen in the course of negotiations over new collective agreements, and very few have involved
violations of rights under existing collective agreements.

2.5.4 Slovenia

In Slovenia, there is no national service providing third-party intervention in labour disputes, or lists of arbitrators etc maintained by Ministries or similar bodies, despite legal provisions requiring the use of dispute-resolution procedures. Such procedures, in the form of arbitration and conciliation, are regulated solely by collective agreements, which usually set up various committees and lay down certain basic procedural rules. National-level collective agreements usually establish three committees: a committee for the interpretation of the collective agreement; a conciliation committee; and an arbitration committee. These three committees function in a sequential dispute-resolution procedure. The majority of company-level collective agreements are also thought to include similar procedures. This agreed sequential process has proved to be so efficient that almost all collective labour disputes have been resolved through it, with few reaching the courts. Mediation as a means for resolving
collective labour disputes has not been established in practice so far.

2.6 A Summary

In Hungary, the re-legislation of dispute regulation in the early 1990s proved to be a controversial development. On the one hand, the institution of the collective labour dispute and the right to strike were restored while, on the other hand, not unrelated to the role they played in the previous state socialist regime, trade unions were barred from having an institutionalised role in individual legal disputes between employees and employers. As a result, unions have weak institutional anchorage in defending the interests of employees. Due to the economic crisis of the early 1990s and the subsequent weakness of unions, however, very few conflicts have developed into a formalised process of collective labour dispute. Over the last decade, only unions in state-owned public services companies (most notably in public transport) have been able to use their industrial action 'muscle' in practice to underpin their demands. Public service unions, in turn, have mainly resorted to demonstrations rather than strikes to put pressure on the government.
In private sector industries and services, most strikes have been token actions with a defensive character, protesting against redundancies and closures, or demanding better severance payments. National-level trade union confederations have mostly organised demonstrations in order to put pressure on the government in various issues.

In Slovakia, the majority of collective disputes between the social partners have been peacefully resolved during the transition period. Most collective disputes have occurred when negotiations over new collective agreements reach a deadlock and have been resolved through mediation procedures. In some cases, consultations with the Ministry of Labour, Social Affairs and Family by the parties have helped overcome the impasse and a collective agreement has been concluded without the involvement of a mediator. When both the mediator and consultation with the Ministry have failed to solve the deadlock, the disputes have been resolved by arbitrators. Since 2000, only one strike warning has been issued with the aim of forcing an employer to conclude a new agreement. The Collective Bargaining Act has contributed significantly to the maintenance of the social peace. Nonetheless, the
radicalisation of public service and public utility unions in response to government measures cutting state budget expenditures - heralded by the rail workers' strikes of early 2003, Slovakia's first genuine strikes since independence - may change the peaceful nature of Slovakian industrial relations in future.

In Slovenia, a fundamental reform of the judicial avenues for resolving individual and collective labour disputes is currently in preparation in order to harmonise practices with those of other European countries as well as with EU legislation.

In Poland, after well over a decade of political and economic reform, two distinct systems of industrial relations have emerged, one in the private sector and the other in the public sector. In the private sector, as in Slovakia and Hungary, trade unions are on the retreat. Unions, in general, tend to prefer survival and try to avoid confrontation. Strikes, if they occur at all, tend to have a local dimension only. By contrast, unions are fairly well embedded in public sector, and they frequently use their muscle to enforce their demands.
Comparing the legal regulations of the four central and eastern European countries consider, a number of variations can be identified. As far as individual legal disputes are concerned, in all four countries excessive delays in the court systems are undermining the effectiveness of labour law: employers and trade unions equally have criticised this situation. Slovakia is unique in this respect, not having a specific labour court system. Poland is also an exceptional case as it appears to be the most collectively-oriented, even in the enforcement of rights of individual workers. Unions have maintained an institutionalised conciliation role in pre-labour court dispute-resolution efforts only in Poland among the countries surveyed.

As for collective disputes, there is a major cleavage between Hungary and the other three countries. The Hungarian legislation denies trade unions any role in representing the interests of groups of workers except through strikes or collective bargaining. Having concluded a collective agreement, the union plays no formal enforcement role. It is left to the individual worker to sue the employer for any violation of rights or the terms of the collective agreement, even if the employer’s action simultaneously affect more than one
worker. In all three other countries, unions are authorised to occupy an intermediary position between employees and the employer in the event of violations of rights as well as in disputes over interests. The other difference between Hungary and the other three countries is that the Hungarian dispute-resolution system is in practice based almost entirely on the voluntary conduct of the parties, while in the other three countries there are formally prescribed avenues for using third-party intervention to settle disputes.⁵

An efficient and well-functioning collective dispute-resolution system with effective implementation of legal regulations, however, could contribute to maintaining social peace.

3. The Need for Model Legislation

Labour is one of the most vulnerable sections of the society. Its emancipation is one of the fundamentals concerns of political philosophies. In India, the socio-economic uplift of labour constituted one of the main objectives of national movement. The social objective was embodied in "objective resolution" adopted by the Constituent Assembly on 22nd January 1947, which

⁵ Supra n 4
framed the Indian Constitution. The Social and economic objectives are clearly and forcefully expressed in the preamble of the Constitution. These objectives have been elaborately stated in the "Directive Principles of State Policy".

In view of the concept of state envisaged in the constitution and in pursuance of the provisions of Directive Principles of State Policy and elsewhere, numerous legislations relating to labour have been passed. The new labour laws are primarily concerned with the welfare of the working class and aimed at bringing industrial peace that will in its turn increase productivity leading to economic growth. These legislations in our country have become an important part of the social and economic legislation that derives its inspiration from the recognition of the wider responsibilities, which the state has undertaken to protect the economically weaker sections of the community.

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It was found that there was an urgent need of governmental interference in the dispute settlement process. Unlike developed countries, the poor workmen of the country were highly illiterate and were totally
ignorant of their rights and duties. So as part of welfare obligation of the government, it took the sole responsibility to ensure justice to the workmen first by conciliation and finally through the mode of adjudication. The drawbacks in the present system of conciliation and adjudication have already been discussed in chapter 3 of this thesis. As it can be seen from discussion in chapter 3 of this thesis that India borrowed the idea of conciliation from the Australia, however the law since has undergone changes in Australia itself. India continues to be under the same legal regime. The immediate cause for change has been the need to meet the requirements of changes in the nature of economy. A law enacted in the year 1947 definitely needs a re-look.

3.1 Model Law for Dispute Resolution

A plethora of legislations is one of the evils, which the present Indian labour law is facing. So it is very much important to be noted that, the proposed legislation should not become one among others. It should not create over burden to the existing system, the same way, it should be free from chaos and contradictions by way of its simple as well as clear
structure and contents. In short, there is no need for one more labour legislation, unless it cannot solve the present disparities or insufficiencies. As we know, the industrial dispute resolution has utmost importance in this post modern globalisation era, without adequate industrial peace, the national economy cannot survive and compete with the global market. As long as the assumption that compulsory adjudication is the only one remedy for industrial disputes exists, so long our industrial backwardness will remain. What is needed is minimum guarantee for industrial peace. It cannot be achieved through the weapon of adjudication, because the basic element of adjudication is causing fear in the mind of both the parties. Instead of settling their dispute amicably, the parties themselves treated as enemies with in the court premises. How will it lead to the industrial peace? It will take away the homely environment from the industry and the result should be either depression or arrogance.

While talking of disputes, it is relevant to recognise that dispute can be both disputes of rights and disputes of interests, the former taking the character of claim petitions in respect of an existing undisputed right and the latter mainly relating to creation of new rights but
also covering interpretation regarding a disputed right. In most, if not all, the labour laws other than Industrial Disputes Act, 1947, there are claim petitions under Sec. 33 (c), which are disputes of rights. Also there are with in the framework of some, if not all, the other laws, provisions for administrative hierarchies themselves to deal with the disputes.

The bewildering varieties of arrangements that obtain in various laws and various governments in the matter of decisions and appeals have only added to the mystique of legislation and to complicated litigations and expenditures. The ordinary worker, and even a small employer, more often finds the system so complicated and confusing that the worker gets resigned to his fate and the small employer, more often than not, ignores the law and hope for the best. Is the situation irremediable? Surely not. The obvious remedy is to avoid the multiplication of labour laws and to simplify, rationalise and consolidate the existing laws into a single and simple code avoiding multiplicity of definitions and multitudes of administrative/judicial agencies. A single window approach, which is currently the preferred practice in industry and business, could be incorporated in the labour adjudicative process.
There is the importance of a new labour law legislation, which should provide a new model of dispute resolution mechanism, by replacing the existing out dated concepts like works committee, conciliation officer as well as the board etc. The present legislation has a duty to constitute labour judiciary. A system of labour judiciary, with dispute resolution officer at the base and central/state Industrial Relations Commissions with its designated powers including appellate powers over the decisions of lower bodies will constitute the basic structure of labour judiciary.

3.2 Objectives of the New Machinery

The new dispute resolution machinery should be based on the basic principles of negotiation. Through this way of approach, the new machinery can ensure the following goals/objectives:

1. Both the parties must get an opportunity to cooperate and to meet their goals.

2. Both the parties can influence each other to act in ways that provide mutual benefit or avoidance of harm;

3. Both the parties are affected by time constraints;
4. Both the parties recognizes that alternative procedures viz adjudication are not as desirable as negotiation which allows them to determine the outcome.

5. Both the parties can identify and agree on what issues are in dispute.

6. External constraints such as reputation, cost and risk of an adversarial decision encourage participation in a private, cooperative process.

4. General Propositions on the Model Labour Law legislation

4.1 Purpose of legislation on labour

The labour legislation governs the labour relations of all workers in factories and industrial establishments, with the object of promoting labour productivity, and efficiency and on this basis raising the living standards of the working people, and strengthening labour discipline.
4.2 Basic labour rights enjoyed by workers and their duties

The right of the Indian citizen to work is ensured by the national economy, the growth of the economy ensures the removal of unemployment. Workers utilize their right to employment by signing work agreements to work at an enterprise, institution or organisation. The workers have a right to a wage, which is guaranteed the State in proportion to the quantity and quality of labour contributed.

They have a right to leisure and rest in conformity with the laws on the working day and working week and on annual paid leave, the right to healthy and safe working conditions the right to free professional and advanced training, the right to unite in trade unions, the right to take part in managing production, the right to material maintenance in old-age and in the case of sickness or disability, at the expense of the State through state social insurance. It is duty of all workers in factories and establishment to observe labour discipline, to display care for public property and to carry out production quotas established by the state in the participation of the trade unions.
4.3 Work agreement

A work agreement is an agreement between a workingman, on the one hand and an enterprise, institution, employer or the organisation on the other in keeping with which the working man undertakes to carry out work in a definite trade, with internal labour regulations while the enterprise, institution or organisation undertakes to pay the working man wages and to provide labour conditions envisaged by labour legislation, collective agreements and agreement signed by the parties concerned.

Terms of work agreement, which offer conditions for workers in factories and establishments, which are less favourable than those, provided by specific Statutes, or contradict it in any other way, will be regarded as invalid.

The trade union committee of the factory or industrial establishment on behalf of the factory workers with the administration of an enterprise or organization will sign a collective work agreement. The signing of a collective agreement will be preceded by a discussion of a draft agreement, which is to be approved by the meeting of the Dispute Resolution Committee.
4.4 Labour Disputes

Labour disputes shall be considered by:

(1) Rural Labour Court at the village level

(2) Dispute Resolution Committee at the plant level or at the level of the establishment

(3) District Industrial Relations Commission at the district level

(4) State Industrial Relations Commission at the State level

(5) Central Industrial Relations Commission at the National level.

The Model labour legislation may provide for the establishment of above said authorities, for settlement of disputes between the employer and his employees and to promote good relations among them: A short description of the machinery is given as under:
1. Rural Labour Court

Considering the fact that some of the major industries are located in rural areas and since most of the unorganised workforce come from the villages, there must be established a Rural Labour Court. The above Court may be established for every village or a group of villages. The Rural Labour Court shall consist of one judge having the qualification prescribed for a Civil Judge (Junior Division) along with the Head of the Panchayat. The Head of the Panchayat shall assist the judge in identification of the rural worker and provide other necessary assistance. The Rural Labour Court shall resolve disputes between one or more rural labourers and employer. The Rural Labour Court shall be the obligatory primary body for the consideration of labour disputes arising at the village level in a plant or establishment. The Court must arrive at a resolution through agreement between the parties through the process of mediation and or arbitration.

The Enforcement Advocate shall be the liasoning officer for each Rural Labour Court. Any party aggrieved by the decision of the Rural Labour Court may prefer an appeal to the District Industrial Relations Commission. The
Enforcement Advocate shall suitably advice and certifies the need for an appeal in each case.

2. Dispute Resolution Committee

The appropriate government may by notification in the official gazette appoint such number of persons as it thinks fit to be Dispute Resolution Officers charged with the duty of mediating in and promoting industrial peace. There shall be a Dispute Resolution Officer with each industrial establishment, who shall be the chairman of proposed Dispute Resolution Committee. It is suggested that a Dispute Resolution Committee be established with each industries and it should consists of equal number of workman and employer. It will be the function of Dispute Resolution Committee to promote measures for securing the preserving amity and good relations between the employer and workmen. It should endeavour to compose any material difference of opinion in respect of any matter of common interest for various reasons.
3. Enforcement Advocate

The appropriate government may appoint an Enforcement Advocate with the objective of effective enforcement of labour agreements. He shall be a public servant for the purpose of the new law. He should have the duties such as to ensure adequate enforcement of labour agreements, fairness, justness complaints etc.

The Enforcement Advocate shall have the following qualifications:

i) Shall have qualified degree in law, preferably a post graduation in law with specialization in labour law.

ii) Must have practised law for a minimum period of 5 years.

The Enforcement Advocate shall be a full time officer attached to the Department of Labour entrusted with the task of performing the following functions:

a) Give information to the employers and employees about their rights and duties under various labour legislations.

b) Give assistance to individual worker in arriving at a settlement /agreement with employer.
c) Take penal action against the employer for unfair labour practice and for non-fulfilment of terms and conditions of employment.

d) Provide free legal representation to the worker in any proceeding under the labour laws.

e) Give assistance to unorganised labour in filing and hearing complaints of alleged violations of various labour welfare and social security legislations.

f) Approve all individual agreements subject to the fulfilment of statutory requirements.

4. District Industrial Relations Commission

The Appropriate government may constitute a District Industrial Relations Commission in each district by notification in the official gazette. The purpose is to handle all sort of industrial disputes, with in that particular district. It shall consist of following persons;

(a) A judge, preferably with background of labour law or Industrial Relations which may be either in practice or in profession.
(b) A representative of workmen at the district level, who may be elected through either mutual consensus or democratic electoral process; and

(c) A representative of employer at the district level, who also may be elected through the mutual consensus.

The District Industrial Relations Commission shall take in both arbitration and adjudication to consideration. After giving the parties reasonable opportunity to be heard, the commission tries to reach to a settlement. Adjudication shall be the last option and that too before the Commission. There may be provisions for preliminary hearing of the disputes, so that the Commission can assess the basic merit of the case. If the Commission finds that, there is no prima facie dispute in the issue, then it can convey this fact to the parties. Even there after, any of the parties can decide to go for adjudication; the Commission can give them such a warning that, they shall be liable to pay heavy fine for unwanted litigation. The same way it will save the precious time of the Commission also. Instead of existing term 'award', it is preferable to insert a new term—"settlement".
5. State Industrial Relations Commission

The appropriate government may by notification in the official gazette, constitute a State Industrial Relations Commission in the state, which may consist of:

a) A judicial Representative, who may be a judge with the background of labour laws or Industrial Relations. Even a senior Advocate with enough experience in the labour matters shall also be preferable;

b) An employee's representative at the state level, who may be elected through either mutual consent or democratic electoral process;

c) An Employer's representative at State level, who may be elected through either mutual consensus or democratic electoral process and

d) A representative from the state ministry of labour; and

e) A representative of the existing state government.

State Industrial Relations Commission shall be the final body to the dispute resolution system, within a state. Its functions should not be of judicial nature, but purely administrative. It should have supervisory
jurisdiction over all sub machineries. It shall prescribe time limits to the subordinate organs. They shall frame the rules regarding the appointment of representatives in the subordinate organs.

6. Central Industrial Relations Commission

The Union Government by notification in the official gazette may constitute a Central Industrial Relations Commission at the centre with the purpose to settle disputes regarding industries, which are under the control of Central Government and or which are of national importance.

Apart from the above suggested machinery it is recommended that a Common Code for Labour disputes be formulated to remove discrepancies in various pieces of labour legislation. However, the enactment of laws alone will not end industrial disputes. Industrial peace will reign only if the parties to a dispute are determined to abide by the law.
However, this alternate dispute resolution machinery is suggested keeping in mind the prevailing Indian conditions of increasing rural labour and location of new industries in rural sectors. If tried this will help in quick settlement of disputes to the satisfaction of all concerned.