CHAPTER 3

INDUSTRIAL RELATIONS DURING FRENCH PERIOD
(PART ONE - PERIOD UPTO 1947)

The French experience and expertise in the field of industrial relation, as could be found at Pondicherry is proposed to be analysed in these two chapters. Due to the independence of the country in 1947 the impact was felt at Pondicherry, which was then a French Colony and many measures were taken up in the field of industrial relations during the period from 1947 to 1954 i.e., till the date of de-facto merger. In this chapter, it is proposed to analyse the position prevailing upto the period of 1947 and in the next chapter, the position prevailed at Pondicherry for the remaining part of the French rule is analysed. Before getting into the study of industrial relations law, an attempt is made to submit the hall-marks of French Law in comparison with Anglo-saxon System.

3.1 French Concept of Law

Though the code of Nepolean is the basis for understanding the various branches of law as prevailed in France in modern
times, French had their own past history to indicate as to how
they viewed the concept of law. French initially came under the
Roman influence and so long it remained part of the Roman
Empire, Roman law prevailed, even though local customs to some
extent remained in force. During fifth century, the
Burgundians, Visigoths, and Franks, set up kingdoms in Gaul, and
in the following century, the Frankish kingdom gained dominion
over the whole country. The Barbarians did not want to take
away the Roman laws. They introduced the system of Personal
Laws. In the ninth century, the system of Personal laws broke
down and in its place grew up the feudal system and concomitant
with it the territoriality of law.¹ Later, when the
renaissance of the study of law began and the Corpus Juris of
Justinian came to be studied, it was received without question
as living law. There was a compilation of Lombard Feudal Law
known as Libri or 'Consuetudines Feudorum' which took its final
shape in the thirteenth century. In some provinces, the work of
the Lombard was accepted as law. During the period from
fourteenth to seventeenth century, there were many royal
ordinances which dealt with mostly administrative procedures and
in some cases, it contemplated changes in the substantive
private law. A series of 'Grandes Ordonances' were introduced
towards the end of seventeenth and during the first half of the
eighteenth century, which to some extent codified several

¹ Amos and Walton - Introduction to French Law - p. 27
branches of law.

From the sixteenth century onwards, the 'Coutume de Paris' began to occupy a predominant position among the 'Coutumes'\(^1\) (customs). It was regarded as the common law of France. When the French law was established in the dominions abroad, 'Coutume de Paris' was first introduced.\(^2\) The period between the fall end of the eighteenth century and the first decade of the nineteenth century was called by the French writers as the 'Intermediary Period' and the law which it produced is called the 'Intermediary Law'.\(^3\) It was nothing but transition between the old law and the new law.

Due to diversities of the 'Coutumes', the convention held in 1972 expressed contempt for the Roman law and also for the 'Coutumes' and there was widespread desire to have a code. Several attempts made for codification had failed. Finally, Nepolean Bonaparte as first Consul determined to have the codification and the code was published as a whole in 1804 which was titled as 'Code Civil des Français'. It was changed to Code Nepolean' in 1807 back to 'Code Civil' in 1816 and to 'Code Nepolean' by a decree of 1852. Though the decree of 1852 is never repealed, the code is now always calle d'Code Civil'.\(^4\) The 'Code Civil' of France due to its simplicity and clearness, has excelled and regarded as the best code in the world. It

\[\text{References:}\]

2. Establissement de la Compagnie des Indés Occidentales.
fused together the 'droit ecrit' and the 'coutumes' and created a unified law for the whole country without destroying anything for the sake of destruction.\(^{(1)}\)

The French have always understood the concept of law with its purpose to regulate the behaviour in society. Law is not just identified with legal rules but understood to be concomitant with justice and morality. Further, the object of the law is primarily meant to regulate the private relationships of the individuals. The law later developed and encompassed other matters according to the principles of civil law. Thus the normative approach with which the law functions in society has put the French legal system on a distinct footing. It is more so, in regard to French labour law, which has always occupied a unique position.

3.2 Droit Commun and French Law

French law is by no means a rigidly hide-bound codified jurisdiction, but a living legal system developing consciously by means of a flexible case law technique of interpretation of modern texts, influenced by contemporary jurists, whose views are recorded in the legal periodicals, still drawing upon a limited background of 'droit-commun', albeit fully alive to the social and economic pressures of our times, particularly in the

industrial sphere. Though there is nothing like a wholesale lack of 'droit commun', yet certain basics of the law governing the French contract of employment are still firmly enshrined within the confines of 'droit commun'. 'The convention relative au travail' promulgated on 30 December 1910\(^{(1)}\) provides for adoption of 'droit commun' by the parties to the contract of employment. Article 19 of the above convention reads as follows:

'Le contrat du travail est soumis aux régles du droit commun et peut être constaté dans les formes qu'il convient aux parties contractuelles d'adopter'.

The translation of the Article runs as follows:

'The contract of work is subject to the rules of common law and may be adopted by the parties according to their convenience, while entering into contract.\(^{39}\)

The contract of employment is basically of indeterminate duration and although in principle, it can be brought to an end by either party. This type of obligation, in practice, has to an appreciable extent lost its original consensual character in that the liberty of both master and servant has been considerably restricted by legislation and perceptibly conditioned by the application of the principles of collective agreements.

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1. Article 19 of 'convention relative au travail' of 1910.
Popular opinion in England seems to accept the proposition that case law and common law are exclusively English in origin and character. However, French Common Law had its own origin, though it was later partly influenced by Roman Law and English Law. The codification has not destroyed the entity of 'droit commun' and it could be found in the area of succession. The French codifiers believed that, 'it is worthwhile to keep whatever need not be destroyed; laws should humour habits so long as they are not vices'.(1) However, in the area of labour law 'droit commun' does not have much influence after codification.

3.3 Place of Labour Law in the French Legal System

The French experience in the field of labour law proves that a given body of law cannot be codified successfully, until the subject matter has been systematically and cohesively elaborated with, at least minimum degree of stability over a period of time. Labour Law has never been and can not be a static law. It has been always craving for dynamism, since its purpose is not to freeze the situation as it was yesterday, or as it may be today, but it is to change this situation starting from the premise that the new technique in production must be accompanied by a new look in the mutual relations of capital and labour.

In the early nineteenth century, labour law in France was not only a part of droit civil, but completely merged with general rules of law, which presupposed a minimum degree of economic as well as political equality of bargaining power for their effectiveness. French labour Law was based in the nineteenth century on the assumption that nothing could serve the economy and progress better and nothing could also be more consonant with justice than a complete freedom to mould their contractual relations recognized to the individuals.\(^{(1)}\) Society was emerging from feudalism, where each man was bound to a given status, by virtue of which he was granted some benefits but incurred also some duties, though this status was given to him by birth and there was little chance for him to better this attributed status. The Revolution of 1789 brought remarkable changes in the system. All the discriminations resulting from birth were abolished and all men were proclaimed as equal. Citizens were called to mould themselves by their free will, their rights, and duties, and a contract appeared to be the best way to ensure justice in human relations. Non-interference or little interference as possible by the State was generally regarded as the best policy to guarantee the highest values which were liberty and equality amongst the citizens.\(^{(2)}\) However, these expectations did not last long. The industrial

\[\text{(1)}\text{David René - English Law and French Law (Stevens) p. 172 (1980).}\]

\[\text{(2)}\text{ibid.}\]
workers were constrained by poverty to submit to harsh terms dictated by factory owners who imposed such terms so as to ensure economic survival in the face of fierce business competition. Trade Union formations were prohibited in France because it was feared that they would perpetuate the corporation organizations of pre-revolutionary days and their interference would put the national economy at a disadvantage in the world market.

With the industry taking a new dimension and the resulting concentration of hired labour, society faced a new problem of economic and social inequalities and had to plan for maintenance of just and peaceful social order. It was therefore considered necessary to develop a new and specified field of law, which in turn gave rise to the birth of labour law in France. However, the economists and politicians believed in the doctrine of laissez-faire and argued that any interference with the natural laws of economics may peril the progress of industry. Hence labour law had to face many hurdles in its growth and development.

The development of labour law in France has been always on a different footing. The right to form union was prohibited in France till 1884. The adult franchise was extended to all male citizens as early as in 1848 and the political influence on

labour made the system to take a different form. Labour as a party is not represented in Parliament, though the workers' unions (syndicats) have some link with one of the political parties. Though politically, the position may weaken the labour organization, it has not happened in France as the labourers have reposed full confidence in Parliament and the labour laws have always intervened only for the protection of workers. The rules or standards set by the statutes can always be modified provided the modification is not contrary to public order and not unfavourable to workers, than what is already provided in the statute. The above factors have given rise to negotiations and thereby entering into collective agreements.

Unlike English Law, collective agreements are considered as legal transaction and enforceable at law. Legal status was given to collective bargaining in France as far back as 1919. However, by virtue of the Law of 1946, the workers organization which had more membership was given the right to conclude agreements. A National Collective Agreement Board has been established as a consultative body, whose opinion has to be sought before fixing the national minimum wage. The law has recognized four types of agreements in France: (1) an ordinary agreement restricted to a section of employees, (2) a wages

1.Sur Mary - Collective Bargaining - p. 41
Asia Publishing House (1965).
agreement between an employer and the most representative union in the unit, (3) a works agreement between one or more employers and the most representative union in the occupation, and (4) a collective agreement on wages and conditions of employment concluded at national level between the most representative employers' association and union in an industry or occupation. The agreements may be reached to cover a whole branch of activity, an industry or trade or even an individual establishment or separate grades of staff. However, all the agreements are controlled by legislation. An agreement signed with a representative union is binding on the employer and all the employees, whether they are members of the union or not. Thus substantial improvements in industrial relations have been achieved in France through collective bargaining process.

The role of the union is very modest in France. Abuse of union powers is very limited and problems created by the unions, where State intervention are called for are rare. Since clear statutory provisions have been made encompassing entire gamut of labour laws, the trade unions could hardly contribute anything significant. Therefore, unions are not regarded in France as the main artisans of labour law.(1) In the recent past, the Government of France has been thinking to decentralize powers

and unions also have been assigned with definite role to play in taking decisions affecting industrial enterprises.

It may be thus said that in France codification, with its beginnings as early as the seventeenth century, became inevitable as the effective economic, political and social units expanded from the localized feudalism of the Middle Ages to the nation-State of the nineteenth century.\(^1\) The great codifications of the early nineteenth century shifted the growth in French law from the courts to the legislator. The French returned from elevated theories to more positive and hence more practical ideas. They could foresee the things clearly and did not wait until the things to happen. They acted according to their own wisdom.\(^2\) Specialized courts involving non-professionals in the administration of justice were established for resolving labour conflicts, which enjoyed considerable popular support. Courts made references to the legislature, whenever necessary, to know the intention of the legislatures or for interpretation of laws. Thus labour laws vis-a-vis the industrial relation system in France was developed on a firm but different footing.

### 3.4 The Ideologies and Values of French Labour Law vis-a-vis French Law in General

French Law is made up of many parts each of which

1. Mehren Von - The Civil Law System - p. 1146  

2. Combe A. David - Seruzier's French Codes - p. 23  
   Colorado (1979).
constitutes a separate discipline and as often as not, falls under the jurisdiction of a separate set of courts. (1) The most important aspect under French law is the clear-cut distinction between public and private law. Matters pertaining to government and public administration are in general withdrawn from the courts, which administer justice between private persons and corporations and committed to separate administrative courts headed by the council de' Etat, which exercise inter-alia, the sort of control over administrative authorities and tribunals exercised in England by the ordinary courts. One part of the public law, revenue law, is treated quite separately and is more independent of the rest of the law, than for instance, in England. Even within private law, there are important distinctions. Labour law is highly developed as a separate discipline and at first instance, usually administered in special courts.

French law is governed by the spirit of history to a far less extent than is the law of England. On the other hand, greater prominence is given in French than in English judgements to the ratio-legis. Whereas the English lawyer seeking to interpret a legal principle will look first to its pedigree, the French lawyer will look first for its policy. French method of approach is to smoothen the effects instead of fostering exceptions to general rules.

1. Amos & Walton - Introduction to French Law - p. 2
Statutory requirements or interdictions are not the only ways and means in which public authorities may play a role in France in the field of labour relations. State interference, direct or indirect also have played vital role in the economic life of the nation. As early as 1899 through the so-called 'decrets Millrand' a rule has been adopted in France according to which no contract for public works shall be entered into by the State (or other public agencies) unless some terms in favour of workers are included in the agreement.\(^1\) The content of Labour Law Statutes also will rather set up standards instead of defining rights and duties which are to be taken note of while entering into contract of employment. The important function of Labour Law, as it is emphasised in France is to provide for remedies for conflicts between employers and employees than to define rights.

The law has been regarded in France as something just and equitable. The law should be used as an instrument to render justice and not merely to speak about their rights. In one way, the meaning attached to the concept of law in France is something similar to 'Dharma' for a Hindu.\(^2\) As such, to find remedies against the difficulties and problems encountered by the individuals and the State and to protect their interests, law has become an instrument. The above ideology could be found

\(^1\)David René - English Law and French Law p. 177 Stevens (1980).
\(^2\)ibid - p. 7.
more in the field of labour law. The statutes have been enacted primarily to protect the interests of the workmen as it is presupposed that the workers need the help of the law to get justice. The rights and duties of the individuals are recognized according to an ideal of justice. This is one of the ideologies preached and practised in the French legal system.

Unlike any other legal system, French legal system does not give much importance to the elaborate procedure or technicalities to be followed. It concentrates more on the substance of the law with a view to bring in more justice in the organization of society. The French judges have been interpreting the law only with a view to arrive at justice and not necessarily to recognize the rights of the individuals. Thus, the approval of the judge has become more humanistic in comparison with his counterparts in other legal systems.

More persuasive value is attached to the decisions of the courts. Though, no court is bound by the earlier decisions of the same court or higher courts, highest value is attached to the decisions of the superior courts viz. Court of Cessation and Council of State. However, it is an accepted principle in France that no legal rules originate from judicial decisions (La jurisprudence n'est pas une source du droit). (1)

3.5 Application of French Labour Law in Overseas Territories including Pondicherry

French treated all its citizens alike unlike Britishers, who had separate set of laws for the British Indian subjects. However, depending upon the local needs, French either applied the laws with modifications wherever necessary or promulgated décrets and arrêtés exclusively applicable to overseas territories. Pondicherry, which was one of the overseas territories under the French regime was known for its sophisticated textile goods from the second century of the Christian era as stated earlier. Obviously, Pondicherry was one of the three important trade ports in the entire Coromandel region. With the fall of the Roman Empire and also due to the fact that the cholas developed many other ports in the eastern coast, Pondicherry (Podukai) received a slight set back in its trading activities. Though, French occupied Pondicherry in the second half of the seventeenth century due to frequent transfer of power among British, Dutch, and French, no policy decision could be taken until 1816 when
Pondicherry came to the hands of the French finally. Since then, several legislative measures were taken by French in order to bring Pondicherry on par with other French territories.

3.6 Legislative Measures in the Unorganized Sector

French have introduced several measures both in the organized and unorganized sectors after having settled down permanently. There was not much need to introduce legislations in the organized sector at Pondicherry in the beginning of the last century as there was not much industrial activity at Pondicherry. There was only one textile mill by then at Pondicherry which was started in 1829 and no unions could be formed, the relationship of employer and workers was regulated by the dictates of the employer. However, in the unorganized sector, the first legislative measure was taken by promulgating an Arrêté on 16 December 1835. The Arrêté of 1835 mainly dealt with the problems of domestic servants (relatif aux domestique). By virtue of the
aforesaid arrêté, the domestic servants were considered as workmen\(^{(1)}\) and given the benefits available to workmen in industries at France. From 1835 to 1937, number of Arrêtés and Décrets were promulgated both in the organized industrial sector and in the unorganized agricultural sector.\(^{(2)}\)

Before dwelling on the study of important legislative measures in the organized sector, it is felt necessary to highlight the historic arrêté promulgated in 1854\(^{2}\) regulating mainly agricultural labour (reglat les droit et lès obligations de la populations agricole de l'establissment de Karaikal).

### 3.6.1 ARRÊTE OF 1854

When the organized labour in other sectors were not having any specific laws or rules governing the contract of employment, the agricultural labourers, who are neglected even today in India, could have better conditions of service than their counterpart in other sectors. By virtue of the arrêté of 1854, the working hours for the agricultural labourers were specified and wages to be paid were fixed. Certain gratuitous payments on

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1. Under the French Law, a worker is said to mean any person who has undertaken to place his gainful activity in return for remuneration under the control of any person including a public or private corporation.

2. Arrêté of 27 April 1854 (Appendix-2).
occasions like Pongal, Deepavali etc., were provided for. Workers could get advances to perform certain ceremonies from the Mirasdar. The women folk had to work along with their minor children in the absence of their husband.\(^{(1)}\) The entire agricultural operation were required to be regulated by virtue of an agreement to be entered into between Paneal (Paneal) and Mirasdar. This agreement used to be in force for a maximum period of five years and minimum period of one year. The working hours of Paneal was stipulated in general to be from 07.00 hours to 12.00 hours and from 14.00 hours to 18.00 hours. If it is ploughing, the working hours are to be from 05.00 hours to 11.00 hours and from 13.00 hours to 18.00 hours. During the harvest season, it was stipulated that the work must commence from 05.00 hours. During a particular type of work entrusted to him, Paneal should not absent himself without the permission of the Mirasdar or Thalayari. During his work, the Paneal has to take his food in the field itself. This naturally prevented the worker from putting forth lame excuses for his absence. The Paneal was not to be asked to work during public holidays. If there is a natural calamity, the Paneal was required to work day and night. During the harvest season, the Paneal had to work upto 11.00 hours on holidays for which he was given half-a-day wages. When Paneal is engaged in ploughing or replanting work,

\(^{(1)}\)Article 1 - Arrêté of 27 April 1854.
he had to do the work from 05.00 hours and he had to work for 70 kuzhis\(^{(1)}\) if he was ploughing once or 35 kuzhis, if he was ploughing twice in the same land. Again from 13.00 hours, the Paneal had to work for 30 kuzhis, if he is to dig the land. If it is replanting, he has to tie the plants and make bundles. Each bundle used to contain 150 plants. He had to complete four bundles a day. For half-a-day, (when he commences the work in the afternoon) he had to replant two bundles.

He has to report to the Mirasdar at the end of the day about the work remaining to be completed. Mirasdar has to provide either 80 kuzhis of dry land or 40 kuzhis of wet land to Paneal for his residence. Every year, Mirasdar had to supply the construction materials to Paneal. Paneal was not entitled to the ownership right over the land given to him for residence or the materials supplied to him for construction. The Paneal was not having any right to sell the fruits or the trees planted by him. The Mirasdar used to make gratuitous payment either in cash or in kind (one dhoti for every man or a saree to a woman or six metres of white cloth) for every Deepavali festival or after the harvest. The worker was entitled to five per cent of paddy seeds. The Mirasdar used to make certain payments in kind or cash at the time of the marriage of the Paneal or at the time of performing marriage ceremonies\(^{(2)}\) (of children). The

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1. 1 kuzhi is equal to 12 metres cubes.
2. Article 15 of the Arrête of 27 April 1854.
gratuitous payment was also to be made at the time of delivery of the child and towards funeral expenses. The workers were entitled to free amenities like coconut, paddy etc., during Pongal festival. The minimum wages to be paid for various types of works like digging work, construction work, ploughing, watering plants etc., were fixed.\(^1\) The child (young) was to get half of the wages of the adult worker.\(^2\) The Paneal was entitled to four per cent of the produce (crops). During the natural calamities, the Paneal could be asked to work without wages for two hours.

The Paneal was entitled to reimbursement of medical expenses from the Mirasdar.

Once the agreement is entered into, alternations in regard to wages and other things were not permissible.\(^3\) Agreement was required to be registered and attested by two witnesses.\(^4\) The agreement will come to an end, if Paneal dies or gets liberation from Mirasdar. If the Paneal desires to discontinue the agreement, he has to give one month's notice. Mirasdar could extend the period of agreement by one more year and bind the Paneal. The agreement also would come to an end, if Paneal has been punished twice by judiciary.\(^5\) If there is any

\(^1\) Article 22 of the Arrêté of 27 April 1854.
\(^2\) Article 24 ibid.
\(^3\) Article 27 ibid.
\(^4\) Article 28 ibid.
\(^5\) Article 29 and 30 ibid.
conflict in regard to the interpretation of the clauses in the agreement, a panel of three judges (one of them selected by the Government) will decide the matter and no appeal would lie against such judgement. The Arrêté promulgated in 1854 was thus a very important law regulating relations between agricultural labourers and their employer. On one hand, the relationship between the employer and employees was legally determined by virtue of the agreement and rights and duties were specifically spelt out. On the other hand, a human touch was given to their relationships by providing gratuitous payments on festival and other important occasions.

The Arrêté of 27 April 1854 was partially amended by the Arrêté of 23 September 1854 which also governed only agricultural operations.

3.7 Background to Industrial Relations System in Pondicherry

The industrial relation system at Pondicherry took a formal shape with the promulgation of the Décret of 1937. By then, there were three major textile mills, which were known as Savana Mills, Gable Mills, and Rodier Mills. The industrial relation was governed by the agreements entered into between the employer and employees. Since France always conferred legal sanction for such agreements, the aggrieved party could seek

1. Article 32 - Arrêté dated 27 April 1854.
2. Décret of 6 April 1937. (Appendix 3)
enforcement of the agreement. There were very a few legislative measures introduced at Pondicherry in the organized sector. Formation of trade unions were not permitted at Pondicherry until 1937. However, for the settlement of industrial disputes a machinery called 'Counseils de Prudhomme' was established in 1907. (1) The Décret of 1937, which has hailed as workers' charter improved the industrial relation system further by bringing in several measures comprising of security, welfare, health etc., of the workmen.

3.7.1 IMPROVEMENT OF INDUSTRIAL RELATION SYSTEM UNDER THE DÉCRET OF 1937

The year of 1937 was very significant from the point of view of labour in Pondicherry. The workers in the three textile mills had a substantial strength by then and the developments - political, labour happening elsewhere in the country had created awakening in the mind of labour. The changing political climate in France also called for a change in the industrial relation system prevailing in France as well as in the overseas territories. 13 Arrêtés and two Décrets were promulgated during the year 1937, which was mainly applicable to overseas territories. The Arrêtés and Décrets were mainly concerning working hours, fixation of porter charges, who are children and women, work in dangerous establishments, provision

1. Law of 27 March 1907.
of amenities to the workers employed in textile industries etc. The most important promulgation was the Décret of 6 April 1937 which was considered as workers charter.

Décret of 1937 is one of the exhaustive and comprehensive décret promulgated by the French Government applicable to workmen in overseas territories. The décret contains 81 Articles arranged in 14 chapters dealing with different aspects of industrial relation. The Décret was a labour code in itself. It dealt with exhaustively security and welfare measures as well as industrial relation.

3.7.2 SECURITY AND WELFARE MEASURES

The Décret of 1937\(^{(1)}\) provided for fixation of minimum wages for different categories of workers belonging to different region. The Décret provided for the duration of the work to be done by workers in a factory, unit or enterprise. Mode of payment of salaries to the workers by cash was prescribed. It was also provided for periodical payment like once in a week or a fortnight depending upon the nature of industries and the agreement between the workmen and employer. Duration of the work

1. Décret of 6 April 1937.
was not to exceed nine hours on any day and from 1 January 1938
the working hours were to be regulated as eight hours per day. A weekly off was provided to every worker. Provision was made
to give over-time wages for the extra work done after the
regular working hours. Specific formula was laid down
regulating the working hours. (1) Exhaustive provisions were
made in respect of rest intervals during working hours and also
for the grant of leave to workers. An employee was not expected
to work without rest for more than six hours continuously. The
workmen who work continuously for a period of six months were
entitled for continuation of service and for all the service
benefits eventually.

Separate provisions were made in respect of female workers
and child workers in relation to duration of the work and also
nature and quantum of work entrusted to them. No child below
the age of 14 years could be admitted to work in a factory or
establishment. It was made compulsory to obtain a medical
certificate about the physical fitness before one is appointed
as worker. The Inspector of Works was to assure that all the
conditions are satisfied before a child is appointed to work in
any factory or establishment. If any child below 14 years is
appointed to work in some institutions like orphange etc., they
are not to work for more than three hours per day. The

Article 21 of Décret of 6 April 1937.
implementation of the provisions applicable to women and children was to be within the purview of the Inspector of Works.

Certain gratuitous payments were to be made to the parents towards the cost of the books for the children. Separate registers were required to be maintained indicating full details about the child workers employed in an industry and these registers were subject to periodical inspection by the Inspector of Works.

Much care was taken to provide for better hygienic conditions and security for the workers. All the smallest establishments like botiques, theatres, were covered under the Décret and machinery was provided for strict enforcement of these provisions. It was incumbent on the part of the officer in charge of the establishment to keep proper and adequate medicines for immediate treatment. It was also compulsory to provide for medical facilities for the workmen. The Inspector of Works had to make periodical inspection of all the factories and establishments and had to sign in the register maintained for this purpose during every visit to the factories and establishments. The Inspector of Works empowered to prosecute the occupier of the factories or industrial establishments, who contravene any of the provisions proclaimed in the Décret of 6 April 1937.
Provision was made in the Décret of 6 April 1937 to provide compensation for workers who are victims of accidents during the course of the work.\(^1\) The Governor was to promulgate the rules (Arrêté) within three months from the date of the Décret of 6 April 1937 providing the modalités to work out the compensation to be paid to the workers for the industrial accidents.

Penalties to the extent of Francs 800 were provided for contravening the provisions of the Décret of April 1937.\(^2\) Penalties upto Francs 500 could be imposed for contravening any of the provisions applicable to children and female workers. The occupier, the chief of the industry, and the chief of the enterprise, were responsible to pay the fine for contravening the provisions of the Décret. The tribunal (la tribunal de simple) and the police were competent to take cognizance of the contravention of the provisions of the Décret. Certain general provisions also were made to make the Décret exhaustive.\(^3\)

3.7.3 TRADE UNIONISM

The right of the workers to form union was recognized for the first time by the virtue of the Décret of 6 April 1937. The unions were allowed to represent the case of workers. No change in the service conditions of the workers were to be made without consulting the unions (Syndicate Professionals). The unions

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1. Article 63 (Titre XII of Décret dated 6 April 1937.
2. Titre XIII ibid.
3. Titre XIV ibid.
were exclusively allowed to defend the cause of workers in economic, commercial and agricultural industries. Unions were formed separately for the workers belonging to different profession. The members of the union were exempted from criminal liabilities to some extent. The members of the union were exempted from the purview of Articles 291, 292, 293, and 294 of 'du Code Penal'.

3.7.4 SETTLEMENT OF DISPUTES

Provision was made in the Décret of 6 April 1937 for the constitution of a 'Mixed Commission'. The mixed commission could be constituted on demand from an employer or a syndicate organization (trade union) or interested workmen or by the Governor or his representative. The main object of the mixed commission is to bring about a collective convention regulating the relations between employers and employees of a branch of industry or of commerce belonging to a particular region or for the whole territory. The mixed commission would consist of representatives of the syndicate organizations, employers and workmen and also representatives from any other

1. Article 55 (Titre X) of Décret of 6 April 1937.
industry or commerce belonging to French Establishment in India.\(^{(1)}\) In case mixed commission constituted in accordance with the above provision will not reach an agreement on any one or several issues proposed to be incorporated in the collective convention, the Governor shall, on demand from one of the parties intervene in order to help the parties to settle the differences.

Separate machinery was provided for the settlement of collective disputes (conflicts collectifs).\(^{(2)}\) Disputes of serious nature were to be referred to either conciliation or arbitration. In regard to procedural conflicts, the assistance of the advocates was not permissible.\(^{(3)}\) Detail procedures were laid down for the settlement of collective disputes. The procedure for settlement of disputes was very simple. The aggrieved party can submit an application in the regional language on a plain paper to the Inspector of Works indicating the grievance. No stamp or fee is required to be paid while submitting the application. The Inspector of Works must try all means to reconcile the

1. Article 2 of the Décret dated 6 April 1937.
2. Titre XI ibid.
3. Article 62 ibid.
difference between the parties and in case, he does not succeed, he must prepare a note, which is known as process-verbal and submit the case for arbitration. The process-verbal will indicate the name of the parties, the cause of the dispute, the stand taken by the parties during the attempts made by the Inspector for reconciliation and his opinion as to the cause for failure of reconciliation. The process-verbal has to be signed by both the parties. The arbitration award becomes final and conclusive.

3.7.5 COLLECTIVE CONVENTION

One of the important components of French Labour Law is the collective convention. The employer and employees were free to enter into agreements conferring certain benefits to the employees, which were not provided in the statute or to confer more benefits than what have been provided under the relevant statutes. The relationship of the employer and employees were regulated mainly by proclaiming many Arrêtés and Décrets and employees entered into several agreements with their employers providing for various benefits. The Décret of 6 April 1937 which was made applicable to overseas territory gave specifically legal sanction to such collective conventions. As such, the enforceability of collective conventions became easy before the settlement machinery, whenever dispute arose as to its provisions or interpretation of the words used in the collective convention. The provision also helped the unions to
strengthen their hands and increased their bargaining capacity.

3.7.4 CONCLUSION OF REFORMS

The Décret of 6 April 1937, which is hailed as workers charter brought many innovations in maintaining a peaceful industrial relation system.

The Inspector of Works was given supervisory powers but his actions were also properly monitored. He was not given the power to book a case for violation of the provisions. The police who were also known for their integrity and honesty during the French regime and the tribunal were only empowered to take cognizance of the case and prosecute the offender. The checks and balances devised under the French system need to be considered for augmenting our system.

The Décret of 1937 was reviewed and amended in the year 1938 and 1939. Four Décrets and two Arrêtés were promulgated in the year 1938. However, with slight changes made from time to time, the Décret of 6 April 1937, continued to be the law until the same was replaced by the Labour Code of 1952.

3.8 Retirement Benefits - Pension Scheme

With the implementation of the Décret of 1937(1) a new era began in the industrial arena. With the right conferred on the workmen to form the union, trade union activities started.

1. Décret of 6 April 1937.
Workmen of all the three textile mills, which were then existent went on strike in 1936, demanding better wages. By then, labour movement had gained sufficient momentum in other parts of the country and visit of national leaders to Pondicherry awakened the mind of the people of Pondicherry as to the happenings outside Pondicherry. French Government also was very considerate and was willing to provide adequate benefits to workmen even after retirement, so that they are not pushed to starvation like the happenings in our country. A collective bargaining agreement was entered into after the strike which took place in 1936\(^1\) and as a result of this agreement a novel scheme of pension, which did not exist anywhere in India was introduced for the benefit of workers at Pondicherry. Though the Pension Scheme was abolished in the year 1955, it is proposed to discuss the scope, merits and demerits of the scheme, in this chapter.

3.8.1 SCOPE OF THE PENSION SCHEME

Pension scheme provided that the workers were entitled to the benefit of full pension, if they retire after completing 25 years of service or after attaining the age of 55 years. There was also a provision that if a worker, who had attained the age of 40 years and had put in a service of 15 years and was forced to retire on the grounds of invalidity, he would get a

\(^1\)Collective Agreement of 1936 referred to in B.R.Chakravarthi's Award of 1955.
proportionate pension. The amount of full monthly pension payable was 40 per cent of the monthly average pay during the 12 months preceding the retirement. This system continued till 1943 when as a result of the introduction of payment of dearness allowance in 1942 the amount of pension was increased from 40 per cent of the wages to 40 per cent of the wages plus 50 per cent of the Dearness Allowance. In September 1946 a collective labour agreement between the management of textile mills in Pondicherry and labour unions of three textile mills was concluded. This agreement is known as collective convention. This collective convention was concluded under the auspices of the then Governor of Pondicherry Territory. The convention confirmed\(^1\) the system of pension and provided for payment of pension at a higher rate viz., 40 per cent of the average basic salary and 75 per cent of the Dearness Allowance. The provision for proportionate pension for workers, who had put in at least 15 years of service and were forced to retire on account of physical incapacity was also repealed. One of the important clauses\(^2\) stipulated that it would remain in force for a period of one year in the first instance but will stand renewed thereafter from year to year by tacit consent, however to denunciation thereof by either party to the convention by issue of a notice in the manner specified therein i.e., the notice of denunciation must be given three months before the

2. Article 2 ibid.
expiry of the original period or the period of the renewal as the case might be and must specify the points in regard to which the denunciation is made. Under this convention, which continued the past practice with modification, pension payments continued to be made to workers, who retired from service. In 1952 the French Labour Code (Code du Travail) was brought into force. The code was made applicable to all territories and associated territories coming under the jurisdiction of the French Overseas Ministry. Pondicherry was one of those territories. The Labour Code of 1952 among other things gave statutory sanction and validity to collective conventions of the type entered into in 1946. In September 1954 in exercise of the power conferred on them by virtue of the collective convention, the management of the Roddier Mills gave a notice to the Labour Union of that Mill denouncing among other things, the pension scheme set out in Article 12 of that convention.

The de-facto merger of Pondicherry Territory into the Indian Union took place on 1 November 1954 and all the mills experienced one or the other difficulties in re-adjusting their position to the changed conditions. When the Arbitration Committee was set up under the chairmanship of Shri B.R. Chakravarthi, one of the main points referred to the committee was the continuance of the pension scheme. The

contention of the managements of all the three textile mills was that it will no longer be possible to them to continue the pension scheme, if they were to survive in competition with the mills in the rest of India. They contended that the scheme of pension as obtained at Pondicherry is not prevailing in any other parts of India and therefore, once the wage structure among the textile workers in Pondicherry is raised and brought on par with that prevailing outside the territory of Pondicherry, the pension scheme, which involves heavy financial commitment on the part of the mills must in fairness and in the interests of both the managements and the labour be put an end to forthwith.

3.8.2 MERITS AND DEMERITS OF THE SCHEME

The scheme was discussed at length by the committee of 1955 as the legal validity vis-a-vis the enforcement of the collective convention which introduced the pension scheme, was questioned before the committee. The French Labour Code of 1952 expressly sanctified the collective convention of 1946 and clothed every individual worker with a right to enforce the terms thereof in the manner provided in the statute. It was also provided that not only those who were members of the signatory organization at the time of the agreement was concluded but all those who later become members

of those organizations would be governed by the terms of the agreement. Article 68 of the Labour Code and paragraph 3 of Article 70 stated the law as follows:

'The convention can provide more favourable provisions to the workers than those of the laws and regulations in force. It cannot derogate from the provisions of public order defined in these laws and regulations'.

In other words, the French Labour Code recognized the right of the workers to enter into contract to gain better benefits than the one provided under the relevant laws. Article 70(1) (paragraph 3) provided that,

'The collective convention must lay down under what form and what time, it could be denounced, renewed or revised. The collective convention must particularly specify the period of notice which must precede the denunciation'. Article 235 of the Code(2) also provided that, so long as new collective conventions have not been established within the frame work of this law, the previous conventions will remain in force provided, their provisions are not contrary to this law'.

In view of the above provisions in the Labour Code, there was no doubt about the legal validity of the pension scheme. The following discussion of the pension scheme by the committee

2. Article 235 ibid.
is noteworthy:

'Collective agreements have recently been recognized and protected by statute in a few States.\(^1\)
As already noted, violation of a collective agreement became an unfair labour practice in Wisconsin and Minnesota under the legislation of 1939. In 1940 in a revision of the California Code, collective agreements were given the same status as other contracts. Finally, an amendment to the Civil Practice Act now makes written arbitration agreements legally enforceable in New York. The overwhelming weight of authority today holds that collective bargaining agreements are valid contracts, enforceable both at law and in equity.\(^2\) The foreign collective bargaining agreement varies in the extent of recognition but, with the exception of England, where the agreement is not given legal effect at all, the law intervenes in some way or other to enforce the terms of the agreement. In Denmark, Finland, Italy, and Queensland, violation of the terms of a collective bargaining agreement are void. The trend of modern decisions

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except in England is to cloth collective agreements with a legal status giving rise to rights in individual workers, which they can enforce in a court of law. The one important point on which a right accruing to an individual worker under a collective contract may differ from a right accruing to him under an individual contract is that while in the latter case his own volition, current or pre-determined may be necessary to alter, modify or put an end to his right, in the former, the volition of the union independent of the individual worker may bring about such a result. (1)

The stipulation about pension in the collective convention of 1946 was not contrary to any of the provisions of the Labour Code. It was therefore valid. The collective convention also provided (2) for denunciation by either party of all, or any of the terms of that convention. The Article runs as follows:

'The present agreement will be considered valid for a period of one year then, to be renewed by tacit agreement for equal periods except for denunciation of same by one or other


of the parties three months before expiration of renewal of the said agreement.

The denunciation must be made in writing and as every year all questions cannot be reconsidered, the letter of denunciation must clearly define the particular points on which modifications of the agreement then in force might be desirable.

The first annual period of validity will end exceptionally on 31 December 1947'.

The second point which was elaborately considered by the committee is also worthy to note. The committee went in detail as to the rights and obligations as had accrued during the continuance in force of the pension clause, in case denunciation is accepted. The right of the workers who have retired and enjoying pensionary benefits and also those workers, who are aspiring for pensionary benefits were taken note of by the committee. On one hand, it was argued on behalf of workers that a vested right to a pension for life, though payable monthly, accrued to every
worker who retired during the continuance in force of the pension clause, the moment he retired from service and the right was not liable to be defeated by any subsequent denunciation, the effect of any such subsequent denunciation being only to take away or alter the rights of workers retiring thereafter. In other words, the right to pension guaranteed by the convention was a right to pension for life and it must be conceived as a whole and as a single right, although its fulfilment may take the shape of monthly payments, and therefore, once that right has to say, crystalized and fallen into the hands of a worker at the moment of his retirement, it cannot be cut down or affected by subsequent denunciation. It was argued on behalf of the management that what accrued to worker at his retirement during the continuance in force to the pension clause was not a right which must necessarily last for life but only a right to receive a monthly pension so long as the pension clause remained in force; and so, the moment the pension clause ceased to exist either by denunciation or otherwise, the right of a worker to claim any further payment by way of pension also came to an end. The right to receive a monthly pension arising out of the pension clause depended for its continuance in force of the pension clause itself. In other
words, the right was co-terminus with the life of the pension clause and where the life of the pension clause itself was dependent upon the will of the employer, the right to receive pension was also terminable at the will of that employer subject only to his observing formalities requisite for denouncing the pension clause. The right of a worker to pension, therefore, under a convention which gives the option to the employer himself to denounce it at will is, in practice, no higher than the right of a worker under a voluntary scheme for pension. If the right is to be conceived as a vested right for pension for life, then it must be deemed to be a right subject to defeasance on the termination or abrogation of the clause for payment of pension. It was thus contended that the liability to pay pension can not continue even in regard to workers who have already retired after the denunciation of the convention. The committee could not reconcile the two divergent views stated on behalf of the management and workmen and found that the problem can be approached not by a pure legalistic view but only by truely humanistic approach.

Committee held in respect of workers, who are still in service, that no right for pension can be said to have accrued in their favour. The committee had to deal with, apart from the legal validity of the collective convention, the matter as to
it is just and proper to direct the continuance of the pension scheme and what is the alternative, in case the pension scheme has to be abandoned. The committee relied upon the following factors to come to the conclusion viz., (i) the capacity of the mills to bear the burden of a pension scheme in the new set up, and (ii) from the point of view of the workers themselves, a pension scheme or a scheme of contributory provident fund is preferable.

3.8.3 BASIS AND FINDINGS OF THE COMMITTEE

First of all, the committee noted that a compulsory pension scheme of the kind contemplated by the collective convention is not in existence in any industry or in any other part of India and no committee or adjudicator has so far recommended the introduction or adoption of a scheme of old age pension in the textile industry in this country. The report of 1947(1) had expressed that it was not possible for the mills to give pension to its workers. The Tripartite Enquiry Committee also had expressed in its report that it could not recommend the payment of old age pension but would have the matter to the discretion of the employers.(2) It was also brought to the notice of the committee that although there have been demands for pension in many cases, no adjudicator has conceded the demand even in a single case. The committee opined

that, no doubt, the mere circumstance that there is no system of old age pension in any other mills in India, may not, by itself be a ground for not allowing it to continue in Pondicherry where it has already existed, if there is proof of ability on the part of the Pondicherry mills to bear the burden. The committee took note of the enormity of the burden arising out of a pension scheme especially when the pension liability of the Rodier Mills alone in 1955 was about Rs 400 000. This amount was bound to increase as years grow and the committee felt that unless there is some guarantee that this burden will be satisfactorily borne by the mills, there is no use making a direction that pension scheme shall continue.

According to the views of the committee, the scheme obtained in Pondicherry mills can not be accurately called 'Pension Scheme', since a scheme involves a plan and a funding but there has been total absence of any plan or funding in the local mills so far to meet the ever increasing burden of pension payments. The committee also noted that the pension payments were started not as a result of any planned scheme but as a result of "pressure" and the pension payments are simply going on without there being any plan for the future. The committee relied upon the writings of Watkins(1) who stated that pension, for which is security for old age, can not be safely built into

haphazard and insecure foundations and any element of uncertainty as to how the burden is to be borne in future is manifestly objectionable. The committee also was very much influenced by the following statements of Dearing.\(^{(1)}\)

\[\text{It must be kept in mind that the costs of pensions for the past service have two features not found in other labour costs. First, they are inherently inflexible in most cases requiring fixed annual payments irrespective of changes in the level of wages and salaries. In fact, with a down turn in business, past service payments would tend to increase in relation to total labour costs since all those eligible for retirement would undoubtedly be forced on the pension rolls. Secondly, the outlays constitute not burden on future production that can not usually be off-set by increased productivity and may not be fully off-set by increased prices. The burden of these liabilities is thus shifted in varying degrees to other income receivers, notably workers, owners, and customers. A discriminatory system results. Moreover, the burden of cost on future production accentuates the problem of management in making orderly adjustments during periods of business recession. The costs of these pension adjustments represent heavy charges on industry. They are costs that cannot be charged retroactively against past production; they can only be charged against future production. And their introduction imposes indiscriminate burden on other workers and other income receivers. These consequences must be considered against the advantages of comparable treatment of older and younger workers. The costs of pension adjustments for past service are so great that for many companies they impose financial problems of first magnitude.}\]

On the above basis, the committee concluded this point by stating that unless a pension fund has been built up to bear the huge burden, the system can not and will not work well;

\[1.\text{Dearing - On Industrial Pensions (cited).}\]
and the question of building up of a fund all on a sudden is unthinkable. Moreover, even if the funding is to be spread over a number of years, it will adversely affect other interests, including those of the present workers. If practically, the whole of the profits accruing during the next 10 years is to be appropriated towards a pension fund, there will be nothing left to the present workers during these years for being distributed by way of bonus or other benefits. The committee therefore recommended to discontinue the pension scheme.

The committee suggested an alternative to the pension scheme by recommending the introduction of Contributory Provident Fund Scheme. The committee noted that under the Employees' Provident Fund's Act 1952, the scheme of contributory provident fund has become compulsory in all textile mills in the Indian Union employing 50 or more persons and the provisions of that Act are bound to be extended to this State (Pondicherry) also very soon. The committee felt it appropriate to suggest that even now in substitution of the pension scheme, which stands abolished, a scheme of contributory provident fund is brought into force immediately. The committee's emphasis on the introduction of contributory provident fund could be seen from the following paras of the report:

"How long a man lives to enjoy pension is uncertain. Very
often he dies even while he is in service or within a few years of his retirement. In the former case, neither he nor his family gets any benefit at all, and in the latter case the total pensionary benefit comes to practically nothing. But under the contributory provident fund scheme, his family gets a substantial amount if he dies, while in service and he himself gets that benefit on his retirement or otherwise leaving the service". The following observation of the Labour Appellate Tribunal(1) is quoted for strengthening the Committee's views:

The most forcible argument against the pension system is that if the worker dies in or about 50 or 55 years, his or her family derives absolutely no benefit. It is seldom that a worker survives beyond 50 or 55 years of age to enjoy the benefit of pension for a larger number of years, having regard to the shortness of Indian life.

The committee quoted further the following passage of Industrial Awards in India(2) to justify the introduction of contributory provident fund scheme:

The contributory provident fund scheme is the best scheme of retiring benefit, because, while imposing a burden on the employers it also makes it compulsory for the employees to make a contribution, this is desirable because not only it teaches the employees the habit of saving but also a guarantee against reckless spending of the retiring benefit money, when obtained for, if the employees feel that they have contributed to build up the fund money, they would be careful about the money they receive on retiring.

The committee further noted that there is also another

2. Industrial Awards in India (Extract from the Award of an Industrial Tribunal in West Bengal - Cited by the Committee in its Report 1955).
advantage in a system of contributory provident fund viz., that
the contribution that is made by the employer is based on the
principle of pay as you go without any accumulation of burden.
As such, the committee held that all the mills in Pondicherry
should bring into force a scheme of contributory provident
fund. In order to protect the interest of workers, who are in
service from and after 1936 (when the pension scheme was
started) till 1 January 1956 (when the contributory provident
fund scheme is to be introduced), the committee recommended for
grant of gratuity. The extent of gratuity to be paid to the
workers was a different question and the following extract of
the report of the committee narrates the solution to the
problem, as suggested by the committee.\(^1\)

"We have given our most anxious considerations as to the
extent to which this benefit in the shape of gratuity should go.
The decisions rendered on the question of gratuity by the Labour
Appellate Tribunals are not on any fixed or uniform principle.
The decision in each case has depended on the facts and
circumstances of and the equities prevailing in that case. In
Bihar Sugar Mills v. Their Workmen\(^2\) 15 days consolidated wages
for each completed year of service upto the date when the new
provident fund scheme was introduced, but subject to a maximum
of five months wages were given as gratuity. The rate to be

2.Bihar Sugar Mills v. Their Workmen
taken into account for calculation was directed to be the rate payable immediately the provident fund scheme was introduced. In Burma Shell etc., (the old companies) Madras v. Their Employees (1) the gratuity was made up of 6½ per cent of the salary that the workers had been getting during each of the year of the service. In the Sirpur Paper Mills Ltd. v. Workmen (2) what was taken into was the average salary or wages drawn during 12 months preceding death, disability or retirement. We feel that the maximum of five months pay will be too small. We also feel that having regard to the fact that 1943 onwards the pension scheme was not merely the basic wages but also dearness allowance, calculation of gratuity with reference to the basic wages alone leaving out of the amount dearness allowance may not be right. The wage structure will undergo a drastic change under our award and therefore, it will not be fair to the management to calculate the gratuity for past service on the basis of the new wage structure. We have also to take note of the fact as already stated, that it was only in 1936 for the first time the hope of expectation of retirement benefit was given to the workers and that the burden which we now impose upon the managements must not be too heavy for them to bear, having regard to the new set up and the competition which they have to face with the other textile mills in the country. Taking all these circumstances


into account, we feel that if we substantially push back the scheme of contributory provident fund to 1936 and work out the amount of gratuity on that basis, it will be fair to both the management and the labour. We therefore direct that the contribution of one anna for rupee 1.e., one-sixteenth of the total emoluments which every worker or clerk has received from the beginning of 1936 to the end of 1955 shall be made by the management to constitute the gratuity or the compensation payable to him for the period from 1936 to 1955 (both years inclusive). The amount so calculated shall be payable along with the amount standing to his credit in his provident fund account according to the rules of the Provident Fund Scheme. Wherein the case of a person retiring after attaining the age of 55 and after 25 years of service, the amount to his credit in the provident fund account is so low that amount together with the amount of gratuity calculated in the manner set forth above, makes a total of less than Rs 500. The amount of gratuity shall be increased by that sum which is necessary to make the total of Rs 500. As we apprehend that some of the managements may say that the records of the wages paid are missing for certain periods, we make the following provisions by way of abundant caution. If in respect of any period the records of the wages paid to a worker are not available, the contribution
due to him for that period will be calculated on the basis of his earnings during the period of equal duration succeeding the period for which the records are not available; provided however, that any intervening period or periods of lay-off shall be excluded in computing that period of equal duration".

3.8.4 AN APPRAISAL OF THE FINDINGS OF THE COMMITTEE

Though the legal validity of the pension scheme which was existing from 1936 could not be questioned, the committee(1) appears to have recommended for abolition of the scheme viewing from the 'economic' point of view of the management. The committee also appears to have taken into fact that the wage structure which was comparatively unfavourable to the workmen has been increased and brought on par with the situation in neighbouring Tamil Nadu. The other point, the committee has taken note of is that, the pension scheme has not been properly planned and adequately funded. The committee has opined that the scheme of contributory provident fund is more beneficial to the workers as well as their family.

Though the committee has attempted to put forth convincing arguments justifying its recommendations, the reasoning does not appear to be very sound. In India, poverty is the eternal partner of the industrial worker. The span of life of the workman in India is shorter mainly because of the fact that he is yet to get a living wage for the hard labour he is required


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to do. He knows not practically recreation and all the wage he earns does not provide him two square meals. Industrial workers in India are having a secluded life of their own. They are seldom treated as a segment of society, though the economic bone of the country lies in the industrial production in this country. The care and amenities provided to him in and outside the industry can hardly keep him healthy. The medical facilities provided to the workers are not adequate. In many cases, he is over worked. In our country, the children of industrial workers are unable to get higher and better education and due to this fact, many of them follow the footsteps of their parents and become themselves industrial workers. They are unable to maintain their old parents. The retired workers therefore die in most of the cases due to starvation. The amount of gratuity and the accumulated amount of provident fund will be a meagre sum, so far as the workers are concerned. Moreover, the worker due to the paltry sum he is getting as salary will have more liabilities to pay off and he always relies upon the amount he is going to get to pay these liabilities. It is the tendency on the part of the poor paid workers to incur debts as and when need arises and they do not hesitate to incur debts, when they are sure of getting a substantial sum in the immediate future so that they can pay off.
their debts. The workers after their retirement are not taken care of by their children, who in most of the cases, are unable to maintain dependents, due to their poor economic position. The amount a worker would receive either by way of gratuity or as accumulated provident fund will not last long. The amount would be taken away either for paying off the debts or discharging his obligations like children's marriages etc. In some cases, he would be the victim of circumstances and spends the money lavishly. It is an admitted fact that very few workers would think of their tomorrows and save or preserve money. It would always be better to make arrangement in such a way that a worker would continue to get at least a meagre amount even after retirement so that he can at least have square meal a day and he can depend on himself to the extent possible.

The pensionary system in India seems to have originated in about the middle of the last century as a non-contributory system on the lines prevalent in the United Kingdom. However, it differs from the system, as conditions and scales relating to pension are governed not by statute as in United Kingdom but by rules. As early as in 1950, liberalised pension rules were introduced as a result of Varadachariar Commission's recommendations which came into effect from 17 April 1950.(1)

The pension scheme effective from 1950 has combined the

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advantages available both under the earlier pension scheme as well as under the provident fund schemes. The family also would be entitled to the benefit of family pension under this scheme. Most of the non-industrial staff have been covered by the pension-scheme and there is no reason as to why the same should not be extended to the industrial workers. The number of industrial workers at Pondicherry were very less (about 8 000) at that time. As such, it could have been experimented at Pondicherry as to the pros and cons of extension of pension scheme to industrial workers.

The pension scheme existing elsewhere in the country also is governed by rules and not by statutes. No difficulty was experienced by the mills from 1936 till 1955 to pay the pension to the workers at Pondicherry. It is also stated in the report of the committee that the financial position of the Rodier Mills and Savana Mills is sound and even though the position of Bharathi Mills is not so sound, the Government of India had given them number of concessions. Continuing the pension scheme as such would not have affected the financial position of the mills. Pension is an objective and a cherished goal one works upto and looks forward to. It is the culmination of the long journey in one's service career. The root of the idea of pension lies in a long term relationship between the employer
ard the employee of a service normally spanning an employee's whole working life, followed by the annuity for the rest of his life. It is superfluous to state workers would not be alive to receive pension. The question may be reversed as to what is the benefit he is going to get, if the amount is given in a lumpsum, when he is not going to survive, as stated by the committee. Retirement benefits, whether it is pension, gratuity, or provident fund are mainly meant for enjoying a quiet life as a consideration for the service rendered in the past. Even under the pension scheme, there is a possibility for commuting certain percentage of the pension for which one is entitled to and thereby one can get a substantial amount for meeting the urgent needs with still having hopes to sustain himself at least to some extent in future. In a contributory provident fund scheme, the employer's liability continues from the day the employee becomes eligible to contribute till he draws his last salary. The death rate after retirement is certainly more than the death rate while in service except in cases of industrial accidents for which the employer can not escape from paying compensation amount. As such, in the ultimate analysis, the economic burden on the part of the employer may not be much lessened by abolishing the pension scheme and substituting by contributory provident fund scheme. There is no additional benefit conferred
to the workmen by introducing the provident fund scheme. The committee has further pointed out that the pension scheme is not property founded and funded. Any scheme, which is formulated may not be full proof for all the time to come. The defects in the scheme can always be rectified. The defects can be found out only when a scheme is put into operation. It must be noted that the pension scheme was not started based upon any plan or directive from the Government but due to pressure by the workmen themselves. It is therefore obvious that the management might not have put its head into it in order to give a proper shape to the scheme. The funding of such schemes depends upon the financial position of the industry. When the Government of India had come forward to show number of concessions at that time to Bharathi Mills, there is no reason to disbelieve that the Government of India would have certainly come forward to help to fund the scheme adequately especially because of the fact that de-facto merger of the territory had just taken place then.

In view of the above factors, the award of the committee in abolishing the existing pension scheme does not appear to be sound and it can said to be favouring the management. The unique scheme of pension available to industrial workers at Pondicherry could have been experimented in the changing
situations after the merger of the territory with the Union of India and would have been made as a worthy scheme to benefit the workmen at large.

The interview with some of the workmen and trade union leaders who were associated with the award of 1955(1) revealed that the workers were not given any option as to whether they would prefer pension scheme or contributory provident fund scheme. The committee appears to have mainly relied upon the provisions under the Provident Fund Act 1952 which makes the introduction of the scheme of contributory provident fund compulsory in certain industrial establishments. There was no doubt that the pension scheme had benefitted large number of people and that no one was willing to opt out of the pension scheme when the same was extended to any unit or establishment. As such, the award directing the abolition of the pension scheme does not appear to be a happy decision from the point of view of workmen.

3.9 Council of Prudhommes (Conseil de Prudhommes)

The French experience of Council of Prudhommes is unique and had shown the way of settlement of disputes in a more judicious and equitable manner. The experience of Council of Prudhommes was given a fillip by making elaborate provisions for settlement of disputes under the Labour Code, (Code du Travail) 1952.

Prior to the establishment of Council of Prudhommes, the disputes were settled either by 'Justice of Peace' or by referring to 'Tribunal of Commerce'. French proclaimed separate set of laws from time to time to deal with commercial matters and finally drafted a separate code known as 'Commercial Code' in the year 1807. Tribunal of Commerce was established in accordance with the provisions of the Commercial Code and had jurisdiction over disputes relating to employees of commerce. After the establishment of separate commerce section in some of the Council of Prudhommes, dispute relating to commerce were handled by the Council of Prudhommes and the jurisdiction of the Council of Prudhommes was thus expanded.

The Justice of Peace is a nominee of the Government. He is a well qualified person in law. Towns in

which Council of Prudhommes was not established, the disputes between employers and workers used to be referred to Justice of Peace. After establishing the Council of Prudhommes whenever difficulty had arisen due to equality of votes between the representative of workmen and employer, Justice of Peace used to be called in to preside over the Council of Prudhommes.

3.9.1 COUNCIL OF PRUDHOMMES - ORIGIN AND COMPOSITION

The concept of prudhommes can be treated back to the ancient French Law. Prudhommes (Plural-Prudeautes) meant either the municipal officer or more specifically experts appointed by the courts. The Council of Prudhommes as it exists now is of recent past and its origin can be traced to the beginning of nineteenth century. The abolition of kingship in 1791 took away the local jurisdiction of the courts and during the whole revolutionary period and the period of the 'consulat', the disputes between the employers and workers were submitted to the
"common law" judges. In 1805 Napoleon came to Lyon. The industrialists of Lyon requested him to establish a machinery for arbitrating disputes analogous to corporate jurisdiction i.e., to have machinery, which can exercise jurisdiction over a specified area in respect of all kinds of disputes in the manner the corporation exercises. The Imperial Government agreed to this request and by the Law of 18 March 1806 a Council of Prudhommes was established. It was aimed at terminating by way of conciliation the differences (discords) that daily arose either between the factory owners and their workers/apprentices.

The first Council of Prudhommes which was started in Lyon was composed of nine members - five members from the factory owners or dealers and four among the licensed supervisors. Initial composition of the council was employer-oriented. Although the Law of 1806 was promulgated mainly in the interest of the silk factories in the region of Lyon, the Article 34 of that Law contained a provision destined to facilitate the application of the beneficial new system to all industrial towns. The provision stipulated that there could be established other Councils of Prudhommes by means of decree approved by the "Council d'Etat" in such of the industrial towns that the Government determines. Accordingly, the Government prepared a list of towns, wherein the Council of Prudhommes could be
established. Additions were made to the list as and when necessary. As on 1 January 1907 it is reported that there were 169 Councils of Prudhommes. Ordinarily, there used to be only one Council in one town dealing with all kinds of matters. The majority of the councils established in big and important cities consisted of two sections; viz., (a) Industrial Section, and (b) Commercial Section. However, councils of important towns were divided into a number of sections e.g., Councils of Prudhommes of Paris, which was instituted by the décret of 1908(1) comprised of five sections involving labour connected with:

(a) Construction of buildings;
(b) Fabrication of Steel;
(c) Manufacture of chemicals
(d) Commerce and trade; and
(e) Other industries.

The Council at Lyon, which was established by the décret of 1910(2) was composed of three sections connected with:

(a) Fabrication of silk products;
(b) Construction of buildings; and
(c) Other industrial and commercial labour.

The Legislation of 1806 was often amended in the last century by décrets dated 11 June 1809, 3 August 1810, 27 May 1880, and bye-laws dated 1 June 1853, 4 June 1864,

1. Décret of 23 March 1908.
7 February 1880, and 11 December 1884. The legislation was clearly in favour of the extension of Council System to the employees of commerce and the Senate, (which is supreme body) on the contrary, considered such amendment as a violation of the unitory jurisdictional principle proclaimed by the Revolution of 1789. It was decided in France by the Proclamation of 1789 that a single body shall not have jurisdiction over several matters. It was intended to have specialized body in every respect and not to generalize.

A first step was taken by the Law of 15 July 1905 which contained many important procedural amendments e.g., the right of appeal was transferred from the Tribunal of Commerce to the civil law courts. The judgement section was made to comprise of an equal number of employers and workers including the Chairman/Vice-Chairman presiding alternatively. The Judge of the Peace would be called to preside over the section, when there would be equality of votes. Such provisions were meant to prevent the abuses in number of reconventional petitions (since the right of appeal was transferred to civil law courts). As the decisions of Tribunals of Commerce were sent in appeal to civil courts, it was held logical to transfer appeal jurisdiction from the Councils of Prudhommes to professional judges who would be faithful in interpreting the laws and would
not be interested in the debates. But as honorary judges (consular judges) belonged to the category of employers, the balance tilted in favour of the latter. The debate in this regard continued for some time. In law and in equity, legislation had to be amended and the Senate finally withdrew its opposition and on 8 November 1906 extension of Prudhommal jurisdiction to the employees of commerce with an important restriction was granted.

The Laws of 27 March 1907 also attempted other reforms. Not only this law synthesised, completed, and co-ordinated the prior legislation but also it brought in series of reforms viz.,

1. Creation by right of a Council of Prudhommes, when such creation is asked for by the Municipal Council and when the advices of the advisory bodies are favourable.\(^{(1)}\)

2. The extension of Prudhommal System to attractive industries, manipulative industries, and transport industries.\(^{(2)}\)

3. The extension of electoral capacity to women.

4. The extension of eligibility to male electors, who have not left the industry for more than 5 years.\(^{(3)}\)

5. The reduction of duration of the practice period necessary for acquiring eligibility.\(^{(4)}\)

2. Article 2 ibid.
3. Article 6 ibid.
4. Article 6 ibid.
6. The access within the jurisdiction of the Council to women and to minors.(1)
7. The possibility of getting judicial help.(2)
8. The alternation of chairmanship between the group workers and the group employers.
9. The determination of competency, when there are many sections, which will be determined not according to the nature of the establishment but by the nature of the work undertaken.

The Laws of 27 March 1907 had been amended and completed by the Laws of 13 November 1908 conferring eligibility to women and the Laws of 8 March 1912 concerning the Articles 49 and 50 (exclusion of some incapacities). By the Laws of 1905 and 1907 the French legislation has nominated the Judges of the Peace for presiding over the Council of Prudhommes, in case there is an equality of vote between the two classes of representatives.

3.9.1.1 Electoral Procedure. The Prudhommes' employees are elected by the electors workers/employees. The representative of employers to the Council of Prudhommes are elected by the electors employers sitting in various assemblies presided by the Judges of the Peace. They are elected for two years. Half the members of the Council are replaced every year. The members are eligible for re-election.

2. Article 40 ibid.
The Chairman and the Vice-Chairman are elected for a year by the members of each council or of each section of the council (in case, there are two or more sections) sitting in General Assembly by absolute majority of votes. When the chairman is elected from the employer's group, the vice-chairman must belong to the group of workers/employees. The chairmanship must alternatively go to the employer group and then to the workers group. If the council is divided into sections, the Chairman/Vice-Chairman of each section and other members assemble themselves every year for electing the person who will be entrusted with the relations with the administration (Public Relation Officer). One or more Secretaries appointed on the proposal of the Law Minister is/are attached to each council. They are selected from a panel of three candidates elected by the General Assembly.

The Secretary represents the permanent element of the council and he is the repository of usages and traditions of the council. His responsibilities and authorities become greater, when there is no Public Procurator(1) in the council.

The Councillors of Prudhommes must take oath in the box of the civil court. The effectiveness of the judges depends upon the authority of the Minister for Law and Labour. The functions of the judges in general are honorary. Yet, the Law of 1880

1. Public Procurator takes care of the interest of the public.
authorizes the communes to provide salary to the Councillors of Prudhommes. There will be no distinction in this regard between a Prudhomme employer and a Prudhomme worker. This privilege has been maintained by the Law of 1907.

3.9.2 FUNCTIONING OF 'COUNCIL OF PRUDHOMMES'

The Council of Prudhommes is basically a conciliatory organ. Their attempts to reconcile two parties must always precede the legal exchange of arguments. Hence, the Council is divided into two sections viz., one section is called as conciliation or special section and the other is the judging section called general section.

The special section comprises of two members i.e., of an employer and of a worker councillors. It must meet at least once a week to hear the parties. It is presided over alternatively by the employer councillor and the worker councillor.

The general section comprises of an equal number of Prudhommes employers and of Prudhommes workers/employees including the chairman sitting alternatively. There must be at least two councillors workers/employees. In case of division of votes, the case is sent back at the earliest before the same general section presided by the Judge of the Peace of the constituency or by one of his substitutes. If the constituency
comprises of many districts/taluks having each a Judge of the Peace, the senior most in age and service will be selected for chairmanship.

3.9.2.1 **Judicial Functions of Councils of Prudhommes.**

According to the Law of 1806 and the decree of 3 August 1840 the Councils of Prudhommes were given dual power (dual capacity) civil as well as penal. In regard to penal matters, the councils were entitled to try just like ordinary criminal courts, every wrong, tort of workers tending to disrupt law, order and discipline in the factory, mill or other working place. This penal competence to which Council of Prudhommes would not ordinarily resort. Such competence did not appear justified to the 1907 legislators, who simply took it out of the statute book, by abrogating the decree of 1840. On the contrary, the civil competency of the Prudhommes, which was restricted till then within narrow limits was greatly enlarged.

Prior to the Law of 1907 the Council of Prudhommes had an exceptional jurisdiction in the strictest sense of the word solely instituted for solving the disputes arising between an employer and his workers in an industry in relation to the work contract (the industry also must be a scheduled industry). The competence of the Council according to the previous legislation was thus subordinated to the five following requisites:

(i) There must exist between the parties a lien of subordination; if the lien exists, it does not matter, whether
the worker works in a factory or at home (for instance, in silk industries, it was common to work at home). But for this link, the connecting element of subordination is absent and the basis of Prudhommal competence disappears. Hence, the Council of Prudhommes is radically incompetent to try disputes between partners or employers of any industry or undertaking. Sometimes, it is not easy to distinguish between the partner and the section superintendent. The fact of admitting a worker or a section superintendent to the gains or the benefits of the enterprise does not make the worker/superintendent, a partner. Jurisprudence in this regard is very categorical. Partnership means an association with regard to losses as well as to gains.

The Council of Prudhommes is competent to try disputes between the employer in an industry and a worker, who is interested in the productivity. On the contrary, it cannot try disputes between an industrial chief and one of the contractors independently.

(ii) The employer must possess a double capacity of manufacturer and trader. It follows that on the one hand, the Council of Prudhommes is incompetent to entertain disputes of such industries not of commercial character, such as the extractive industries vis-a-vis the government servants, because of the present state of administrative law, the State cannot be
assimilated to an ordinary trader (this applies also to employees of government industrial undertaking). On the other hand, jurisdiction of Prudhommes is radically not applicable to try disputes arising between simple traders who sell or transport the products without bringing a change to the said products and their respective agents that they employ either for manipulation of goods or for their sale.

(iii) The salaried person must be a worker or supervisor. All the employees of the manufacturer could not be considered as coming within the jurisdiction of the Council of Prudhommes; but some may come within the jurisdiction of the Tribunals of Commerce.

The disputes between the executives of the industries and their servants (of the household) must be submitted to the Judges of the Peace and not to the Council of Prudhommes, provided they are not commercial ancillaries attached to the executives' business.

(iv) The common industries engaged by both parties must be one amongst those contemplated by the decree instituting the Council. The Council of Prudhommes being a jurisdiction of exception can exercise its authority only upon the industries expressly scheduled in the said decree of 11 July 1809. With regard to other industries, even if they are
manufacturing industries, only the Judges of the Peace are competent to solve the disputes.

(v) The Council of Prudhommes is not entitled to solve disputes between fabricating traders (or trading manufacturers) and their workers, but only to solve the contestations arising out of breach of contract of service, work contracts, and training contracts.

The council can try disputes relating to salaries, leave claims for certificates. Frequent disputes arise about salaries. Such type of disputes represent two-thirds of the cases brought about. The Prudhommes Councillors cannot alter the rate of salary. They can order such customary salary as exists in a similar industry only, if the clauses of the contract do not 'speak' in this regard (if the amount of salary is an unliquidated amount) i.e., if the vagueness of the provisions do not permit to uncover with certainty the common intention of the parties - nor the Council can fix a rate with retrospective effect. This duty befalls exclusively upon the conciliatory/arbitration councils.

3.9.2.2 Hiring of Work.- The Council of Prudhommes is competent to decide disputes between section heads and the contingent workers and the employer. As in the above analysis,
disputes arise most frequently with regard to the rates of salary and misfabrication (i.e., tort, damages caused by the negligence of workers). It happens frequently that the regulation of the workshops farsee the ordinary cases of mal-fabrication and that they indicate the penalties thereof. According to industrial jurisprudence, when the workshop regulations prescribe times, it must be ascertained that the concerned worker was aware of the methods of fabrctions and that he had at least opportunity to have the knowledge thereof. The Councils of Prudhommes can only apply the regulations and enforce the co-relative fines.

3.9.2.3. Training Contract. - The Council of Prudhommes is competent in the last resort to know the difficulties and recission of training contracts, i.e., bilateral relations of the employers and section heads with the apprentices (or with the latter’s representatives). The Council of Prudhommes is competent to decide about actions for damages put up by a master against the manufacturer or section head, who would have pursuaded the apprentice to leave his master who had provided training. (1)

3.9.3 LIMITS OF THE COMPETENCY OF COUNCIL OF PRUDHOMMES

In the various above cited cases, the Council of Prudhommes, whatever may be the amount of the risks involved

1. Law of 1851.
will possess jurisdiction. By application of the rule that the judge of the main suit is also the judge of the exception, the council is competent to hear any reconventional application, which is incidental to the main suit. (There are some exceptions to the above rule e.g., for knowing forgery cases, for verification of handwriting, for knowing of problems connected with the conditions, capacities of parties etc.) The forgery cases, verification of handwritings, verification of privileges of State acting in its sovereign capacity are in the jurisdiction of Civil/Administrative Courts and the Council of Prudhommes must postpone their decision until the competent court had solved these prejudicial questions. The requisitions are brought before court civil/court of sessions.

On the other hand, the Council is absolutely incompetent to deal with disputes arising, when the latter do not relate to the above three kinds of contracts or when the hiring contract is between an employer and a worker exercising in a different industry. No lien of subordination between the parties is found here, which is essential for deciding jurisdiction of the council. The Law of 1907 has considerably extended the area of Prudhommal jurisdiction. However, some of the aforesaid conditions have been retained. Likewise, the disputes which relate to the execution and interpretation of an industrial contract come under jurisdiction of the council. According to
the Law of 1907(1) a great number of new categories of salaried people were to get benefit. Instead of restrictive words, 'fabricating merchant', the first Article of Law of 1907 has substituted a more larger formula. The Councils of Prudhommes are established for conciliating disputes arising out of breach of work contracts in industry as well as in commerce between employers (their representatives) and employees, workers and apprentices. They interfere when the Conciliation Bureau has failed to promote a settlement. (2) The reorganized councils can settle disputes concerning -

(a) the workers engaged in an extractive industry,

(b) the workers of transport (Railway, Tramways, Transport by light carriers, Transport by canals and rivers) and those who work in docks and warehouses,

(c) the employees of industry, banking, travelling agents, commission agents.

There exists a difference between workers and employees in respect of claim value. The competency of the council vis-a-vis workers is unlimited. But, there is a limit determined by the value of employees claims. The council has jurisdiction upon cases valued below Francs 1 000. Over this amount, the admiralty court remains competent.

On the contrary, the Law of 1907 does not apply to

1. Article 1 and 5 of Law of 1907.
2. Article 32 of Law of 1907.
servants attached to a master nor to servants employed in the commercial transport. It is also not applicable to the workers and employees of the government undertaking and enterprises, to national railway's staff, to the municipal employees (corporation).

3.9.3.1 Territorial Competency of Council of Prudhommes

In common law, the cases concerning transfer of movable property must be filed before the court in the jurisdiction of which the domicile of the defendant is situated. But the petitioner in a commercial case can opt one of the three courts.

3.9.4 REFORMS OF THE SYSTEM OF COUNCIL OF PRUDHOMMES

The Council of Prudhommes occupied a unique position in maintaining industrial relations in France and also overseas territories. The Council of Prudhommes adopted simple procedures. By virtue of the participation of both the workers and employers representatives in the settlement mechanism, the parties reposed confidence in the machinery and settlement became smooth. As the industrial activities progressed, number of industrial disputes also increased considerably and distinction had to be made in regard to collective disputes and individual disputes. When the Labour Code (Code du Travail) was enacted in 1952, settlement mechanism was much more improved by setting up separate machineries for adjudication of individual
disputes and collective disputes. The mechanism provided under the Labour Code has been discussed later.\(^{(1)}\)

When the policy of workers' participation in the management was formulated in India in 1976 there was hue and cry by the management and the employers did not want their grip to be lost and to answer any one in the industrial matters. However, the French have always developed a juristic tendency to be impartial, allowed equal participation of workmen and employers in settlement of their disputes. This novel method, apart from humane treatment and simple procedure adopted for settlement of labour disputes through Councils of Prudhommes may be taken as guiding principles to improve our system.

\(^{1}\)See Chapter 4 - p. 115.