CHAPTER- III

POST-CONSTITUTIONAL LABOUR ENACTMENTS - NEW ERA
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3.1. Introduction:

After the independence various labour legislations have been enacted by the Parliament and the State legislatures from time to time for the industrial workers with a view to provide social as well as economic security to the industrial workers. In December 1947, the Government of India convened the Indian labour Conference. The Conference has adopted unanimously the Industrial Truce Resolution 1947. The object of the Resolution was to devise measures to arrest rapidly deteriorating labour management relations and to increase industrial production. According to this Resolution, “the system of remuneration to capital as well as labour must be so devised that while in the interest of the consumers and primary producers, excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the produce of their common efforts after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserve for the maintenance and expansion of the undertaking”.  

3.2. Industrial Policy Resolution (1948):

The Industrial Policy Resolution 1948 *inter alia* emphasized:

(1) Fixation of statutory minimum wages in sweated industries and
(2) Promotion of Fair Wage Agreements in the more organized industries.

To facilitate the former, the Minimum Wages Act, 1948 had already been passed. For the latter, the government of India appointed the Committee on Fair Wages to "determine the principles on which fair wages should be based and to suggest the lines on which these principles should be applied".  

3.3. The Committee on Fair Wages (1949):

The Committee on Fair Wages defined three distinct levels of wages, *viz.*, living wage, fair wage and minimum wage. The 'living wage', according to the Committee, represented a standard of living which provide not merely for a bare physical subsistence but for the maintenance of health and decency, a measure of frugal comfort including education for the children, protection against ill-health, requirements of

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essential social needs and some insurance against the more important misfortunes. The 'minimum wage' was to ensure not merely the bare sustenance of life but the preservation of the efficiency of the worker by providing some measure of education, medical requirements and amenities. The Committee envisaged that while the lower limit for 'fair wage' must obviously be the minimum wage, the upper limit was set by the capacity of the industry to pay. Between these two limits the actual wage would depend on:

(a) The productivity of labour,
(b) The prevailing rates of wages,
(c) The level of national income and its distribution, and
(d) The place of the industry in the economy of the country.

With regard to the Minimum Wage, the Committee further reported the following: The Minimum Wage-Fixing Machinery published by the I.L.O. has summarized these views as follows:

"In different countries estimates have been made of the amount of a living wage, but the estimates vary according to the point of view of the investigator.

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4. Ibid. at 15
Estimate may be classified into at least three groups:

(1) the amount necessary for mere subsistence,
(2) the amount necessary for health and decency, and
(3) the amount necessary to provide a standard of comfort."

It will be seen from this summary of the concept of the living wage held in various part of the world that there is general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.\(^6\)

It appears to the Committee that this represents the living wage standard as widely accepted, but naturally it has to be consider in due course how far one can aim at, or approach, this standard in the present-day economy of the country.\(^7\)

The living wage, as mentioned above, is a well-understood concept though views may differ as regards the details of calculation. There can

\(^6\) Ibid. at 11-12.
\(^7\) Ibid.
be differences of opinion as to the standards to be adopted and the methods of investigation and ascertainment of factual data, but the objective is clear. But different considerations arise as far as the minimum wage is concerned.8

The demand for the fixation of the minimum wage arose, in the first instance out of the clamor for the eradication of the evils of “sweating”. The I.L.O. Convention of 1928 prescribes the setting up of minimum wage-fixing machinery in industries in which “no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.” The Minimum Wages Act passed by the Indian Legislature last year was found necessary on both these grounds.9

Further the Committee observed that in foreign countries, particularly Australia, New Zealand, the United States of America and Canada, where the national wealth is high, the living wage forms the primary basis of the minimum wage. In these countries there is not much distinction between the minimum wage and living wage. The I.L.O. monograph on the Minimum Wage-Fixing Machinery contains the following passage on the subjects:

8 Ibid.
9 Id. at 14.
"The bases specified in various laws include the living wage basis, and that of fixing minimum wages in any trade in relation to the wages paid to workers in the same trades in other districts or in relation to the wages paid to workers of similar grade in other trades. There is a third important basis, namely, the capacity of the individual industry or of industry in general, which, though sometimes not expressly mentioned in minimum wage laws, must always be taken into account in practice. A close relation exists between them. As a basis for wage fixing, it would be valueless to make an estimate of a living wage beyond the capacity of industry to pay. Here capacity of industry as a whole, and not of each separate industry or branch is to be understood." 10

From this analysis of the bases of fixing of the minimum wage, it will be seen that, as a rule, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of the industry to pay. This view has been accepted by the Bombay Textile Labour Inquiry Committee which says that "the living wage basis affords an absolute external standard for the determination of the minimum" and that "where a living wage criterion has been used in the

10. Ibid.
giving of an award or the fixing of a wage, the decision has always been tempered by other considerations of a practical character."

In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage, which would correspond to the concept of the living wage as described in the preceding paragraphs. What then should be the level of minimum wages, which can be sustained by the present stage of the country's economy? Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage. In fact, even one important All India Organization of employees has suggested that "a minimum wage is that wage which is sufficient to cover the bare physical needs of a worker and his family." Many others, however, consider that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities.12

Finally the Committee concluded that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must

11. Id. at 15.
12. Ibid.
also provide for some measure of education, medical requirements, and amenities.13

To give effect to the recommendations of the Committee on Fair Wages, the Fair Wages Bill was introduced in the Constituent Assembly of India. Though it was not enacted, the then Prime Minister, the late Shri. Jawaharlal Nehru stated in the Parliament in April 1950: "Government is committed to the principles of fair wages as recommended by the Tripartite Committee."14 The Bill lapsed after the dissolution of the Constituent Assembly. It was not pursued in the Parliament later.

However Industrial adjudication and Arbitration in India have drawn extensively from the Recommendations of the Committee on Fair Wages. For instance, paras 6 to 15 of Chapter II of the Report were approved and quoted in Express News Papers Ltd. V Union of India,15

3.4. Industrial Disputes (Appellate Tribunals) Act, 1950:

The working of the Industrial Disputes Act, which introduced for the first time the principle of compulsory adjudication, revealed the need for a

13. Ibid
15. AIR 1958. SC 573.
central appellate authority, which, by its decisions, would co-ordinate the activities of the large number of industrial tribunals set up by the Central and State Governments. The Industrial Disputes (Appellate Tribunal) Act provided for the setting up of an appellate tribunal to deal with industrial disputes and certain other incidental matters. Appeal to the tribunal could be made only in matters involving finance, classification by grades, retrenchment of staff and questions of law.  

The working of the Labour Appellant Tribunal (LAT) came up for criticism in tripartite meetings and a decision was taken in pursuance of the strong feelings expressed in these meetings, particularly by the labour representatives, that the LAT should be abolished.

The Second Plan envisaged a marked shift in the industrial relations policy consequent on the acceptance of the socialist pattern of society as the goal of planning. It emphasized mutual negotiations as the effective mode of settling disputes. Among the other recommendations in the Plan were demarcation of functions between works committees and unions, and increased association of labour with management. The Industrial Disputes Act was amended in 1956. The LAT was abolished through this amendment and a three-tier system of original tribunals – viz., Labour Courts, Industrial Tribunals and National Tribunals – was brought

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While the Labour Court would deal with certain matters regarding the propriety and legality of an order passed by the employer under the standing orders, and discharge and dismissal of workmen including reinstatement, the industrial tribunal adjudicates on matters like wages, allowances, hours of work, leave and holidays and other conditions of service. The National Tribunal to which matters similar to those adjudicated upon by a tribunal are referred, is appointed by the Central government to decide disputes which involve questions of national importance and those which affect industrial establishments situated in more than one State.

3.5. Planned Economic Development and the Labour Issues:

In most of the countries, labour matter relating to labour policy is a complex and sensitive area of public policy. This is because the relative status of workers in the society, their commitment to industries and attitude towards management, their morale and motivation towards productivity, their living standard and in fact their way of life are all conditioned by industrial relations. Hence, a policy dealing with these crucial problems cannot be simply socio-economic, as it has to reckon with realities of multi-dimensional socio-political phenomena, in which besides the worker and the management, the society at large and the State are all vitally interested.

The Constitution of India has commenced in the year 1950 and the planned economic development system is introduced in the year 1951 though the pronouncement of the First Five Year Plan (1951-55). The central objectives of planning in India has been to initiate a process of rapid development, which will raise living standards and open out to the new opportunities for a richer and more varied life. This task is not merely one of reaching any fixed or static point such has doubling of living standards, but of generating, a dynamism in the economy which will lift it continually to higher levels of material well-being and of intellectual and cultural attainments. The Planners believe that alimentation of poverty cannot obviously, be achieved merely by redistributing existing wealth. The labour and management policies in India like all other social policies emanate from these basic aims and are essentially directed towards the well defined goals of a welfare State and the socialist pattern of society. These policies seek to provide in the framework of democratic planning, for a balanced emphasis on increased in production and employment and the attainment of economic equality and social justice.\(^{18}\)

The Planners have stressed, in particular, that the benefits should accrue more to the relatively less privileged class of society and that there should be a progressive reduction in the concentration of incomes, wealth and economic power.

The First Five Year Plan (1951-1955) based its approach to labour problems on considerations, which are related on the one hand to the requirements of the well-being of the working class and on the other its vital contribution to the economic stability and progress of the country. The Plan classified that the rate of progress in workers welfare had to be determined not only on the needs of the worker but, also by the limitations of the country's resources. ¹⁹

The Second Five Year Plan (1955 – 1960), observed that, "Suitable alterations in labour Policy required to be made". One such alteration was the creation of industrial democracy as a pre-requisite to the establishment of socialistic society. Another was the need to evolve a wage policy, which aimed at a structure with rising real wages.²⁰ During this Plan two important developments occurred. They were namely;

(i) Recommendations of the 15th Indian Labour Conference (1957) regarding need based minimum wage

(ii) The Important amendments to the Industrial Employment (Standing Orders) Act, 1946 and Industrial Disputes Act, 1947 and

¹⁹. First Five Year Plan, New Delhi: Government of India Planning Commission.(1951) at. 584.

The Third Five Year Plan (1961-1966) provided no greater clarity than the second in regard to the development of a sound Labour Policy. It's said, "Labour Policy in India has been evolving in response to the specific needs of the situation in relation to the industry and the working class and has to suit the requirements of a Planned Economy." It did not say whether the process of evolution of policy had been satisfactory or whether any positive direction could be with advantage be impart to it.

This Plan too paid lip service to the cause of productivity. For the workers no real advance in their standard of living is possible without a steady increase in productivity, because any increase in wages generally, beyond certain narrow limits, would otherwise be nullified by a rise in prices.

However, one notable development immediately after end of the Plan period was the appointment of First national Labour Commission in the year 1966.22

22. National Commission on Labour was appointed in December 1966 under the Chairmanship of Justice. Gajendragadkhar, former Chief Justice of India to study the changes in the conditions of labour since Independence and to review the legislative and other provisions intended to protect the interest of labour, assess their working and advice how far these provisions serve to implement the Directive Principles in the Constitution on labour matters and
The Fourth Five Year Plan (1969-1974) has not provided much about the labour-management relations. Except by mentioning that a concepted drive should be made for achieving higher levels of production and simple incentive scheme should be evolved jointly by employer and workmen. 23

The Fifth Five Year Plan (1974-1979) emphasized the need for proper discipline on the part of those who draw their income from property and from the enterprise.24 However this Plan period witnessed major labour judgments from the higher judiciary and the initiation of corresponding amendments to the Industrial Disputes Act, 1947 were witnessed.25 Also the Government of India constituted a high power Committee to examine the issue of Minimum Wages for the unorganized sector.26

The Sixth Five Year Plan (1979-85) has linked the issue of labour related problems to the wage policy of the country and referred to the issues like need based minimum wages, protection of the real wages through compensation for rise in the cost of living, incentives for increase

the national objectives of establishing a socialistic society and achieving planned economic development.  
in productivity, allowances for hazardous occupation, wage differentials for skills, essential fringe benefits, bonus and such other ex-gratia payments and social security arrangements like medical care, provident funds etc.,\textsuperscript{27} 

The \textit{Seventh Five Year Plan (1985-1990)} points out: "An important aspect of labour policy pertains to the formulation of any appropriate wage policy. The basic object of wage policy is to bring a rise in the levels in real incomes in consonance with increase in productivity, promotion of productive employment, improvement in skills, sectoral shifts in designed directions and reduction in disparities".\textsuperscript{28} 

The \textit{Eighth Five Year Plan (1992-1997)} stated that: the tripartite bodies at all levels, starting from the Indian Labour Conference at the national level to region-cum-industry level should be constituted and utilized for consultations and agreements on matters of labour policy. In the past, such bodies either at the national and regional level or at the industry level have been confined to the organized sector only and efforts also need to be made to see that the unorganized sector is also brought under the purview of tripartite machinery.\textsuperscript{29} 

\textsuperscript{27} Sixth Five-Year Plan, Vol-I, New Delhi; Government of India, Planning Commission – (1979) at. 89. 
\textsuperscript{29} Eighth Five-Year Plan, Vol-I, New Delhi; Government of India, Planning Commission – (1992) at. 120. 

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This Plan period witnessed a new shift in the economic policy of the Government, which ultimately led to the entry of more foreign capital by direct investment. This has resulted to a considerable extent the closing of many native industries and thus pushed the labour in organized sector to the unorganized sector.

The Ninth Five Year Plan (1997 to 2002) stated that at present, labour laws are targeted towards the organized labour force. The unorganized sector does not get much benefit out of the existing labour laws. Particularly vulnerable groups among them the unorganized labour, migrant labour, women and child labour and poor landless workers who are poverty stricken. This Plan has given raise to the idea of rationalization of labour laws in order to create a conducive atmosphere for foreign direct investment.

The notable development in this Plan period was the appointment of Second National Commission on Labour, with a two term specific agenda namely:

(i) Rationalization of existing labour laws in the organized sector and

31. See. Gazette Notification
To suggest an umbrella legislation providing minimum social security protection for the unorganized sector workers.

The *Tenth Five Year Plan (2003-2007)* has carried the policy of curtailing the labour rights to suit for the investment of foreign direct capital. Further by insisting that the increase of employment of labour on contract basis should be aimed in order to have the labour flexibility to suit the needs of global market.

This Plan period witnessed a tremendous shift in the labour policy of the State considerably. Some State Governments have amended the provisions of important labour legislations namely, the Contract Labour (Regulation and Abolition) Act, 1970, The Industrial Employment (Standing Orders) Act, 1946 and the Local Shops and Commercial Establishment legislations to pave the easy way for the entry of multinationals.

3.6. Vital Amendments to the Industrial Disputes Act, 1947:

A series of amendments have been made to the Industrial Disputes Act, 1947 (herein referred to ‘Act’) during the period of 1949 to 1968 to supplement the provisions of the Act and to meet the special requirements as felt from time to time. The main amending areas are:
1). Industrial Disputes (Banking and Insurance companies) Act, 1949:
The Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949 (VI of 1949) and Ordinance (XXVIII) and Act LIV of 1949 was promulgated in April 1949, in order to include banking and insurance companies in the list of undertakings for which the Central Government alone was competent to constitute Boards, Courts or Tribunals.

2). The Industrial Disputes (Appellate Tribunal) Act, 1950: This Act provided for the setting up of an appellate tribunal in relation to industrial disputes and certain other incidental matters. This Act inserted Section 33-A which deals special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.

3). Industrial Disputes (Amendment) Act, 1953: The Industrial Disputes (Amendment) Ordinance (No. 5 of 1953) and consequent Act 43 of 1953 provided for the payment of compensation for lay-off or retrenchment.

32. Gazette of India, Extraordinary, 30 April 1949, at 749-750.
33. Inserted by Act 48 of 1950 Section 34 and Schedule. "Section 33- Special Provisions for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. Where an employer contravenes the provisions of section 33 during the pendency of proceedings (before a Conciliation Officer, board, an Arbitrator, a labour Court, Tribunal or National Tribunal), any employee aggrieved by such contravention, may make a complaint in writing, (in the prescribed manner, -
(a) to such conciliation officer or Board, and the conciliation officer or board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and
(b) to such Arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the Arbitrator, Labour Court, Tribunal or National tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this act and shall submit his or its award to the appropriate government and the provisions of this Act shall apply accordingly.)
34. Ibid, Extraordinary, Part II; Section 1, 24 October 1953, at 365-370.
and for the regulation of lay-off on the lines of the agreement entered into between 'employers' and 'workers' representatives at the 13th session of the Standing Labour Committee. 35

4) Industrial Disputes (Amendment) Act, 1954: The provisions of lay-off benefits were extended to plantation workers with effect from 1 April 1954 by Act XLVII of 1954. 36

5) Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956). 37 The amendments made are:

1. The Amendment enlarges the definition of 'workman' in section 2(s) of the Industrial disputes Act, 1947, to cover supervisory personnel whose emoluments do not exceed Rs. 500/- per mensem, and also technical personnel.
2. Repealing the Industrial disputes (Appellate Tribunal) Act, 1950, the Act created National Tribunal, defined and prescribed jurisdiction of labour courts and industrial tribunals and encourages voluntary.
3. A new chapter XI-A, prohibiting the employer from introducing any change in respect of certain matters relating to conditions of employment specified in the Fourth Schedule to the Act without

37. Ibid. 28 August 1956, at 723-745.
giving the workman concerned 21 days' notice of his intention to do so.

4. While continuing the protection available under Section 33 to workmen, provision was made that where during pendency of any proceedings an employer finds it necessary to proceed against any workmen in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Orders applicable to the workmen in the establishment.

6). The word 'Award' was substituted by section 3 of the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, which came into force with effect from 10th March 1957.

7). Industrial Disputes (Amendment) Act, 1956: The Amendment Act prescribes the conditions under which retrenchment compensation is payable when the ownership or management of the undertaking is transferred, and clarifies lay-off and retrenchment provisions.

8). Industrial Disputes (Amendment) Ordinance, 1957 and Act 18 of 1957: The Government of India promulgated an Ordinance on April 1957, with retrospective effect from 1st December 1956, providing that retrenchment

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38. 'Award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal and includes an arbitration award made under Section 10A.

compensation will be payable in 'bona fide' closure or transfer of an undertaking. It further provided that in the case of the transfer of an undertaking, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. The Ordinance was replaced in June 1947 by Central Act 18 of 1957. 40

9). Industrial Disputes (Amendment) Act, 1964: In this Act Section 25-B was inserted defining the word 'continuous service' 41 and also this Act inserted section 10-A (3-A)42 and section 10-A (4-A) to prohibit strikes and lock-outs, when arbitration proceedings taking before the arbitrator.43

10). Industrial Disputes (Amendment) Act, 1965: By this Amending Act which came into effect from 1st December 1965 Section 2A was added whereby certain individual disputes as deemed to be 'industrial disputes'.

Later amendments in 1976, 1978 and 1982 are discussed in later chapters more meaningfully.

40. Ibid, Extraordinary, Part II, Section 1, 8 June 1957, at 213-215.
41. Substituted by Act 36 of 1964, Section 13, for section 25B (w.e.f. 19-12-1964).
42. Section 10-A (3-A) where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators).
43. Section 10-A (4-A) where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3-A), the appropriate Government may, by order, prohibit the continuance of any strikes or lock-out in connection with such dispute which may be in existence on the date of the reference).

3.7.1. The Employees' Provident Funds Act, 1952:

The Provident Funds Act of 1925 deals with provident funds relating to only government, Railways and local authorities and certain other provident funds. Until Chapter IX-A was introduced into the Indian Incomes-tax Act of 1922, there was practically no law governing provident funds in private industries. The said Chapter provided for the recognition of provident funds by the Commissioner of Income-tax so that the employers could claim deductions for income-tax purposes. Further, certain conditions were prescribed thereunder which a provident fund had to satisfy for being “recognized”.

A scheme under the Act was framed by the Central Government in September 1952. 44 By Employee's Provident Funds and Family Pension Fund and Deposit Linked Insurance Fund Act, 1952, an employee's deposit linked insurance scheme has been introduced.

The object of the Act is to provide for the institution of funds for employees in factories and other establishments, so that provisions can

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44. Ibid. Extraordinary, 2 September 1952, Part II, Section 3, at 807.
be made for retirement benefits, like provident fund, pension and insurance.45

3.7.2. Maternity Benefit Act, 1961:

This Act has been enacted to regulate employment of women for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits, to them.46 When Royal Commission on Labour submitted its report, the maternity benefit legislation in some States to provide for grant of leave and payment of cash benefits for certain periods before and after confinement to women workers in factories were operating. Several other States also passed Maternity Benefit Act subsequently. Besides, there have been three Central Acts, namely, the Maternity Benefit Act, 1941, the Employees State Insurance Act, 1948 and the Plantation Labour Act, 1951, under which maternity benefits have also been granted to women workers. It should, however, be noted that with the passage of the Employees State Insurance Act, 1948 maternity became the responsibility of the Corporation (Employee State Insurance Corporation) and the State Acts applied to residual

employment/areas (not covered by ESI Act) till the Maternity Benefit Act, 1961 was passed.47

This Act extends to the whole of India. It applies to every establishment, which is a factory, mine, or plantation including the one belonging to the Government and to every establishment employing persons for the exhibition of equestrian, acrobatic and other performances. However, it would not apply to factory or other establishment to which the provisions of Employees State Insurance Act, 1948 apply for the time being. The State Governments have been empowered to extend this Act to any other establishment or class of establishment: industries, commerce, agricultural or otherwise with the approval of the Central Government by giving not less than two months notice of its intention of doing. Women not covered by the Employees State Insurance Act, 1948 be entitled to benefits under this Act.

The object of the present Act is to reduce disparities existing in the Central Acts relating to the maternity provisions. However, it is provided that on application of this Act, to the mines, the Mines Maternity Benefit Act, 1941 on its application to factories situated in the territory of Delhi, the Bombay Maternity Benefit Act, 1929, would stand repealed.48

3.7.3. Payment of Bonus Act, 1965:

In India bonus was originally regarded as a gratuitous payment by an employer to his employee. Claims to get bonus was made by the industrial employees for the first time after First World War, which caused inflation and considerable disparity between the living wages and the contractual remunerations. The employers paid to the workmen some increase in wages. It was initially called "war bonus" and later was called as 'special allowance'. During Second World War the employers in the textile industry were granted cash bonus equivalent to a fraction of actual wages. However, it was a voluntary payment made with a view to keep the labour contented.

By gradual course of time bonus has acquired the meaning of an annual payment, which the employee may claim as a matter of right. This was based on the following two considerations;

i. That there is an 'available surplus' out of the profit from which bonus can be paid and

ii. That there is a gap between the present and the living wage which bonus is intended to shorten.
After independence the Courts in India including industrial Courts held that bonus is legitimate right of the workers. In 1950 the Bombay Industrial Court held that since labour as well as capital employed in industry contribute to the profits of the industry both are entitled to claim a legitimate return out of the profit of the establishment. It evolved a formula for deciding the percentage of bonus. It was accepted by the Appellate Tribunal and it is known as the Full Bench Formula. Under this the surplus available for distribution had to be determined by debiting the following prior charged against the gross profits. The prior charges are:

Provision for depreciation, the reserves for rehabilitation, return of 6% percentage on paid-up capital, return on the working capital. From the balance called 'available surplus' the workmen are to be awarded a reasonable share by way of bonus for the year. The Supreme Court in many cases broadly accepted, with some modifications the above full bench formula.49

In Associated Cement Companies v/s Workmen,50 the Supreme Court while considering the full Bench Formula observed as follows; " If the legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis, it can step in legislation in that behalf. It may also be possible to have the question

comprehensively considered by a high powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and bodies of workmen”.

“A Tripartite Commission was set up by the Government of India by their Resolution No. WB-20 (9)/61, dated 6th December, 1961, to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments and to make recommendations to the Government. The Commission’s Report containing their recommendations was received by the Government on 24th January 1984. In their Resolution No., WB-20 (3)/64, dated the 2nd September 1964, the Government announced acceptance by the Government announced acceptance of the Commission’s recommendations subject to a few modifications as were mentioned therein. With a view to implement the recommendations of the Commission as accepted by the Government, the Payment of Bonus Ordinance, 1965, was promulgated on 29th May 1965. 51

3.7.4. The Payment of Gratuity Act, 1971:

This Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters

51. Gazette of India, 16-8-1965 Part II, Section 2, Extraordinary, at. 674.
connected therewith or incidental thereto. It was enacted by the Parliament in the Twenty-third year of the Republic of India.\textsuperscript{52}

A gratuity is a retirement benefit hence a measure of social security. The need for according such a benefit was accepted long back.\textsuperscript{53} The evolution of gratuity law in India and its final culmination into Payment of Gratuity Act, 1972 represents the same familiar story of evolution of other labour laws like the Payment of Bonus Act, 1965 and other laws of social security.

The Payment of Gratuity Act, which came into force from 16th September, 1972, is an Act with a view to provide a scheme for payment of gratuity to the employees. There was no Central Act to regulate the payment of gratuity to industrial workers. An attempt was made in Kerala and West Bengal to make laws for the purpose. In 1970 the Kerala Legislature passed the Industrial Employees Payment of Gratuity Act for payment of gratuity to workers employed in factories, plantations, shops and establishments. This was followed by West Bengal by passing the West Bengal Employees Payment of Compulsory Gratuity Act, 1971. Some other States in India also expressed the desire and urgency to pass legislation in those States as well.

\textsuperscript{52} Supra Note. 41. at. 255.
In order to ensure uniform pattern of payment of gratuity to the employees throughout the country the enactment of Central Legislation was felt. The enactment of a Central Law would avoid different treatment of employees of establishments having branches in more than one State, when under the condition of service, such employees were liable to transfer from one State to another. The Central Legislation of Gratuity was discussed at a conference of the Labour Ministers and then at the Indian Labour Conference and ultimately the Act was passed.54


A high power commission on labour affairs known as the "National Commission on Labour"55 was appointed by the Government of India on 24th December 1966 under the Chairmanship of the former Chief Justice of the Supreme Court of India, Dr. P. B. Gajendragadkar, having on its membership employers' representatives, trade union representatives and independent persons. The terms of reference of the Commission included a very wide range of matters regarding the existing conditions of labour in the country, review of the existing legislative and other provisions intended to protect the interests of labour, and to advise how far they serve in

implementing the Directive Principles of State Policy in the Constitution and the national objectives of establishing a socialist society and achieving planned economic development.

Appointment of such a Commission was a momentous occasion in the history of labour as 30 years had passed since the appointment of the Royal Commission on Labour in 1929, which went into the labour affairs and conditions of labour in the country. After a thorough and comprehensive study of the matters the Commission signed its report on 28th August 1969 and suggested some of the very far-reaching and important recommendations.

The Commission found that it was impracticable to formulate a Common Labour Code for the whole country, the reason being that labour continuing in the concurrent list under Constitution, adjustment to suit local conditions in different States would have to be allowed and these adjustments may not necessarily conform to the letter of a common code. The commission has suggested measures to straighten the existing legal provisions rather than overhauling the same. On the whole the approach of the Commission seems to have been to maintain the existing labour structure in the country with suggestions for modifications and recommendations for improvements.
3.9. Legislative Regulation of Employment Terms:

The Government regulation, in our country, of late, has been mainly on the following lines in respect of employment conditions: —

1. (a) Enactment of minimum standards and regulation of employment terms and conditions for specific industries viz:-

1. Factories and Workshops\(^56\)
2. Mines and minerals\(^57\)
3. Plantations\(^58\)
4. Transport\(^59\)
5. Working Journalists\(^60\)
6. Shops and Commercial establishments\(^61\)
7. Construction Works
8. Agriculture.

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\(^{56}\) Industries (Development and Regulations) Act, 1951; Factories Act, 1948; Cotton Ginning and Pressing Factories Act, 1949.


\(^{58}\) Plantations Labour Act, 1951; Tea Districts Emigrant Labour Act, 1952.

\(^{59}\) Indian Merchant Shipping Act, Indian Dock Labourers Act, 1934; Dock Workers (Regulation of Employment Act), 1948; The Motor Transport Workers Act; The Motor Vehicles Act.

\(^{60}\) The Working Journalists (Conditions of Service) and Misc. Provisions Act 1955; Working Journalists (Fixation of Rates of Wages) Act, 1958.

\(^{61}\) The Motor Vehicles Act.
(b) Regulation and prescription of minimum norms in respect of specific industrial matters e.g.

1. Wages\textsuperscript{62}
2. Indebtedness\textsuperscript{63}
3. Social security\textsuperscript{64}
4. Welfare and Safety\textsuperscript{65}
5. Housing\textsuperscript{66}
6. Forced Labour\textsuperscript{67}

(c) Prescription of employment conditions for sub-standard or weaker groups of society e.g.

1. Children\textsuperscript{68}
2. Women under certain conditions\textsuperscript{69}
3. Apprentices\textsuperscript{70}

\textsuperscript{62} The Weekly Holidays Act, 1942; The Shops and Establishments Acts.
\textsuperscript{63} C.P.C. Sec. 60; Punjab Relief of Indebtedness Act; The Bengal Workmen's Protection Act; Madras Workmen's Protection Act, 1941; The Bihar Workmen's Protection Ad 1948.
\textsuperscript{64} Coal Mines P.P. and Bonus Scheme Act; Employees Provident Fund Act, 1952; Employees State Insurance Act, 1948; Employees Liability Act, 1938; Indian Fatal Accidents Act, 1855; Maternity Benefit Act, 1961; Workmen's Compensation Act, 1923.
\textsuperscript{66} Housing Boards Acts in different States.
\textsuperscript{67} Art. 23 of Constitution; Criminal Tribes (Repeal) Act, 1952; Habitual Offenders Acts.
\textsuperscript{68} Children (Pledging of Labour) Act, 1933; Employment of Children Act, 1938.
\textsuperscript{69} Maternity Benefit Act, 1961.
\textsuperscript{70} Apprentices Act, 1961.
Regulation of structure or framework, of collective bargaining, raising of industrial disputes and machinery for negotiations and settlement of employment or non-employment disputes.\textsuperscript{71} It would be clear from these laws that the policy of legislature has been restricted so far to the 'laying down of minima in industrial or employment matters. For demands, claims or conditions higher than minima, legislature provides machinery for settlement only. This maxima is left flexible to be awarded or refused with conditions by the machinery provided for settlement. It has however been repeatedly held in construing legal provisions that laying down of minima of conditions does not bar higher claims.

Under the present Constitution of our country, both the legislature as well as the machinery for settlement of industrial disputes has invariably to bear the considerations of social justice, which is the ultimate goal of all State policy.

3.10. Enactment of Contract Labour (Regulation and Abolition) Act, 1970:

The system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of

Government for a long time. In the Second Five Year Plan, the Planning Commission made certain recommendations namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the State Governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where this system could not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provision of essential amenities.72

The Contract Labour (Regulation and Abolition) Act, 1970 (herein after called Act) aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of certain criteria that have been laid down, and at regulating the service conditions of contract labour where abolition is not possible. The Act provides for the setting up of Advisory Boards of a tripartite character, representing various interests, to advise the Central and State Governments in administering the legislation and registration of establishments and contractors. Under the scheme of the Act, the provision and maintenance of certain basic welfare amenities for contract labour, like drinking water and first-aid facilities, and in certain cases rest-

rooms and canteens, have been made obligatory provisions have also been made to guard against defaults in the matter of wage payment.

The statement of object and reasons accompanying the Bill of *Contract Labour (Regulation and Abolition) Act, 1970*, speaks volumes on legislative intent and philosophy behind contract labour.\(^{73}\)

The Act was enacted to abolish, wherever possible or practicable, the employment of contract labour; it aimed at abolition of contract labour in respect of such categories as may be notified. An employer attempting to reverse this trend does no credit to himself, where law helps such anti labour practices must be thwarted or nipped in the bud.\(^{74}\)

The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensue payment of wages and provision of essential amenities.\(^{75}\)


\(^{75}\) *M/s. Gammon India Ltd., etc., etc., v/s. Union of India & Others*, (AIR 1974 SC 960)
The Act applies to every establishment in which twenty or more workmen are employed or were on any day during the preceding twelve months as contract labour. And to every contractor who employs or who employed on any day during the preceding twelve months more than twenty workmen. Both the Central and State Governments which administer this legislation have the powers to apply the provision of this Act to any establishment or contract or employing even less than twenty workmen after giving at least two month's notice of their intention to do so.76

Under section 10 of the Act the appropriate Government may after consultation with the Central Board or as the case may be a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment, before issuing such notifications the appropriate Government shall have regard the conditions of work and benefits provided for the contract labour, in the establishment and other relevant factors such as –

a. Whether the process, operation or other work is incidental to, nor necessary for the industry, trade business, manufacture or occupation that is carried on in the establishment;

b. Whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry,

76. Section 1 sub-section 4 of the Contract Labour (Regulation & Abolition) Act, 1970.
trade, business, manufacture or occupation carried on in the establishment;

c. Whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

d. Whether it is sufficient to employ considerable number of whole-time workmen.

Explanation: If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.\(^77\)

Section 10 of the Act is the sole decisive factor to achieve the intended object of the legislation. The object of Act is of two fold i.e., abolition of the system of employment of contract labour on the satisfaction of the criteria laid down and were the system cannot be abolished the regulation of the system of employment contract labour. In order to achieve the intended object of the Act main thrust is placed on advise of Advisory Boards set-up under the act. The Advisory Boards are tripartite in character consisting the Government officials. Representatives of employer, and the representatives of the workmen. The Advisor Boards under the Act are vested with the task of decisions making with regard to the prohibition of employment of contract labour basing on criteria laid down. The experience has shown that the Advisory Boards appointed by

\(^77\) Section 10 of the Act.
appropriate Governments invariably consumed elaborate time in submitting their final recommendations as required under Section 10. It is also pertinent to note that many State Governments have never appointed the State Advisory Boards in the lifetime of the Act. Only the Central Government is appointing the Advisory Boards in respect of the public sector undertakings predominately in view of the notifications issued by the Central Government itself.

It must be noted that section 10 of the Act was framed practically basing on the guidelines laid down by the Supreme Court. But at the same time the Act did not specify the guidelines basing on which the appropriate government take cognizance in order to exercise its powers under section 10 of the Act, such as how the appropriate Government comes to the factual knowledge about the existence of the contract labour system which can be done away under section 10. This lacuna led to the catena of conflicts between the management and the contract labour.

Once the contract labour system is abolished by the appropriate government under section 10, what would be the fate of erstwhile contract workmen. Since section 10 of the Act speaks only about, under what circumstances the contract labour system can be abolished. By abolition of contract labour system, the workmen would not automatically become the employees of the principal employer. This lacuna led to some

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conflicting decisions on the subject. This needs to careful examination of the issue.

3.11. Appointment of Relevant High Power Committees:

The Government of India after the appointment of the First National Commission on Labour in the year 1966, constituted several high power Committees and Commissions to examine the key labour issues to mention a few, namely, A Study Group on Wages (1977), Sanath Mehta Committee on ‘laws of Industrial Disputes and Trade Unions’ (1982) and The National Commission on Rural Labour (1991), for the purpose of relevance the highlights of the Sanath Mehta Committee recommendations are shown below:


The Sanath Mehta Committee was constituted in 1982 to examine item 4 of the agenda of the National Labour conference held in September 1982 i.e., on “Laws of Industrial disputes and Trade Unions” and to suggest changes. The Committee made the following recommendations:

1. Statutory provision to be made for having Collective Bargaining Agent at unit/Industry level.
2. The question as to who should be the agent is to be decided by operating check-off system.

3. The check-off system with written authorization of workers should be valid for 3 years.

4. No craft/category-wise union should be eligible for check-off system or recognition.

5. There should be a sole Collective Bargaining Agent wherever feasible failing which a Composite Bargaining Agent Council with proportional representation subject to a minimum membership. The percentage of membership could be determined by Industrial Relations Commission.

6. Recognition once granted should be valid for 3 years and to continue unless validly challenged thereafter.

7. A new Code of conduct should be formulated for eligibility to compete for check-off recognition.

8. These recommendations should be included as a new chapter in Industrial Relations Act.

The Committee has also recommended that there shall be a Code of Conduct for employers. The following could form part of such Code;

i. The Employer shall not declare any lock-out, closure or lay-off or retrenchment, except in accordance with the procedure laid down in the Act and prior consultation with the recognized Collective Bargaining Agent.
All Schemes of rationalization, automation and the like shall in the first instance, be discussed with the Collective Bargaining Agent/Bargaining Council.

The employer shall not violate the terms and conditions of service of the workers.

The employer shall accept arbitration when unions offer for settlement of disputes.

Whoever the employer or unions violate the code of Industrial Relations commission shall impose appropriate punishment including suspension or cancellation of recognition in the case of trade union and appropriate deterrent fine in the case of employers.


The Government of India persuade a new economic policy and their by initiated plethora of changes in the economic structure of the country. They include reforms in the functional as well as sectoral adjustments in the economic activities either to pursued by the State. In this context there is a tremendous change in the very outlook of employment patterns in the country.

Since 1991 to date, several State Governments have made far-reaching changes in their policies. For instance, Uttar Pradesh requires
the labour inspector to obtain prior permission of the labour commissioner or labour minister in prosecutions under the labour laws, Rajasthan has granted exemption to several firms; and both Rajasthan and Andhra Pradesh have simplified several forms with regard to labour inspection. Orissa and West Bengal have introduced secret ballot. Maharashtra proposed a new legislation in the mid-1990s the Maharashtra Industrial Relations Act to replace the existing Bombay Industrial Relations Act and Prevention of Unfair Labour Practices Act; and Kerala announced radical moves in labour policies as part of its 1994 industrial policy.79

The desirability, possibility and feasibility of competitive labour policies merits serious consideration. The implications of industrial relations pertaining to center-state relations, particularly public sector undertakings, also needs careful review.

In a global economy, labour law as an autonomous subject stands at crossroad. Some judges feel compelled to interpret law not on the basis of the text of the clauses, but in the light of the preamble to that particular piece of legislation and more importantly, the Indian situation itself. Therefore, the 'new economic policies' may some times be interpreted as being inconsistent with the Indian Constitution. Elsewhere in the world, there is another view gaining ground—the social vision of

labour law, which went with the old-established institutions and practices, has come under challenge to change. The current scenario requires striking a balance between these two extreme viewpoints.

There is a perception that the existing laws give virtual veto power to the unions in the organized sector to block changes like improvement in plant and machinery, the rationalization of manpower, and growth of productivity. Further, there is a perception that labour legislation has paved the way for a multiplicity of unions, the growth of intra- and inter-union rivalry, the exacerbation of industrial strife and the excessive intervention by the state in industrial relations.

There are as many as 165 legislations both central and state-that address themselves to various aspects relating to labour. But more laws mean less when implementation is thinly spread out. Even minimum Wage laws have meant little when the wages fixed are low and implementation lax. Study groups of the National Commission on Labour and the National Labour Law Association (NLLA) prepared draft labour codes in 1969 and 1994 respectively. The Commission on Labour Standards appointed by the Government of India, in its report submitted in 1995, almost entirely endorsed the NLLA's Draft Labour Code. It suggested a few changes: initiate a national debate or wider consultation on the Draft Labour Code.
through Project LARGE (Legal Adjustment Reforms for Globalising Economy) and simplify the law without further delay.

3.13. Appointment of Second National Commission on Labour and the Recommendations:

The appointment of High Power Commissions in the field of Labour to suggest the necessary reforms in the existing labour scenario is not a new phenomenon in our Country. The history of appointing such high power Commissions can be traced back to the pre-independent period. Way back in 1929, the first National Commission on Labour known as the 'Royal Commission on Labour' was appointed by the Crown under the Chairmanship of Whitely. The submission of the Report by the Commission in 1931 has witnessed a change in the labour policy adopted by the British Government in India. The immediate result was the passing of the important labour legislation, 'The Payment of Wages Act 1936', which is relevant even today for the labour in the field of regulation of payment of wages. The Commission examined all the important aspects of the labour and submitted a comprehensive report. Even today the findings and the recommendations of the Commission are cited and considered by the judiciary and the subsequent Commissions and the Committees. Later the Post-Independent era witnessed the appointment of the first National Commission on Labour in 1966 under the
Chairmanship of late Justice Gajendragadkar, who was the author of early labour jurisprudence in India. The Commission submitted its Report in 1969. The interesting aspect at that time was, the Government has evinced a serious commitment in looking into the subject altogether with a new perspective in view of the labour policy perceived under the Plans or otherwise. Both the labour and the employers participated in the deliberations of the Commission without any reservations and the outcome was with a certain commitment. No iota of criticism was found on the Report after it was made open to the public. The Report is a guide for everybody dealing with the subject.\textsuperscript{80}

The very announcement of appointment of the Second National Commission on Labour in the year 1999 with a two hold terms of reference by the Government of India invited a severe criticism from the quarters of the workers organizations. Some All India Trade Union Federations were not represented in the Commission on the contrary only BMS and INTUC were represented in the Commission. The apprehensions were that the intention of the Government in going for the Second National Commission is with a clear agenda of anti-labour policies. Added to this syndrome the Government launched two interim assaults in the mean time pending the submission of the report by the Commission. The first being the Yashwant Sinha's Budget speech as

\textsuperscript{80} \textit{Report of the National Commission on Labour, New Delhi-Government of India, Ministry of Labour 1999.}
Finance Minister in 2001 stating that the government had decided to introduce amendments to the Industrial Disputes Act 1947 and the Contract Labour (Abolition and Regulation) Act 1970. Secondly the Prime Minister's appointed Task Force on Employment Opportunities under the Chairmanship of Planning Commission member Montek Singh Ahluwalia. The Task Force report, submitted on July 2, 2001 provides a blueprint for labour reforms. With reference to the labour sector, the report aims to amend the three important labour legislations: the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947 and the Contract Labour (Abolition and Regulation) Act, 1970. The justifiable reason according to the report was that "the existing labour laws and particularly the way they have been administered and implemented have unintended effect of discouraging employers from investing and expanding in labour-intensive areas. This has made us uncompetitive in these areas in export markets, denying us the possibility of large expansion in organized sector employment". The government pending the submission of the Report of the Second National Commission on Labour has already made clear its final decisions on important controversial labour issues. When the Commission submitted its Report on June 2002, even without properly verifying the contents many labour authors and the Trade Unions certified the Report as anti-labour in view of the agenda placed before the Commission and the intermittent developments.  

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81 Ibid.
The terms of reference before the Commission are of two fold:

i) “to suggest rationalization of existing laws relating to labour in the organized sector;” and ii) “to suggest an umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganized sector”.

“According to the Commission factors shaping the need for an urgent review arise from the experiences that all social partners, entrepreneurs, workers and the State and Central Governments have had of the way the existing laws have worked. All three partners have complained that the laws are unsatisfactory. All wanted a comprehensive review, and reformulation of the legal framework, the administrative framework and the institutional structures in the field of social security. Demands for reforms have been voiced in the Labour Conferences for many years”. In this context the report of the Commission dealt with the subjects namely: i) Review of laws relating to labour, ii) minimum protection and welfare to the workers in unorganized sector, iii) social security laws, iv) protection for Women and Child labour, v) Skill Development for workers in the context of globalization and changes in technology as well as work processes, vi) Labour Administration and vii) other matters that include workers participation in management, employment scenario in the country and labour statistics and research. 82

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82. Ibid.
The Commission before undertaking the task of considering the whole subject assigned to it, opted first to define its basic approach to the subject by identifying the following: i) the ongoing process of full-scale globalization has generated new hopes and given rise to new dangers and temptations ii) the labour laws are not alone the cause for unsatisfactory economic development but the other factors like efficiency of managerial skills, integrity and honesty, efficient and reliable infrastructure (ii) industrial relations relate to the relations between the management and the workforce employed in the undertaking. In the ultimate analysis industrial relations are a branch of human relations iv) there must be a systematic arrangement to maintain a high level of work culture, fair wages, equitable profit-sharing and effective organs of participatory management at all levels v) the need of social security for all workers at all levels vi) the promotion of bilateralism based on mutual interests vii) the settlement of disputes through mediation and arbitration and viii) the process of adjudication must be quick, expeditious and inexpensive. In this regard the Commission highlighted the Constitutional guarantees under the chapters relating to Fundamental Rights and the Directive Principles, also the ILO declaration on ‘Fundamental Principles and Rights at Work’, famously known as ‘Core Labour Standards’ of 1998. Perhaps one can find the best thesis of criticism on Globalization from the Report of the Commission. Unfortunately the core recommendations of the Commission are aimed to strengthen the Globalization.
The Commission with reference to first term drafted a model Bill judiciously consolidating the existing Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act 1946, the Industrial Disputes Act 1947 and other Legislations dealing with industrial relations into one legislation namely, 'Labour Management Relations Act'. An indicative bill is also annexed to the report in this regard.

The applicability of various existing labour laws be it in the area of social security, social welfare or industrial relations is not uniform. In view of this anomaly the Commission recommended that the proposed legislation should be made applicable to establishments employing 20 or more workers, irrespective of the nature of the activity in which the establishment is engaged. Establishment means a place where some activity is carried on with the help and cooperation of workers. With this the need to define the term 'industry' was avoided. However, the Commission dispensed the workers who are employed in establishments with an employment size of 19 and below with a separate legislation namely 'Small Enterprises (Employment Relations) Act. The Commission proposed the simple common definitions of terms 'worker', 'wages' and 'establishment'. The terms 'wages' and 'remuneration' need to be defined separately. Wages to include only basic wages and dearness allowance for the purpose of contribution to social security. For the purpose of calculating the bonus and gratuity remuneration should be taken into
consideration, which include other allowances. The Government is assigned with task of laying down a list of highly paid jobs who are presently deemed as workmen category as being outside the purview of the laws relating to workmen or the other alternate is fix a remuneration Rs. 25,000/- per month beyond which employees will not be treated as ordinary 'workmen'. The supervisory personnel, irrespective of their wages outside the rank of worker and keep them out of the purview of the labour laws meant for workers. The Commission is of the clear view that the coverage as well as the definition of the term 'worker' should be the same in all groups of labour laws, subject to the stipulation that social security benefits must be available to all employees including administrative, managerial, supervisory and others excluded from the category of workmen and others not treated as workmen or excluded from the category of workmen. The provision of a minimum level of protection to Managerial and other employees against unfair dismissals or removals, through adjudication by labour court or Labour Relations Commission or arbitration must be provided. The Commission is not clear whether such protection should be given by the same law or by a separate legislation. 83

The Commission recommends that there is no need for different definitions of the term ‘appropriate government’. There must be a single definition of the term, applicable to all labour laws. The definition with a modified form provided in the proposed legislation. In case of any dispute

83. Ibid.
with regard to the interpretation of the definition, the National Labour Relations Commission will determine the matter, which is a new set up under the proposed legislation.

The Commission suggests controversial reforms to the existing Industrial Disputes Act 1947 keenly in the areas of unemployment benefits, the very structure of dispute settlement mechanism, the powers of labour courts and the customary right of workers to go on strike. Every establishment shall create a Grievance Redressal Committee of bipartite in character to handle all grievances of a worker in respect of his employment, including his non-employment for decision within a given framework. No need of statutory obligation for the employer to give prior notice, in regard to item 11 of the Fourth Schedule for purpose of increase in the workforce. Notice of Change, issued by an employer under Section 9A, should not operate as a stay under Section 33 in view of Section 33A. May be the view of the Commission is to pave the way for employer to reduce the workforce under this privilege.

The approach of the Commission towards Chapter VB under the Act is projected from the point of view of society as a whole. Provision for adequate compensation; offer outsourced jobs to retrenched workers or their cooperatives. Prior permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. Workers
will be entitled to two months notice or pay in lieu of notice in case of retrenchment. However where 300 more workers are employed, if lay off exceeds a period of one month, such establishments are required to obtain post facto approval of the app. Government. In case of closure offering a chance to workers to take up the management of the enterprise before the decision for closure is given effect to and provide for a third party or judicial review of the decision, without affecting the right of the management to decide what economic efficiency demands. According to the Commission 'in the new circumstances of global competition, it may not be possible for some enterprises to continue and meet the economic consequences of competition, in such cases the non-viable undertakings cannot be compelled to bear the financial burden. Therefore they should be given the option of closing down by disbursing the adequate compensation to the workers, and in the event of an appeal, leave it to the Labour Relations Commission to find ways of redressal through arbitration or adjudication'. The term 'retrenchment' is defined precisely to cover only termination of employment arising out of reduction of surplus workers in an establishment, such surplus having arisen out of one or more of several reasons. The Commission's intention is clear in uprooting the existing labour jurisprudence with regard to scope and definition of the term 'retrenchment' and giving more freedom to employer to include any number of items to show the way for retrenchment.  

84 Ibid.
Indeed one may have to give a serious thought on such type of walkover for the employers in closing down the establishments. Once the establishment is closed and the workers are disbursed with the amount of compensation, the infrastructure including the employer might disappear from the scene. What purpose the award of the labour court or the Arbitrator as the case may be is going to serve? The proper course of action would have been placing of the matter before Labour Relations Commission before the taking place of the closure. However, the prior permission for closure is a must for the establishments employing 300 or more workers. Perhaps the intention of the Commission is that first the employer should go for retrenchment in order to bring the size of the establishment below 300 and then go for a free closure. The rate of compensation in all cases of closure shall be for every completed year of service at a rate of 30 days in case of a sick industry, which has run continuously into losses for the last 3 financial years or has filed an application for bankruptcy or winding up, and other non-profit making bodies like charitable institutions etc. and at the rate of 45 days for retrenchment by such sick industry or body where retrenchment is done with a view to becoming viable. The compensation in other cases of retrenchment at the rate of 60 days of wages and for closure at the rate of 45 days wages for every completed year of service has to be paid to the workers concerned. For establishments employing less than 100 workers half of the compensation mentioned above, in terms of number of days
wages subject to a condition that a notice in the prescribed manner as in the case of bigger establishments before retrenching the workers or closing down. Every employer will have to ensure, before a worker is retrenched or the establishment is closed, irrespective of the employment size, that all the dues to the workers, be it arrears of wages earned, compensation amount and all other kinds of dues are first settled as a precondition to retrenchment or closure.\(^{85}\)

The labour jurisprudence is having a history of over 50 years in India. The aggrieved workers/unions can still challenge as in the case of past, the closure of an establishment on malafide grounds directly before a High Court or the Supreme Court either under Article 226 or under Article 32 of the Constitution. This right of workers is in tact unless the very Constitutional provision is amended. The scope of Article 21 is extended to the cases of 'right to livelihood'. Such right cannot be deprived except according to the procedure established by law, which must be just and fair.\(^{86}\)

The Commission preferred Arbitration as the better choice of dispute settlement machinery, hence every settlement to provide for a clause for arbitration by a named Arbitrator for all disputes arising out of interpretation and implementation of the settlement and any other

\(^{85}\) Ibid.  
\(^{86}\) Ibid.
disputes. A panel of Arbitrators will be maintained and updated by the Labour Relations Commission having experience in labour management relations such as lawyers, trade union functionaries, employers, officials of labour department, both serving and retired, academics, retired judicial officers. In India the roots for inclusion of voluntary arbitration as a dispute settlement mechanism can be traced as the handwork of INTUC, which even today enjoys a meager popularity. The labour courts, *lok adalats* and Labour Relations Commissions function in the form of integrated adjudicatory system in matters pertaining employment relations, wages, social security, safety and health, welfare and working conditions etc. Officials of labour departments at the Center and the States who are of and above the rank of Deputy Labour Commissioners with ten years experience in the labour department with a degree in law are eligible for the presiding officers of the Labour Court. The Labour Relations Commissions at State level shall have as presiding officers, a sitting or retired judge of the High Court or a person who fulfils the qualifications for being appointed as a High Court Judge. The National Labour Relations Commission's presiding officer shall be a sitting or a retired judge of the Supreme Court or a person who fulfils the qualification for being appointed as a Supreme Court Judge. The Conciliation, according to the Commission be vested with the executive. The Inspectors should not be appointed as conciliation officers. The conciliation officers should be clothed with the powers to enforce the attendance at the proceedings.
They carry out such directions given by the *Labour Relations Commission* in addition to performing their duties as prescribed under the Law. The need to publish the awards by the appropriate government was rightly rejected by the Commission. The awards of the competent authorities like labour courts and LRCs would be deemed to have come into effect unless an appeal is preferred within the prescribed period. The labour courts are empowered to enforce its own awards and the awards of LRCs. All matters pertaining to individual workers, be it termination or transfer or any other matter be determined by recourse to the Grievance Redressal Committee, Conciliation and arbitration/adjudication. Individual disputes may be taken up by the affected workers themselves or by trade unions and the collective disputes by the negotiating agent. All disputes, claims or complaints under the law on labour relations should be raised within one year of the occurrence of the cause of action. Under Section 11 A the labour courts shall not have the power to order the reinstatement of a delinquent worker, if charges of violence, sabotage, theft or assault are proved in the labour court. A system of legal aid to workers and trade unions from public funds be worked out to ensure that workers and their organizations are not unduly handicapped as a result of their inability to hire legal counsels.87

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87. Ibid.

The Commission's very approach to the workers right to strike evinces much attention since its views are overlapping and lopsided.
Under the new dispensation the strike could be called only by the recognized negotiating agent and that too after conducting a strike ballot amongst all the workers, of whom at least 51% support the strike. Similarly an employer will not be allowed to declare a lock out except with the approval at the highest level of management except in cases of actual or grave apprehension of physical threat to the management or to the establishment. It is submitted that the employer would go for lockout invariably with the consultations of the top-level management. Deprivation of livelihood to the workers would amount to deprivation of life not only to worker himself but also to his dependents, but still they are prohibited from resisting it by way of collective action in contrast to employer’s privilege to declare a lock out. Such provisions sustain the Constitutional validity?

The conducting of secret ballot for the purpose of electing the bargaining agent, according to the Commission, even on a restricted basis is logistically and financially would be a difficult process. Whereas a strike, which may occur at any time, has to be taken place only after conducting the secret ballot, will it not be financially a difficult process? Further socially essential services like water supply, medical services, sanitation, electricity and transport, when there is a dispute between employers and employees in an enterprise, and when the dispute is not settled through mutual negotiations, a strike ballot has to be held, and if the strike ballot shows that 51% of workers are in favour of a strike, it should be taken that the strike has taken place, and the dispute must forthwith be referred to
compulsory arbitration from the panel of the Labour Relations Commission as agreed by both parties. But the point of the strike ballot is not merely to ensure that the majority of members agree; it is also to put an obstruction in the path of official strikes. Tactically, the unions will be caught flatfooted. This would also pose a serious challenge in cases where the majority workers opt not to favour the collective action and if the union initiates the strike, how to interpret the immunities of a registered trade union? In this context necessarily the term 'trade dispute' has to undergo an amendment. In this context it may be recalled the horrifying experience of Trade Unions in Great Britain under the Trade Unions Act 1984. To quote an instance, the National Union of Railwaymen called a strike by its members in the London Underground in face of management's insistence on introducing more trains without guards was followed by a refusal to strike by 70 per cent of the members. In reality the British Rail threatened to close the entire railway system if the vote approved a strike. The trade unions may complain of intimidation of members by the employer.

The Commission favours the retention of provisions under Sections 23, 10(3), 10A(4A) and 24 with a general provision of notice not less than 14 days for strike. The union, which leads an illegal strike must be de-recognized and debarred from applying for registration or recognition for a period of two years or more. A worker who goes on illegal strike should
lose three days of wages for every one day of strike. Further the new reforms intend to impose harsh penalties in the event of an illegal strike. The Commission totally ignored the rights of the workers who forms a union with less than 10% of workforce in an establishment as its members or in cases where a trade union, which is not an negotiating agent in espousing the grievances of their members with out going on a strike and in such cases, how to construe the factum of the existence of an industrial dispute?88

However, the reforms suggested by the Commission in the areas of disputes settlement mechanism are welcoming. Labour Courts jurisdiction should be confined to labour-management relations except collective disputes, claims under Workmen's Compensation Act, disputes under any labour laws and the disputes relating to social security. The next appeal would lie before the Labour Relations Commissions. The collective labour disputes between the negotiating agent and the employer after Conciliation and Arbitration would lie before the Labour Relations Commissions. The right to file a complaint under any labour laws should also be vested with the aggrieved worker or the office bearer of a trade union apart from enforcement machinery. Constitution of All India Labour Judicial Service for selecting the Presiding Officers of the Labour Courts and the creation of Bipartite or Tripartite Committees as watch dogs for the implementation of labour laws in industrial and commercial areas to

88. Ibid.
protect the interests of the workers as well as the employer are other interesting aspects of the recommendations. Further the Commission felt the need to create All India Labour Administration Service for better and effective implementation of labour laws. The labour department above the rank of the Deputy Labour Commissioner should be included in the proposed Services. 89

The Commission for developing the framework of its recommendations was required to take into account, the merging economic environment involving rapid technological changes requiring response in terms of change in methods, timings and conditions of work in industry, trade and services. In view of international competitiveness a need was felt to bring the existing labour laws in tune with the future labour market needs and demands. 90

India started the era of globalization in the year 1991 but in 1991 the number of sick units was about 2,21,000 but by 1998 it had gone-up to 2,24,000 and in 1999 there were about 3,60,000 sick units. An enormous increase indeed. It has therefore become imperative that the government must adhere to growth, which creatively synthesizes the entire economy because on account of WTO Trade without barriers of boundaries has become [he norm of the present limes. The year 2001 and 2002 have

89. Ibid.
90. Ibid, at 35.
been years of recession and except perhaps China no major economy is expected to grow by 5%. Low inflation rate and falling interest rates and comfortable Foreign Exchange Reserves have also not helped our economy. We shall have to do a lot of things to tone up our economy.

Cotton Textile being (the labour intensive industry, it has been hit the most. In the year 2000 about 349 Textile Mills were closed. In 2001 there were aggregate 380 mills, which were closed. This figure reached 415 till May 2002. It is indeed a horrible state of affair. We all are in gutter but some of us are looking at the stars.91

So displaying awareness to industrial sickness in general some State Governments have came out with packages that could help entrepreneurs. The Labour Policy of 2001 of Government of Kerala highlights the salient features as hereunder:

1. Within the purview of the existing laws, entrepreneur will have rights for engaging labour and shall not be inhibited by any claims from sons of the soil, displaced persons from acquired land, construction, contract labour and dependents of employees.

2. All restrictive labour practices including intimidation, gherao, harassment of Managers and their families and extortion of any kind will be treated as criminal offence and dealt with accordingly.

91. Ibid. at 35.
3. Management will have the prerogative to deploy workers in any section of
the unit as part of a multicraft approach.

4. Government will endeavour to prevent stoppages of work in projects, on
account of industrial disputes; especially during the first five years of the
project the Government will also severely discourage deleterious
practices such as go-slow.

Similarly Karnataka is all set to usher in a new era of labour reforms
and a bill expected to be passed in the ongoing assembly session would
say goodbye to the Inspector Raj in the State. The necessary amendment
would be brought into the legislation to make ‘fresh investment easy task
for entrepreneur in Karnataka. 92

And finally Maharashtra State’s special economic zones are to be
out of the purview of Industrial Disputes Act, 1947. The Center has
approved the State’s proposal to amend Dearness Allowance and the
State Government will now ratify the change, Chief Minister Vilasrao
Deshmukh announced on July 24, 2002.93

The State Government had cleared the proposal to amend the Act
in January 2002. Since IDA is in the Concurrent List of subjects, it required
the Center’s nod too. The amendment will allow shut down of units without

92. Ibid.
93. Ibid.
Government permission. In the current framework, industries with up to 100 employees can close shop without government's nod. The amendments have raised the limit to 1,000.

Maharashtra's SEZ policy, conceived in October 2001, gives lot of concessions to businessmen setting up units in the SEZ. The most generous are related to labour laws. Contract workers are permitted to be engaged and dismissal of employee is easier. Management's can shut unviable units. 94

The Initial membership required for forming a union would now be 300 versus seven outside the zone. The development commissioner of the zone instead of the State Labour commissioner will handle labour issues. The Center's Policy on SEZ will address other issues" the CM said. SEZ development and other establishments in the zone will be exempted from all states and local taxes like sales tax, purchase tax, octroi and cess on all transactions within the zone. Supply of goods and services from outside the zone to units within will also get concessions.

The aforesaid discussions leads to seriously think in terms of crating Special Economic Zones as described above nationally and geographically so that out economic development is not hampered because of the bottlenecks of rigid labour laws which India would not be in

94. Ibid.
a position to amend. Sooner they do it the better it would be for our
motherland. If author want to answer the 'whys' 'when's' and ' if at all' of
the present economic scenario, India shall just have to innovate new kind
of laws, assertively follow it and aggressively enforce such clandestinely
designed law which is as pragmatic as may be acceptable to both capital
and labour.

Thus a few years immediately after the commencement of the
Constitution, the country witnessed the labour law regime
comprehensively covering all the aspects of labour-management relations
barring adequate legislations to deal exclusively with unorganized sector
workers issues adequately. The existing labour law regime is based on
one premise that is they are made applicable only in situations where
employee-employer relationship exists. However, ironically the
Constitution of India paved for the judiciary in the interpretation and
application of the labour laws for the industrial workers.