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RECAPITULATION

For centuries, labour was regarded as commodity governed by law of demand and supply. Being privileged in economic, social and political position, the employers dictated the terms and conditions of employment. The governments of the day were merely like a spectator. They were guided by the doctrine of *laissez-faire* and thus the labourer was subjected to exploitation.

In India, prior to independence, the Government's policy in regard to labour matters was also one of *laissez-faire* and the Government was not interested to interfere in the matters of employers and employees. The idea was to leave labour and management alone to settle their affairs as they liked.

A major portion of Indian society consists of the depressed and deprived masses. The labour class have endeavoured the wrath and wrongs, physical and mental tortures of their employers. But they are the back bone of the Nation. India being an under developed country, can not survive and progress without them, it was evidently clear to the desiring freedom fighters and able Constitution makers. They framed several provisions in the Constitution to raise the weaker section to the general level.

The Preamble of Indian Constitution states that the people of India have solemnly resolved "to secure to all its citizens: Justice - Social, Economic and Political. Equality of status and of opportunity".

Social justice is the harmonisation of the rival claims of the interests of different groups and sections in the social structure by means of which alone it is possible to build up a 'welfare State'. Thus, in the industrial sphere,
its object is to ensure industrial peace which is essential for the development and expansion of the national industry; and this is possible only if the labour force is contented on the one hand and a steady and progressive return is ensured on the other to attract the investing public to the industry. Instead, therefore, of leaving the matter to contract, social justice inspires a welfare State to secure to the workmen a minimum wage, having regard to the capacity of each industry as would establish harmony and co-operation between labour and capital in the task of production, and also enable the worker to achieve a decent standard of living.

Recently, in Air India Statutory corporation's case the Supreme Court considering the concept of social justice as provided in the Preamble of the constitution and in the Directive Principles of State Policy, observed:

"The Preamble and Article 38 of the constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity... Social justice is dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribal and deprived sections of the society..."

Part IV of the Constitution contains Directive Principles of State Policy. These Principles specify the goals and values to be secured. Some of these Principles specify the goals and values to be secured by legislations for workmen. The Directive Principles now stands elevated to inalienable fundamental human rights. Even they are justiciable by themselves.

Economic justice means that there will be no distinction between man and man from the stand point of economic value. It means equality of reward for equal work. Every man should get his just due for his labour, irrespective of caste, sex, or social position.

2. Ibid.
Political justice means the absence of any arbitrary distinction between man and man in the political sphere. This is secured under our Constitution by the adoption of universal adult suffrage and the abolition of communal reservation, and by throwing open employment under the State to all citizens without distinctions of race, caste, sex, descent, place of birth or religion.

The Preamble of our Constitution professes to offer to the citizens the equality of status and opportunity and the object is secured in the body of the Constitution by guaranteeing equality before the law and equal protection of laws (Article 14); by making illegal all discriminations by the State between citizen and citizen, on the ground of religion, race, caste, sex or place of birth (Article 15); offering equality of opportunity in matters relating to employment under the State (Article 16).

The Seventh Schedule of Indian Constitution deals with distribution of legal authority between the Centre and State. The Constitution makers having regard to the nature of the subject matter and different conditions prevailing in the various provinces thought it fit to provide a system whereby labour welfare legislation could provide adequate safeguards as against the strong capitalist class. They in their wisdom decided that labour matters should be placed in the Concurrent List so that the Centre and Provinces could play their respective role successfully.

In regard to labour being on Concurrent List, there were three main points before the National Commission on Labour\(^3\) for consideration:

(i) To discover the basis for Common Labour Code; or

(ii) To transfer labour subject to the Union List or State List; or

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(iii) to maintain Status-quo.

The Commission recommended that labour should continue to be on the Concurrent List for the purpose of maintaining uniformity in definitions and standards. However, the peculiar position of labour being on Concurrent List, there should be a mechanism to deal with Centre State action and over reaction as both are given powers to play an effective roll within their own spheres.

Finally, it is a good scheme based upon the division of labour which also provides the necessary powers to meet specific situations which may be peculiar to particular field of activity.

It is quite natural that the repugnancy or inconsistency may arise in connection with the Concurrent List. Under Article 246 (2), both the Union and the State legislatures have powers to legislate with respect to the Concurrent List. Logically, therefore, an absurd situation would arise if two inconsistent laws, each of equal validity, could exist side by side within the same territory. Article 254 of the Constitution has been engrafted to obviate such an absurd situation.

The Directive Principles of State Policy embody the philosophy of Indian Constitution and contain a system of values.

The Directive Principles are placed in part IV of the Indian Constitution. Through these 'Directives' the framers of the Indian Constitution sought to incorporate certain basic principles which they considered essential to be followed by welfare State for its social and economic progress. Truly speaking, these Directives are guide lines to the Parliament, the State legislatures, the Union and the State executive governments as also to local bodies and other authorities to formulate their legislative and administrative
policies in such a manner that the social and economic interest of Indian people are well protected. Although these Directives are mostly in nature of moral precepts and economic maxims without any binding force, yet the State is directed to give effect to these principles through legislative measures.

In Unikrishnan Vs state of A.P.⁴, the court has reiterated the principle that the Fundamental Rights and Directive Principles are supplementary and complementary to each other.

The most important Article enshrined in the Constitution of India is Article 43 under Part IV relating to Directive Principles of State Policy which provides-

"The State shall endeavour to secure the suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities ---".

The concept of living wage as highlighted in the Constitution under Article 43 (the emphasis is of the researcher) in a sense can be said to be the 'Magna Carta' of all workers. And this Constitutional provision directly or indirectly emphasises the need to improve the wages and living conditions of the workers through legislative and other State measures.

Now the question arises whether we have achieved this Constitutional goal. The answer is in negative. Except in very few industries, this living wage concept does not exist anywhere in India.

⁴ (1993) I. S.C.C. 625
The Supreme Court in workmen vs. The Management of Reptakos Brett and Co. Ltd. rightly observed:

"A living wage has been promised to the workers under Constitution. A 'Socialist' frame work to enable to working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling-up but the day of fulfilment is nowhere in sight. Industrial wage- looking as a whole - has not yet risen higher then the level of minimum wage".

Analysis of the concept of equality begins by confrontation with defence of inequality. Debate on merits and demerits of inequality is endless. It is a tussle between Haves and Have-nots and each side has its ablest advocates. The supporters of inequality say that inequality is ordained by nature itself. Civilization and culture depend upon it. The innate inequality between persons creates inequality of ranks, conditions and fortunes in society.

The critique regarding inequality states that inequality creates a jungle of vested interests and hence is an eternal source of conflicts.

The Preamble to our Constitution promises 'equality of status and opportunity' to all citizens and that this ideal of equality embraces both social and political equality.

So far as the ideal of social equality is concerned, it is concerned and embodied in a series of Articles, of which Article 14 is the genus and the succeeding Articles 15-16 contain particular applications thereof.

6. See Supra note 2 of Chapter IV of this work.
Article 14 being a general provision, is to be read subject to the special provisions which engraft exceptions to the general rule of equality as well as those Articles which explicitly override Article 14 to the specified extent. Thus the special provisions for women and children in Article 15(3) or for the backward classes in Article 15(4) and Article 16(4) can not be challenged on the ground that they violate the rule of equality enunciated in Article 14.

In E.P. Royappa Vs. State of Tamil Nadu, the Supreme Court changed the traditional concept of equality which was based on reasonable classification and has laid down a new concept of equality. The Court observed:

"Equality is dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness ...".

In Maneka Gandhi: case and International Airport Authority case, the Supreme Court reiterated the same principle.

In Satya Deo Mishra Vs. State of U.P., the court observed:

"In my opinion the concept that a temporary employee has no right to the post has to be modified in the light the new interpretation of Article 14 of the Constitution given by the Supreme Court in Maneka Gandhi: case, which is a seven Judges Constitution Bench decision followed by several subsequent decisions of the Supreme Court. The concept that a temporary employee has no right to the post cannot be

8 A.I.R. 1978 S.C. 597
10 1996 Lab. I.C. 443 at 444.
treated as an absolute concept. It has to be treated as subject to Article 14 of the Constitution. The Constitution is the Supreme law of the land. If the Supreme Court gives a new interpretation to a Constitutional provision then it is necessary to revise the earlier concept in the light of the new interpretation given by the Supreme Court. To tell a person who has put in 18 years of service that his service is no longer required in my opinion is wholly arbitrary and unreasonable ——.

Rightly viewed all these three Articles i.e. 14, 15 and 16 are different facets of the same principle enunciated in Article 14. Therefore, the judicial decisions by the Supreme Court have generally agreed that all these three Articles are to be read together. But the view had developed in response to the changing conditions. In the very beginning when the Constitution was viewed as more democratic than socialist, merit or the liberty of the individual was given the pride of place.

This attitude of the judiciary led to the amendment of Article 15 by insertion of clause (4) in 1951 stating that Article 29(2) shall not prevent the State from making any special provision for the advancement of any socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes.

The Constitution of India in its Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State but at the same time, keeping in view the condition of the backward classes, it is provided in clause (4) of Article 16 that nothing in this Article shall prevent the State for making any provision for the reservation of appointment or posts in favour of any backward class
of citizens which, in the opinion of the State is not adequately represented in
the services under the State.

There are various judgements given by various High Courts and
Supreme Court on Article 16, but one thing is very clear from these judgements
that in deciding the scope and ambit of the Fundamental Right of equality of
opportunity guaranteed by Article 16, it is necessary to bear in the mind that
in Construing the relevant Article a technical or pedantic approach must be
avoided. Thus construed it would be clear that matters relating to employment
can not be confined only to initial matters prior to the act of employment. The
narrow Construction would confine the application of Article 16(1) to the
initial employment and nothing else; but that clearly is only one of the matters
relating to employment. The other matters relating to employment would
inevitably be the provision as to salary, and increments therein, terms as to
leave, gratuity, pension, compulsory retirement, the age of superannuation,
termination, promotion, abolitions of post, confirmation, seniority, transfer
and reservation etc. These are all matters relating to employment and they are,
and must be deemed to be included in the expression "matters relating to
employment" in Article 16.

This equality of opportunity need not be confused with absolute
equality as such. What is guaranteed is the equality of opportunity and nothing
more. Article 16 does not prohibit the prescription of reasonable rules for
selection to any employment or appointment to any office. Any provision as
to the qualification for the employment or appointment to office. Any
provision as to the qualification for the employment or appointment to office
reasonably fixed and applicable to all citizens would certainly be consistent
with doctrine of equality of opportunity.
Article 16 is merely an incident of Article 14. Article 14 being the genus is of universal application where as Article 16 is the species and seeks to obtain equality of opportunity in services under the State. What Article 14 or 16 forbid is hostile discrimination and not reasonable classification. Article 16 represents one facet of the guarantee of equality. Articles 14, 15, and 16 underline the importance which framers of our Constitution attached to ensuring equality of treatment. Such equality has special significance in the matter of public employment. It was with a view to prevent any discrimination in that field that an express provision was made to guarantee equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State employing thereby that affirmative action by Government would be consistent with the Article if it is calculated to achieve it.

The reservations for backward classes should not be unreasonable. It should be considered having regard to the employment opportunities of the general public.

In Akhil Bhartiya Shoshit Karamchari Sangh's case the Supreme Court upheld the 'carry-forward rule'. As a result of this rule the reservation quota came to about 64.4% but the court held that this was not excessive as mathematical precision could not be applied in dealing with human problems.

This attitude of the judiciary creates a lot of resentment amongst people who are denied promotions and thereby affects efficiency in the administration. Besides, politicians can take undue advantage of the rulings in the above case and create disharmony and dissensions amongst members of different classes of society.

The decision of Indra Sawhney's case\textsuperscript{12} has laid down a workable and reasonable solution to the problem of reservation. In this case it was held that the maximum limit of reservation cannot exceed 50 percent and the reservation under Article 16(4) cannot be made in promotions. The reservation is confined to initial appointments. In this judgement the majority did not express any opinion on the correctness or adequacy of the Mandal Commission's report.\textsuperscript{13}

The majority judgement was welcomed by all sections of society as it was able to defuse the crisis which the Nation was facing since the implementation of Mandal Report reserving 27% Government's job for the socially and educationally backward classes. The most welcome aspect of this judgement is that reservation will not apply to promotion in services.

But the Government has enacted the Constitution 77th Amendment Act, 1995 in order to bypass the court's ruling on this point. This amendment has added a new clause (4-A) to Article 16, which provides:

"Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State".

This means that reservation in promotion in government services may be continued in favour of Scheduled Castes and Scheduled Tribes even after the Mandal case if the Government wants to do so.

\textsuperscript{12} Indra Sawhney Vs. Union of India. A.I.R. 1993 S.C. 477.
\textsuperscript{13} See Supra note 84 of Chapter IV of this work.
The Supreme Court has to intervene again. In Union of India Vs. Virpal Singh the Supreme Court held that seniority between reserved category candidates and general candidates shall continue to be governed by their panel position prepared at the time of selection.

The ruling of the court puts a question mark on the validity of the recent Constitution amendment permitting reservations in promotions to Scheduled Castes and Scheduled Tribes.

In human society there can not be mathematical equality nor it is physically and humanly possible. There has been endeavour to reduce it to the minimum gap and efforts will continue till the survival of human beings. During last few years flood of litigation all over India has cropped up in Supreme Court, High Courts and Tribunals on the part of the workers to seek equal pay for equal work. The case law has been developed on the interpretation of Article 39(d) read with Article 14 of the Constitution.

In order to implement the constitutional directive, the President of India promulgated on the 26th September, 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the constitution may be implemented in the year which is being celebrated as the International Women Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of similar nature and for the prevention of discrimination on ground of sex. It also ensures that there will be no discrimination against recruitment of women and provides for the setting up of Advisory Committees to promote employment opportunities for women. The Act received the assent of President on February 11, 1976 and published in Gazette of India.

In any democracy, workers must have the right to agitate to press their demands and grievances. The right to agitate empowers those without resources. We have many excellent rules and laws. But in practice, the workman is harassed and denied his rights at every stage. The oppressed must have the right to take his problem to the streets. In fact, the working class of our country need both freedom and food. Neither freedom nor food be sacrificed at any cost. Freedom is unthinkable without free speech. Workers, man and woman who are free, should be in a position to exchange their ideas in order to manage their own affairs. The right to protest, and agitate has to be kept alive in any democratic polity.

It is crystal clear from various judicial pronouncements that during the last fifteen years the judiciary has given new dimensions to Article 19(a). These decisions have heralded a new revolution. But unfortunately the judiciary has given step motherly treatment to the working class in relation to their right of freedom of speech and expression. The recent judgement of the Supreme Court in Bharat Kumar's case, is the example of such step motherly treatment of the judiciary. In this case the Kerala High Court has declared bandh organised by any political party or trade union as unconstitutional and illegal. The Supreme Court on 12-11-1997 puts its stamp on the Kerala High Court judgement.

It is submitted that bandhs (general strike) or hartals are necessary evil for the protection of rights of workers. The blanket ban on such activities will


16 Bharat Kumar Vs State of Kerala, 1997(2) K L T 287.
frustrate the purpose of the Fundamental Rights guaranteed to the workers and their organisations.

In an egalitarian society with its fast changing social norms, a concept like, collective bargaining, is not capable of precise definition. The content and scope of collective bargaining also varies from country to country. Collective bargaining is a method by which the employers and their workmen settle their disputes among themselves on the strength of the sanctions available to each side. By its very nature both parties want to yield less and get more.

In All India Bank Employee Association's case, it was argued that Article 19(c) guarantees, as a concommitant to its right to form associations or unions, a right to effective collective bargaining and a right to strike. But the Supreme Court rejected the argument.

But even so that right is one of social importance in India's industrial development. Now the Government and judicial apathy towards collective bargaining is undergoing a gradual modification and the necessity of collective bargaining for adjusting labour management relations is urgently felt.

The liberalised industrial policy fascinated and encouraged a large number of private investors, both national and foreign, to invest in the Indian economy on a large scale. Globalization of Indian economy questions the existing position or model of collective bargaining. A futuristic model has to be developed to cope with the developments taking place in Indian economy.

There are several definitions of strike which are found in various decisions of the Courts, dictionaries and in the statutes.

17. Supra notes 60 and 61 of Chapter V of this work.
18. Supra notes 62 and 63 of Chapter V of this work.
19. Supra note 64 of Chapter V of this work.
Ordinarily it is open to a trade Union to go on strike or withhold labour. However, in the constitution of India there is a Fundamental Right to form association or Trade Unions. In numerous cases the Supreme Court has however, held that the constitutional freedom of association does not include any Fundamental Right to strike.

It is respectfully submitted that strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g. go-slow; sit-in; tool down; work to rule; absentism etc. A strike is one such mode of demonstration. The right to demonstrate and therefore, the right to strike is an important weapon in the armoury of the workers. But the right of strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. So it is further submitted that the Supreme Court being a guardian and protector of the rights of citizen should also protect the rights of workers specially right of strike, picketing, and demonstration provided that these rights are exercised peaceably by the workers in contraction of reasonable restrictions engrafted in Article 19(2) or (4) of the Constitution.

The freedom of the workers to form and participate in activities of an association is spelled out in the Constitutional provisions in its widest amplitudes, and is subject only to the appropriate reasonable restrictions clause. The reasonableness of restrictions is determined by a direct nexus between the demands of social control conducive to public interest and imposed restrictions.

It is hard fact that without job security a worker cannot perform his duties fearlessly and efficiently. Certain legislative measures have been taken for the betterment and security of the job of the workers. True worth of legislative measures can only be realised by providing a machinery for
deciding the dispute arising therefrom which is suitable in such areas. Thus the existence of an effective working of the enforcement machinery is to be ensured by providing a suitable procedure and appropriate deciding authority.

Parties in a dispute relating to legislative measures are the workers and the employer. The biggest employer is the State today as in almost in every area of human endeavour. We find public organisations which employ a very large number of people.

The result is the capacity to fight a case is very unequal in case of an employer and the workers. The resources at the disposal of the worker are very limited. He has no money for making the payment of the fees of the advocates and other attendant expenditure. The nature of procedure where in adjournments are readily granted makes the dispute a very very long affair. Capacity to wait of worker is very limited as compared to an employer particularly where a State run corporations or other organisations is a party to the dispute.

The need for speedy inexpensive common sense justice is required. For this purpose our social welfare labour legislations should be amended so as to make it more effective system of the resolution of disputes in the field of welfare of workers.

The civil services consist of the body of officials in the service of the Government of India. The civil servant is indispensable to the governance of the country in the modern administrative age. Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants.
In contemporary India, the civil servants are facing enormous difficulties such as political transfers, demotions, suspensions and compulsory retirements etc.

The job security is provided in Articles 309, 310, and 311 of the Constitution of India because a country without an efficient civil service can not progress inspite of the earnestness of the people at the helm of affairs in the country. whatever democratic institutions exist, experience has shown, that it is essential to protect the civil services as far as possible from political or personal influence.

The remedies which are available to a civil servant may be divided into two parts namely remedies before the passing of Administrative Tribunals Act, 1985 and remedies after the passing of Administrative Tribunals Act, 1985.

Prior to the Administrative Tribunals Act, 1985 an aggrieved Government servant could obtain relief from the High Court, in a proceeding under Article 226 on grounds appropriate to the writs available under that Article.

After coming into force of the Act all judicial remedies save those of the Supreme Court under Articles 32 and 136 have been abolished and the pending proceedings before other Courts, e.g., suits before that Civil Court or proceedings before High Court under Article 226 stand transferred before the regional Administrative Tribunals.

Recently in L. Chandra Kumar's case the Supreme Court made it clear that the jurisdiction conferred upon the High Courts under Articles 226 and 227 and upon the Supreme Court under Article 32 of the constitution is an

20. L. Chandra Kumar Vs. Union of India 1997 (3) SCALE. 40
integral and essential feature of the Constitution, constituting part of its basic structure.

Suggestions:

Introduction of steam power and machines in production process which germinated the factory system in our Country, changed the nature and content of traditional labour-management relations. On the one hand, an employer came to engage workers in hundreds and thousands. On the other hand, the worker lost his individual status as significant factor in the production process. He became one of the several easily replaceable persons engaged in the factory. This caused the exploitation of labour. The employers being a private person had tried to earn more and more profit. No attention was paid towards the pitiable conditions of the workers. The Government had tried to check this evil of exploitation by passing various legislations i.e. Factories Act, 1948; Workmen's Compensation Act, 1923; Payment of Wages Act, 1936; Minimum Wages Act, 1948; and Industrial Disputes Act, 1947 etc. Further efforts continued but the object was not achieved.

After Independence the Government changed the policy and decided to become the employer. Policy of Nationalisation was introduced which changed the existing scenario. Concept of Public Sector came to the light. The motive behind this change was not exclusively to earn the profit but was to serve the Nation. The main objective was the service to Nation and secondary object was to earn the profit. Unfortunately these objectives were frustrated and some new problems came in light in the public sectors i.e.-

(i) No proper working on the part of the workmen.
(ii) Continuous losses.
(iii) Over staffing.
After 44 years of Independence the Government realised that the privatization is only the solution of above problems. So the Government decided to invite Non Resident Indians and multinational Companies to invest the money in India. The motive behind this policy of Privatisation is to-

(i) minimise over staffing

(ii) provide effective control over multinational companies

(iii) increase the quality or efficiency of work.

This is current scenario of our industrial system.

The following suggestions should be taken into consideration in order to provide protection to the workers who have always been victim of exploitation and atrocities of the employer, who hold the reins of employment in their hands:

(1) The Preamble of the Indian Constitution proclaimed "to secure to all its citizens, justice- social, economic and political --- equality of status and opportunity". This Preambulatary message of socio-economic justice and equality of status and opportunity has been incorporated into several Articles dealing with its different facets in Part III and IV of the Constitution.

The Governments, Union or States, which purport to act within the Constitutional frame work, is duty bound to strive to secure socio-economic justice and equality of status and opportunity for the citizens and the Government is free for any means to achieve this goal. The judiciary which is more active at present stage, and the judges who are called social engineers and are breathing new judicial life in letters of Constitution and statutes are also expected to breathe the judicial life into this Constitutional goal.
Since the international human rights instruments and their developing jurisprudence enshrine values and principles of equality, freedom, rationality and fairness, like that of the Indian Constitution, they should be seen as complementary to domestic law and could certainly be relied upon and enforced by courts to effectuate the Fundamental Rights guaranteed to labour class. It is submitted that so long as the international covenant was consistent with the provision of chapter III of the Constitution they should be enforced by Indian Courts in the field of labour laws.

(2) The important labour subjects are placed in the Concurrent list of the Constitution of India. The Constitution makes having regard to the nature of the subject matter and different conditions prevailing in various Provinces thought it fit to provide a system whereby labour welfare legislation could provide adequate safeguards as against the strong capitalist group. They in their wisdom decided that labour subjects should be placed in the Concurrent List so that both the Centre and State could play their respective role successfully.

But a rapid change in the circumstances, fast industrialization, creation of new means of communication, establishment of multinational companies in our country, a second thought becomes necessary about the change in division of subject matters mentioned in three list. There are some basic or common standards i.e. working hours, environmental protection, hazardous industry etc., which need a uniform and common legislation for all the States. Thus it is suggested that the important labour subjects in relation to above basic standards should be transferred to Union List to enable the Parliament to make an effective, uniform and suitable legislation in this regard leaving rest of the subjects in Concurrent List.

(3) All efforts should be made to provide the living wages to workers and all organs of State i.e.; Legislature, Executive and Judiciary must be active to provide living wage.

It is further suggested that if the industries, mainly production units, are unable to provide living wage due to one reason or the other, then they should provide some additional amount to their permanent employees for their sincere efforts of increasing the production. In other words the additional amount should be linked with productivity. This additional amount must be made by way of an incentive. The said additional amount cannot called as over-time payment, because the practice of payment for over-time has become a false practice- a practice only on paper, mainly in public sectors. Thus in place of over-time payment, the said additional amount should be paid in addition to the wages which are fixed by the Government. The concept of additional amount will raise the standard of living of the labour class on the one hand and the addition in the national income on the other hand.

(4) Under Article 15(4) the State is empowered to make special provisions for the advancement of socially and educationally backward classes of citizens. Under Article 16(4) the State is authorised to make provisions for the reservation of posts for backward classes or for the Scheduled Castes and Scheduled Tribes.

Originally, under Article 334 the reservation for these castes was made for ten years from the commencement of the Constitution. Since then this duration has been extended from time to time.

The policy of reservation is creating a lot of resentment amongst persons who are denied the jobs, promotions and admissions in educational institutions. There is direct effect on the quality of work and efficiency in the
administration. Besides, politicians can take undue advantage of this policy and create disharmony and dissensions amongst members of different classes of society. This would not be in the interest of the Nation. The whole policy of reservation is, in fact, a politically motivated policy coming down from British day- the divide and rule policy. It has provoked a caste war which threatens to tear our social fabric. Fortunately this caste war is paying nothing to politicians who have provoked the caste war and divided the whole community into various groups. The best example of their defeat is that no single political party was able to win absolute majority to form the Government in the State or in the Centre in last elections. Thus legally, socially and politically the policy of reservation cannot be justified en block on the basis of caste. It should be based upon social, educational and economic backwardness downtrodden have-nots who have been exploited by socially and economically advanced classes of society since time immemorial in India. However, the reservation must be made at the initial stage of employment not in the promotion from the lower rank to the higher rank.

(5) Regarding the provision of Article 39 (d) of the Constitution it may be stated that there is no piece of legislation in India guaranteeing a citizen equal pay for equal work. Moreover, there is no State machinery to protect the workers' right to get equal pay for equal work. However, there is Equal Remuneration Act, 1976 which prohibits discrimination on the basis of sex in wages, recruitment and other matters relating to or incidental to employment. But, the Act is insufficient and ineffective. Firstly it seeks to provide for payment of equal remuneration to male and female workers, but it does not guarantee equal pay for equal work among men. The absence of this specification led to a judicial controversy. Secondly, it provides for equal
wages for men and women for the same or similar work. Similar work\textsuperscript{22} is defined as one in which the skill, effort and responsibility are the same. But the Government on subjective satisfaction has the power to declare that difference in remuneration between men and women in a specific establishment is based on a factor other than sex\textsuperscript{23}.

Therefore it is suggested that the defects discussed above should be removed either by suitable legislation or by a suitable amendment.

(6) The definition of strike recognises concerted action under common understanding on the part of strikers as an essential element of strike.

In the present circumstances and situations where a large number of worker are employed by an employer, this concerted action or action in combination may cause a great loss to the establishment by which the National growth will be affected. The best solution for this problem is the redressal of grievances of the workers as soon as possible. The grievance should be redressed at the initial stage and best method for this redressal is the conciliation. A conciliation can be more effective if it is freed from outside influence and conciliation machinery is adequately staffed. The independent character of the machinery will alone inspire greater cooperation from the parties.

\textsuperscript{22} Section 2(h) of the Equal Remuneration Act, 1976 provides, "Same work or work of similar nature means work in respect of which the skill, effort and responsibility required are the same ---, if any, between the skill effort and responsibility required of a man and those required of a woman are not of practical importance in relation to terms and conditions of employment.

\textsuperscript{23} Section 16 of the Equal Remuneration Act 1976 says,"where the appropriate Government is, on a consideration of all the circumstances of the case, satisfied that the differences in regard to the remuneration, or a particular species of remuneration ... and any act of the employer attributable to such a difference shall not be deemed to be a contravention of any provision of this Act".
The overall picture regarding tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before experiment is extended to new areas of the fields.

Unfortunately in the field of labour law the purpose for which the Administrative Tribunals were constituted is frustrated by the functioning of the Tribunals. They are following the same procedure as prescribed under C.P.C., specially when they apply the principles of Natural Justice. They failed to inspire confidence in public mind and were not successful in creating an 'effective alternative institutional mechanism'. On the other hand the practicing lawyers are also playing the same role as in the civil courts when they are engaged by the concerned parties.

In L. Chandra Kumar's case\textsuperscript{24} the Apex Court rightly requested the Union Government to initiate action to set-up a supervisory body after consulting all concerned, place all these tribunals under one single nodal Ministry preferably the Ministry of Law.

The Government being a social welfare state, an employer and protector of the interest of the workers, has failed to materialize the expectations of the working class. Instead of providing common sense justice, the Government as an employer engaged itself in wrestling with the poor, weak, and depressed workers. In most of the cases the Government files the suits and appeals, applies for revisions and reviews against the claims of the employees.

Therefore it is suggested that the Government should avoid the litigation and provide the common sense justice to the aggrieved workers keeping in view the concept of social welfare state in India.

\textsuperscript{24} L. Chandra Kumar Vs. Union of India, A.I.R. 1997 S.C. 1125.