CHAPTER-VI

REVIEW OF LAWS

Before embarking on a detailed review of the labour legislation in our Statute Book it is necessary to keep in view certain important parameters. In earlier chapters and paragraphs we have referred to the articles of the Constitution of India that provide the parameters of our review. Yet, they bear repetition as a preface to the ensuing paragraphs. Article 19 guarantees freedom of speech and expression, freedom to form associations or unions and freedom to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions that may be imposed by law on the exercise of these freedoms. We also have Article 23 prohibiting traffic in human beings and forced labour, and Article 24 prohibiting employment of children in factories etc. These are Constitutionally binding. Besides we have a very large number of Directive Principles of State Policy in Part IV of the Constitution. These principles are not enforceable by any court but are nevertheless fundamental in the governance of the country, and it is the duty of the State to apply these principles in making laws. Articles 38, 39 39A, 41, 42, 43 and 43A are principles which are relevant to the work of our Commission. It is also relevant to remind ourselves that we now have moves to redefine 'right to work' which figures in the Directive Principles (Article 41) and invest it with the status and sanctity of a fundamental right.

6.2 Apart from these, it is also necessary to refer to two or three other matters. The ILO declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June 1998, declares *inter alia* that all Member States whether they have ratified the relevant conventions or not have an obligation arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution the principles concerning the fundamental rights which are the subject of those conventions, namely,

(a) freedom of association and the effective recognition of the right to collective bargaining

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

6.3 In the next year i.e. 1999, the Report of the Director General to the International Labour Conference was on Decent Work. In his report, the Director General emphasised the following: The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO is concerned with all workers. All those who work have rights at work. The ILO is concerned with Decent Work. The goal is not just the creation of jobs but the creation of jobs, of acceptable quality. The Director General also pointed out that

"We are in a prolonged period of adjustment to an emerging global economy …… The standard policy response was formulated by the Bretton Woods Institutions in the 1980s at the time of debt crisis and subsequently applied in the transition economies. It was based on two fundamental assumptions : That free markets are sufficient for growth, and they were very nearly sufficient for social stability and political democracy. The strategy for economic success basically consisted in transferring responsibilities for regulations from the state to the market. These policies are influential because they were simple and universal. They brought necessary macro-economic discipline and a new spirit of competition and creativity to the economy. They opened the way for the application of new technologies and new management practices. But they confused technical means of action – such as privatisation and de-regulation – with the social and economic ends of development. They became inflexible and did not take the social and political context of markets sufficiently into account. Their impact on people and their families was sometimes devastating. Increasing doubts about the efficacy of these prescriptions after a decade of experience in the transitional economies came to a head with the recent crisis in the emerging markets. That crisis marked a turning point in public opinion. The result has been both greater uncertainty and greater receptivity to a wider range of opinions, including the views of developing countries and of civil society."

6.4 In June 2001, in his Report to the International Labour Conference, the Director General said, *inter alia*,

"... The multilateral system must respond to persistent demands for new, better and more coherent international frameworks. We have made progress, but not enough. I believe that the multilateral system is still under-performing in this respect.

6.5 From the ILO we must push for greater unity of action. In turn, the ILO must stand ready to engage as a committed team player. This means not only working together but also taking on board each other's goals. Just as the ILO has to integrate the need for sound macro economic policies into its understanding, so the Bretton Woods institutions should make decent work development objectives a part of their basic framework. I believe that a system-wide commitment to promoting decent work, as a major development goal and our instrument to reduce poverty, would not only benefit all our constituents but would also enrich the policy agenda of other organisations.

6.6 That does not mean that we will always be in agreement, and the ILO and the IMF or the World Bank may not come to the same conclusions in any given case. Each organisation has its own identity and constituents, and its own mandate. From our perception, when it comes to the hard decision there is no reason why it should so often be the social goals that are sacrificed."

6.7 Apart from these, it is also necessary to take note of the fact that the Government of India ratified Convention 122 on Employment and Social Policy in 1998. This convention was adopted by the International Labour Conference in 1964. It is relevant both to point out that the Convention was ratified after the Government of India embarked on the new economic policy and to reproduce in full the text of Article 1 of the Convention:

"Article 1

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under - employment, each Member shall declare and pursue, as a major goal an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that

(a) There is work for all who are available for and seeking work.

(b) Such work is as productive as possible

(c) There is freedom of choice of the employment and the fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices."

6.8 It is not without significance that this convention was ratified by India at a time when unemployment levels are high even if reckoned purely in terms of employment exchange statistics. One therefore, has to presume that the Government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment.

6. 9 From what we have cited about the commitments of the Government of India in the preceding paragraphs it can be deduced that the following rights of workers have been recognised as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

(a) Right to work of one's choice

(b) Right against discrimination

(c) Prohibition of child labour

(d) Just and humane conditions of work

(e) Right to social security

(f) Protection of wages including right to guaranteed wages

(g) Right to redress at of grievances

(h) Right to organise and form trade unions and right to collective bargaining, and

(i) Right to participation in management.

6.10 One cannot overlook the fact that rights are also related to duties.

6. 11 If our understanding is correct, what exactly should labour laws do? Should labour laws be confining their attention only to a section of the labour force which is a small part of the nearly 400 million work force or should labour laws have universal applicability? It is in this context that the distinction that we usually make in our country between the organised sector and unorganised sector becomes significant. There is no accepted definition of this term or of its companion, namely, the unorganised sector; however, one can presume that there is a certain broad picture at the back of one's mind when one talks of organised sector in contradistinction to the unorganised sector. It is relevant, to point out that in the Trade Unions (Amendment) Act, 2001, (Act 31 of 2001) the explanation in clause 8 of the Bill states that for purposes of the section, 'unorganised sector' means any sector which the appropriate government may, by notification in the official gazette, specify. Even so, should we delimit the organised sector in terms of the number of persons employed in the establishment in that sector, or in terms of the capital invested in the establishment, or in terms of the level of technology that obtains in that establishment, or on the basis of any other criteria like turnover, wage cost as a proportion of total cost, etc.? Also, would the availability of legal protection under the labour laws be a criterion for this? As already pointed out, legal applicability may not be a sole or satisfactory criterion, considering that laws like the Minimum Wages Act, the Equal

Remuneration Act, the Contract Labour Act and so on apply to workers in both the organised and the unorganised sector; even the Industrial Disputes Act applies to large sectors of 'unorganised' labour. Likewise, the investment in an establishment may not always be the relevant criterion because investment is, in a manner of speaking, the function of the technology and the processes involved in the operation of that establishment. Keeping all these in view it would appear that perhaps the safest approach, in the context of coverage under labour laws, would be to define the organised sector as consisting of establishments which have a minimum employment limit (A more detailed analysis of the characteristics of the unorganised sector and employees covered in it can be seen in the ensuing Chapter on the Unorganised Sector).

6.12 A look at the various labour laws particularly Central Labour Laws show that not all labour laws have any employment limit for coverage. The Industrial Disputes Act 1947 has no such limit excepting for section 3 and Chapters VA or Chapter VB of the Act. The Minimum Wages Act, 1948 and the Equal Remuneration Act, 1976 also do not have any employment limit. Therefore, even if a minimum employment limit is prescribed for demarcating the organised sector, it is not as though the Industrial Disputes Act, the Minimum Wages Act or the Equal Remuneration Act will not apply to those establishments where the employment limit is less than the minimum prescribed. The need for universality of labour laws, therefore, appears to have a lot to commend itself. The Indian Labour Code 1994 (draft) prepared by the National Labour Law Association has accepted the need for this kind of universal applicability. But the Commission agrees with the study group that this is perhaps too ambitious or too impractical an approach now and would therefore, like to fix a certain minimum employment limit for coverage under the organised sector.

6.13 What then should this limit be? A study of the employment limits prescribed currently in various labour laws shows that the pattern is not uniform. It ranges from covering establishments employing 5 persons as in the Motor Transport Workers Act and Inter-state Migrant Workers Act to

10, 20 or 100 as in the Factories Act, Building and other Construction Workers Act, Payment of Bonus Act, Contract Labour (Regulation and Abolition) Act, Industrial Employment (Standing Orders Act) and so on. The study group that we had appointed has not been unanimous in defining a threshold. Some members held the view that establishments having 20 or more employees (ie., both workers and others) should be included in the 'organised' sector. Some others preferred the employment limit to be 50, there were also members who considered even 20 a little too high and wanted the limit to be fixed at 10.

6.14 Many Small-Scale Industries Associations have told us that the limit must be 50 and more. The argument that has been used in favour of this is that an establishment of a smaller size can in no manner of speaking be described as 'organised'; they do not have any well-conceived production plan, any access to institutional credit, the necessary economic size to look after all the multifarious responsibilities relating to production, finance, accounts, human resource management, law and so on. Their small size itself makes them vulnerable, as they do not have the wherewithal to meet the diverse requirements necessary for coping with many laws. They thus fall easy prey to the 'Inspector Raj'. It has also been urged that if these 'smaller' establishments i.e. those employing less than 50 persons, were to be covered by a set of self-contained, simple legal provisions which are easily understood by the managements and are easy to implement, then the entrepreneurs will be encouraged to expand their current small establishments by taking more hands and still keeping their employment strength below 50; this, it is argued, will help generate further employment in this sector, which, even now, is both the main source of employment and the generator of skills. These are fairly weighty reasons. The study group has recommended that the establishments employing 50 or more persons (not merely workers) must be governed by the general law while the smaller establishments should have a self-contained set of provisions that will be applicable to them. The group was however, unanimous that every worker, irrespective of the employment size of the establishment, must be assured minimum social security and protection.

6.15 We feel that by raising the cut-off limit to 50 employees, a large majority of establishments and a very high percentage of workers will be kept outside the ambit of the main law. However, the study group was of the view that the smaller establishments and their workers would also benefit from the simple and adequate provisions which were being proposed to protect the interest of the workers satisfactorily under a separate law for such establishments.

6.16 Thus, whatever be the employment limit, there are certain provisions like maternity benefit, child care, workmen's compensation, medical benefits and other elements of social security and safety which must be applicable to all workers, irrespective of the employment size of that establishment, or the nature of its activity.

6.17 The Commission has given considerable thought to the number of employees that should be fixed as the threshold point for the organised sector. It does not want any decision on this question to lead to a situation in which workers who are already enjoying the protection of laws forfeit their protection or benefits of provisions for safety and security. Nor does it want to add to the problems of small entrepreneurs with unbearable financial burdens that affect the viability of their enterprises or compel them to work under irksome conditions that make complicated demands on them. Balancing both these factors, the Commission feels that a limit of 19 workers should be accepted as the socially defensible mean.

6.18 If Labour Laws are essentially meant to protect the interests of the weaker party, and to provide a machinery for healthy industrial relations, the question arises as to whether there should be any salary limit above which the protection of the labour laws will not be available. There are of course salary limits prescribed in the existing labour laws, as for example in the Payment of Bonus Act, the Employees Provident Fund and Miscellaneous Provisions Act, the Employees State Insurance Act, Payment of Wages Act and so on; the Industrial Disputes Act also has a salary limit for coverage of supervisory personnel. The Study Group has recommended that no salary limit be prescribed for coverage of workers under the labour laws, and that the demarcation should be functional rather than based on remuneration. The Study Group was aware that there has been a history of wage limits being prescribed in laws like EPF Act, ESI Act, Payment of Bonus Act etc.; but even so the Study Group recommended that the criterion for coverage should be functional rather than based on wage.

6.19 The Commission carefully considered the view of the study group. It also took into account the evidence it received at various centre not only from employers but other interest groups like consumers etc. to the effect that some of the relatively better paid off categories of employees who are presently deemed as workmen often misuse the protective umbrella of such Acts like the Industrial Disputes Act which are available to them in total disregard of the interest of the employer, and those of the organisation to which they belong, the consumer and the community as a whole. Illustrations frequently cited in this regard were those of Airlines Pilots, and the like who receive remunerations that are much higher than what an average managerial person receives, and are clothed with authority that in some matters is much higher than that enjoyed by ordinary managerial personnel, and yet are treated as workmen. The Commission has, in a succeeding paragraph, made recommendations regarding the desirability of a separate legal provision that will offer reasonable protection to employees who do not come within the purview of the term 'workmen 'and are generally categorized as working in managerial or administrative or supervisory capacities or in sales promotion work and also such categories of employees as are outside the purview of the present laws as a consequence of judicial pronouncements like teachers, artistic personnel, etc. The logic behind such recommendations has been explained in the relevant paragraphs. As has been pointed out earlier the relatively better off section of present day employees categorised as workmen like Airlines Pilots, etc. do not merely carry out instructions from superior authority but are also required and empowered to take various kinds of on the spot decisions in various situations and particularly in exigencies. Their functions, therefore, cannot merely be categorized as those of ordinary workmen; in fact, they belong to the executive realm, and there is, therefore, a case for excluding such people from the provisions of the law designed for ordinary workmen. The Commission is also of the view that such categories of employees are quite capable of negotiating terms of employment on their own and do not need protection beyond a limited extent by legal means. It, therefore, recommends that Government may lay down a list of such highly paid jobs which are presently deemed as workmen category as being outside the purview of the laws relating to workmen and included in the proposed law for the protection of non workmen. Another alternative is that the Government fix a cutoff limit of remuneration which is substantially high enough, in the present context, such as Rs. 25,000/- p.m. beyond which employees will not be treated as ordinary "workmen". In case the Government deems it appropriate to lay down a wage or salary criterion as a cutoff provision, it may also have the enabling powers to review it from time to time under delegated legislation. In making such a recommendation the Commission has also kept in mind the underlying premise that the Supreme Court laid down in its judgment on the validity of reservations for the "creamy layer" in the categories otherwise qualifying for reservation.

6.20 The next point that will have to be considered is whether supervisory employees should or should not be clubbed with workers for purpose of coverage. The ID Act, as it now stands, excludes all supervisory personnel drawing wages in excess of Rs. 1600 p.m. This wage limit is so low in the present context that no argument is necessary to establish the need to do away with this limit. The more basic point in the case of supervisory personnel is whether they ought to be treated as part of the workforce or they should be considered to be part of the management. It is, in this context, necessary to note that the Industrial Disputes Act distinguishes between employees doing work of an administrative or managerial nature and those doing work merely of a supervisory nature, for whom alone a salary limit is fixed. The Commission is of the view that it would be logical to keep all the supervisory personnel, irrespective of their wage/salary, outside the rank of worker and keep them out of the purview of the labour laws meant for workers. As has been recommended in the previous paragraph, all such supervisory category of employees should be clubbed along with the category of persons who discharge managerial and administrative functions. The Commission would also recommend that such a modified definition of worker could be adopted in all the labour laws. We expect managements to take care of the interests of supervisory staff as they will now be part of the managerial fraternity.

6.21 The Commission agrees with the study group and the large volume of opinion that the existing set of labour laws should be broadly grouped into four or five groups of laws pertaining to (i) industrial relations, (ii) wages, (iii) social security, (iv) safety and (v) welfare and working conditions and so on. The Commission is of the view that the coverage as well as the definition of the term 'worker' should be the same in all groups of 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 as has been proposed in the paragraph preceding the previous one. We propose that instead of having separate laws, it may be advantageous to incorporate all the provisions relating to employment relations, wages, social security, safety and working conditions etc., into a single law, with separate parts in respect of establishments employing less than 20 persons.

6.22 The Commission also considered the question whether, apart from laws for the protection of workers, there should be a separate legislation for giving protection to managerial employees as well. It wants to point out that in 1978 the Government had introduced a Bill on the subject in the Parliament. It can also be seen that some kind of protection is available to such employees in the Shops and Establishments Acts of certain States where there is a provision for an appeal to a specified authority, usually an official of the labour department, against orders of discharge, dismissal or removal from service of an employee who may not be a worker under the Industrial Disputes Act. Opinion on this question was divided in the Study Group. So is the case in the Commission. It was pointed out that incorporating such a provision, is likely to create some dissension in an environment which currently is claimed to be based on trust and confidence as far as such employees are concerned. As against this it was pointed out that such employees do not have any legal remedy against unfair removal from service, excepting by way of a legal suit which, experience would show, is not a very satisfactory method of redressal, particularly when it is clear that the best that such a person can expect from a civil court is compensation after a very long drawn out procedure. Keeping all these issues in view, the Commission agrees with the Study Group that it is necessary to provide a minimum level of protection to such employees too, against unfair dismissals or removals. This has to be through adjudication by labour court or Labour Relations Commission or arbitration.

6.23 As we have stated earlier, while embarking on our task of rationalisation of existing labour laws, one of the important aspects that we have had to bear in mind is that in the field of labour, we have not only central laws, i.e., laws enacted by Parliament, but also laws enacted by State legislatures which include State level amendments to Central laws. This is so, because the Constitution of India has included labour and related matters in the concurrent list. The Commission does not consider it necessary or desirable to change this. Howsoever carefully and comprehensively a consolidated law of the type envisaged by us is drafted and enacted, it is likely that individual states may feel the need for making changes and/or additions to suit their local conditions, and this should be permitted within the provisions of the Constitution, under which the State will have to move the Central Government for getting Presidential assent to such changes.

6.24 The enforcement of specific laws is either the responsibility of the Central Government or of the State Government concerned or of both. This is determined on the basis of the definition of the term 'appropriate government' that occurs in various labour laws. While for all state level legislations, the 'appropriate government' is the concerned State Government, the position varies in respect of Central laws. Some Central laws like the Mines Act, 1952 have the Central Government as the sole authority in respect of that law; there are Central laws like Factories Act, Plantations Labour Act and so on, where the authority is exclusively that of the State Government where the factory or plantation is located; in between, we have Central laws like Industrial Disputes Act, Payment of Bonus Act, and so on, where both the Central and State Governments exercise jurisdiction depending on the definition of the term 'appropriate government' in that enactment. The question which is the 'appropriate government' in a given case has come up for judicial determination in a large number of cases under different enactments including the recent judgment dated 30.08.2001 of the Supreme Court of India in the Steel Authority of India and Others Vs National Union of Waterfront Workers and Others (Civil Appeal Nos. 6009-6010/2001), relating to the Contract Labour (R&A) Act, 1970. The Commission feels that there is no need for different definitions of the term 'appropriate government', and considers that there must be a single definition of the term, applicable to all labour laws. It therefore recommends that the Central Government should be the 'appropriate government' in respect of Central government establishments, railways, posts, telecommunications, major ports, lighthouses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR, NCERT and in respect of industrial disputes between the contractor and the Contract Labour engaged in these enterprises/ establishments. In respect of all others, the concerned State Government/Union Territory administrations should be the appropriate government. In case of dispute, the matter will be determined by the

National Labour Relations Commission that we want to be set up.

6.25 We had earlier indicated that in our attempt to rationalise labour laws, we could, with advantage, group the existing labour laws into well-recognised functional groups. While the ultimate object must be to incorporate all such provisions in a comprehensive code, as has been done by the National Labour Law Association, covering all workers including those under Central and State Governments, we consider that such a codification may have to be done in stages and what we have proposed is, hopefully, the first step. What are the laws that should be included in each functional group will be indicated by us, as we deal with each of these groups.

Employment Relations

6.26 We begin with what are perhaps the most important laws relating to industrial relations. The basic central laws relating to the subject are currently the Industrial Disputes Act 1947, the Trade Unions Act 1926 and the Industrial Employment (Standing Orders) Act, 1946. Mention must also be made of the Sales Promotion Employees (Conditions of Service) Act 1976 and other specific Acts governing industrial relations in particular trades or employments. There are state level legislations too on the subject, the more important of which are the Bombay Industrial Relations Act 1946, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, UP Industrial Disputes Act, MP Industrial Relations Act, etc. Besides, there are state level amendments to the central laws on the subject. We recommend that the provisions of all these laws be judiciously consolidated into a single law called the Labour Management Relations Law or the Law on Labour Management Relations. We do not favour separate laws, at least as far as labour-management relations are concerned, for specific groups of persons such as sales promotion employees or others. All of them will be governed by the same law as will be applicable to the entire corpus of workers; we have already stated elsewhere that we cannot ask for consolidation of laws and separate laws for separate employments at the same time; however, we would carve out a section of these workers who are employed in establishments with an employment size of 19 and below, for a different kind of dispensation. In view of our approach, we recommend the repeal of the Sales Promotion Employees (Conditions of Service) Act, 1976 and other specific Acts governing industrial relations in particular trades or employments and also specific laws governing wage fixation in particular trades or employments, in the light of what we recommend later in respect of the law on wages. The general law on industrial relations and wages will apply to them.

6.27 There is a strong volume of opinion that holds that all industrial establishments, irrespective of their size or nature of operations, should be under the same law, and that there is no need to exempt any establishment from the uniform law. There are some members of the Commission who hold the same view. We have, therefore, given much thought and full weight to this view. But there are a number of factors that we have to balance while coming to a conclusion, and making a recommendation. Everywhere we went to hear evidence, we were told about the plight and importance of small-scale industries. We were told, and statistics were cited in support, that (i) small-scale industries provide more employment (18.5 million) than large-scale industries: (ii) their contribution to the GDP is around 7% against 10% of the large-scale manufacturing sector (iii) their share in export earnings is of considerable importance to the economy; (iv) large-scale closure of these units would lead to a frightening increase in unemployment, and consequent increase in misery and possible starvation for many lakhs of workers and their families, as was seen in Delhi when lakhs of small-scale units had to be closed down as a result of the Supreme Court's ruling about pollution; (v) the financial, and administrative burden imposed on them by subjecting them to the same laws as those that may be necessary in the case of big industries cripple their economic viability; (vi) the vulnerability caused by their small size, distance from the gaze of publicity and lack of clout exposed them to harassment and extortions by inspectors; (vii) these genuine difficulties have to be taken into account and provided for if small-scale industries are to play their role in the economy and employment generation, and (viii) this can be done only by bringing them under a separate law that takes into account the size of the operation, investment, etc. of these enterprises.

6.28 The Commission finds that these are very weighty and real considerations. We would, therefore, recommend the enactment of a special law for small-scale units. Two important questions remain: one, waht is the cut-off point for employment in this law, in other words, what is the size of the units that will be entitled to be considered small, and therefore, eligible to be in the regime of this law. After considering all aspects of the question, and the suggestions that were discussed in the Study Group and the Commission itself, we came to the conclusion that the reasonable threshold limit will be 19 workers. Any establishment with workers above that number cannot be regarded as small. We are, therefore, recommending the threshold limit of 19 workers. The composite law suggested by us for small enterprises has provisions for registration of establishments, and provisions pertaining to securing safety, health and welfare of the workers, hours of work, leave, payment of wages, payment of bonus, compensation in case of lay off, retrenchment and closure, resolution of individual and collective disputes of workers, etc. The law suggested by us also has provisions pertaining to social security. We are of the view that a composite law will not only protect the interests of the workers in these enterprises but will make it easier for the small enterprises to comply with the same.

6.29 The second question relates to the protection and welfare of these workers employed in small-scale industries (SSI). They too are entitled to protection and welfare. The size of the enterprise or establishment cannot be a reason to leave workers unprotected, and without even elementary social security, especially when we are recommending measures to ensure protection and welfare to workers in the unorganised sector, where some workers are self-employed or are working in units with less than 5 workers. We have, therefore, ensured that the law we propose assures protection and welfare to workers in the SSI. It is not only the management of establishments in the SSI that need protection and viability, but also the workers working in them.

6.30 While our attempt will be to make the law simple to understand and easy to implement and enforce, our intention in having a separate dispensation for establishments with a workers' complement of 19 and below (and this is again stated in detail in para 6.106 below) is to make self-contained provisions for such small establishments in respect of all matters such as employment relations, wages, social security and the like; this will, hopefully, meet the demands, particularly from the smal-l scale industry sector, as well as shops and commercial establishments and similar sized institutions like hospitals, educational establishments, charitable organisations and the like, for not being burdened with the 'arduous' provisions of laws like the Industrial Disputes Act 1947 and Industrial Employment (Standing Orders) Act 1946 which in their view are designed only for large sized industrial and commercial establishments.

6.31 We now begin by indicating certain broad approaches we are adopting in drafting the Law on Labour Management Relations for establishments with a workers' complement of 20 and more.

6.32 Firstly, the Commission would prefer the gender neutral expression 'worker' instead of the currently used word 'workman' that we find in the Industrial Disputes Act and some other Acts.

6.33 Secondly, the law will apply uniformly to all such establishments, irrespective of the nature of activities carried on in these establishments; and, where such establishments have, within a specified local area, branches, the employment limit will be in respect of all the branches also. Thus where a municipality runs hospitals, dispensaries and schools at various centres within its jurisdiction, if the worker complement of all the branches adds up to 20 or more, this law will apply, even though individual units like a dispensary or a primary school may have less than 20 workmen.

6.34 Thirdly, we hold that the workers in these establishments must be enabled to organise themselves into trade unions of their choice. We are of the view that employment relations are best regulated, not by provisions of law, but on the basis of agreed procedures and systems that the managements and unions are able to arrive at, on the basis of what is commonly described as 'collective bargaining' or negotiations. We recognise that today the extent of unionisation is low and even this low level is being eroded, and that it is time that this trend was reversed and collective negotiations encouraged. Such a step will also, in its wake, reduce, if not altogether avoid, state intervention in employer-worker relations. Where, however, agreements and understanding between the two parties is not possible, there, recourse to the assistance of a third party should as far as possible be through arbitration or where adjudication is the preferred mode, through labour courts and labour relations commissions of the type we propose later in this regard, and not Governmental intervention. The Commission also considers that the present distinction in law, on the extent of the binding nature of settlements entered into bilaterally and those entered in conciliation must go, and a settlement entered into with a recognised negotiating agent must be binding on all workers.

6.35 Fourthly, we consider that provisions must be made in the law for determining negotiating agents, particularly on behalf of workers; it is equally necessary to recognise that collective bargaining or negotiations could be at different levels, say at the establishment level, at the corporate level, at the industry level, at the regional level, at the national level and so on.

6.36 Fifthly, the law must provide for authorities to identify the negotiating agent, to adjudicate disputes and so on, and these must be provided in the shape of labour courts and labour relations commissions at the state, central and national levels.

6.37 Sixthly, having considered the view that rigidities in labour laws are what is standing in the way of acquiring competitiveness and attracting foreign investment, and the equally forcefully articulated view that labour costs are only a comparative small percentage of overall costs and the reasons for the present situation have to be sought in other areas as well, areas like infrastructural facilities, management skills and the like (we have referred to these factors in more detail elsewhere); the Commission is of the view that changes in labour laws are only one of the issues involved, and that these have to be visualised and effected in a broader perspective of infrastructural facilities, social security, and Government policies. We, therefore, suggest that these changes be accompanied by a well defined social security packet that will benefit all workers, be they in the 'organised' or 'unorganised' sector and should also cover those in the administrative, managerial and other categories which have been excluded from the purview of the term worker. In evolving such a social security system, it is necessary to provide for both protective and promotional measures, the latter being particularly relevant for the workers in the unorganised sector.

6.38 One of the most important steps that one needs to take in rationalising and simplifying the existing labour laws is in the area of simple common definitions of terms that are in constant use; such terms include 'worker', 'wages' and 'establishment'. Negatively, by avoiding use of terms like 'industry' which has been the source of considerable litigation, one can strengthen the simplification process. By making the law applicable to establishments employing 20 or more workers, irrespective of the nature of the activity in which the establishment is engaged, we have avoided the need to define 'industry' (The Commission did in this context examine whether domestic service should be included in the coverage under labour laws. After examining all aspects of the question, it has come to the conclusion that they are better covered under the proposed type of umbrella legislation, particularly in regard to wages, hours of work, working conditions, safety and social security.)

6.39 Positively, we will define 'worker' unambiguously by excluding from the definition; all employees who are doing supervisory, administrative and managerial functions, by whatever designations they may be called and also excluding those specifically notified or otherwise held as not coming within the purview of the term. Likewise, we define establishment as a place or places where some activity is carried on with the help and cooperation of workers.

6.40 As regards 'wages', we are clear, keeping in view the endless litigation that takes place as to whether a particular allowance or payment is part of wages for purposes of deduction for provident fund or ESI and calculation for purposes of bonus or gratuity, that it is desirable to define two terms, 'wages' and 'remuneration', the former to include only basic wages and dearness allowance and no other; all other payments including other allowances as well as overtime payment together with wages as defined above will be 'remuneration'.

6.41 The Commission also discussed the question whether any distinction should be made between 'strike' and 'work stoppage', as is the position in the Bombay Industrial Relations Act 1946 and decided that the existing definition of 'strike' in the Industrial Disputes Act 1947 may stand, "Go slow" and "work to rule" are forms of action which must be regarded as misconduct. Standing Orders and Provisions relating to unfair labour practices already include them and provide for action both in the case of "go slow" and "work to rule".

6.42 Item number 5 of part II of the Fifth Schedule of the I.D. Act prescribes that " to stage, encourage or instigate such forms of coercive actions such as wilful go slow, squatting on the premises after working hours or gherao of any of the member of the managerial or the other staff" shall be an unfair labour practice which is prohibited and also made punishable under the Industrial Disputes Act. Similarly, the Model Standing Orders framed under the Industrial Employment (Standing Orders) Central Rules made for the coal mines prescribes that "malingering or slowing down the work" shall be misconduct. We feel that both these provisions may be added as forms of misconduct in the Model Standing Orders formulated for establishments other than coalmines as well; and they may attract appropriate penalties.

6.43 The Commission also carefully considered the recommendation of the Study Group that the term 'retrenchment' should be 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 present definition has, after the Sundaramani case judgment, proliferated to cover virtually every kind of termination of employment. The Commission agrees with the Study Group that this must be rectified. This is particularly so because the provisions in the law for a month's notice, compensation based on years of service already put in by the worker, and provisions of sections 25G and 25H, are, in the opinion of the Commission, inconsistent with any position other than that retrenchment can be only in respect of surplus workers or in case of redundancy.

6.44 With due deference to the opinion of the Study Group, the Commission will urge a deeper consideration of the arguments that have been advanced, and the apprehensions that have been expressed. On a matter that affects more than one section of the society. One is the basic right of the workers to strike. Another is the spectrum of society (spectrum of groups in society) that will be affected by such a strike. Let us begin by saying that we believe that workers have a fundamental right to strike. Having said that, we will have to examine the many forms that a strike can take, the many motivations that can prompt action in the course of the strike, and the consequences that they will have on different sections on which the effects of their actions fall.

6.45 To begin with, a strike is the assertion of the fundamental right of the worker to withdraw co-operation from what he perceives as injustice being done to him. This is achieved by stoppage of work. Secondly, the employer feels the impact when he sees that the strike has led to a stoppage of production, and this has adversely affected his economic interests. Thirdly, the worker feels that continued stoppage of production and continued adverse effect on the economic interests of the employer will compel him to reconsider his attitude, and seek a compromise with the striking workers, so that production may resume. Fourthly, obstinacy or what is seen as obstinacy by one or other of the parties may lead to feelings of indignation and the desire to seek revenge on the other. Fifthly, this may lead to lock-out, the use of hired goondas or blacklegs, agents provocateurs etc. on the part of the management, or anti-social forces, and gherao or destruction of machinery or other acts of violence on the part of the workers. There are many who profit by driving the dispute into the realm of law and order, and using the strong arm of the State to convert industrial disputes into matters for the police or the law and order enforcement machinery. This is not to the advantage of the workers, and perhaps to that of the industry as well.

6.46 There are some industries or services in which where the effects of industrial action, or confrontation, cannot, by the very nature of the activity remain confined to the employers and employees in the service or industry. They impinge on or spread into the lives of the vast majority of people in society who are not involved, who are neither employers nor employees, who are not the confronting parties. One has only to look at what happens when doctors or nurses or hospital employees, or people engaged in transport services, generation and transmission of electricity, water supply and sanitation in urban areas go on strike. They create situations which threaten the lives and normal and essential needs and activities of the vast majority that are not involved in any way; people who are in no way responsible for what those involved are fighting for; and act against society which has a right to protect itself, and for that purpose, intervenes to prevent forms of conflict that inflict vicarious and undeserved suffering or hardship on those who are not guilty. One's liberty has to be seen in the light of the equal right that everyone else has to demand and enjoy liberty. Social intervention thus becomes justified and necessary to protect the interests of all concerned.

6.47 The first National Commission, and earlier the Royal Commission, also referred to this dilemma that is created by strikes in certain 'essential' industries and services. The earlier National Commission has outlined the pros and cons of social intervention, and the forms that such intervention can take. We do not want to reiterate these here. But we have referred elsewhere (in earlier paragraphs) to the increasing need to deal with this situation and the increasing indignation and resistance that one sees in the counter-reaction of the majority that is subjected to vicarious suffering. We have also drawn attention elsewhere to the need for workers' unions to ensure that they do not lose public sympathy.

6.48 We, therefore, recommend that in the case of 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, there may be a strike ballot as in other enterprises, 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 (by arbitrators from the panel of the Labour Relations Commission (LRC), or arbitrators agreed to by both sides either at the time of previous settlements or chosen afresh by mutual consent, if there is no panel of arbitrators provided for in previous agreements). Both parties to the dispute will be bound by the award of the arbitrators. This will secure redress of grievances and at the same time protect the ordinary citizen from the consequences, sometimes fatal consequences - of the disruption of essential services.

6.49 Some argue that such an arrangement is tantamount to taking away the right to strike. We do not accept this contention, because we are providing for a strike ballot, and recognition of majority support to the proposal for strike as the equivalent of a successful strike. A strike is meant to project the demands of the workers as also their determination to resort to direct action or stoppage of work. Another element can be to materially affect the profits of the management, and to show that the management's profits depend on the workers - at least, the workers as well. In the case of essential services, it becomes impossible to non-cooperate with the management without hurting the vast majority of people as well. It is only this element therefore that is tempered through compulsory arbitration. Time limits can be prescribed to ensure that compulsory arbitration is also speedy and time-bound arbitration, and as in the case of other processes of dispute settlement, application of these awards too, may have retrospective effect to protect the interests of the workers. We should also draw attention here to the fact that we are recommending in subsequent paragraphs the withdrawal of the Essential Services Maintenance Acts.

6.50 As already indicated, we consider it desirable that the law of employment relations is so structured as to enable workers to organise themselves and to play a useful and constructive role in the growth and development of the establishment in which they work. The charge that there are inter-union and intra-union rivalries that not only weaken the trade union movement but also hurt the establishments in which the workers are employed, and so on, cannot be brushed aside, but at the same time we cannot ignore the fact that trade unions also function in a political and social milieu where such a state of affairs does exist. The Commission took note of the Bill introduced for making some amendments to the Trade Unions Act 1926, which has now been passed by both Houses of Parliament. This is a minimal bit of legislation in the context of all that is needed, and ignores the most important aspect of the whole question, namely, the recognition of the bargaining or negotiating agent. The Act, namely, Trade Unions (Amendment) Act, 2001 (Act No.31 of 2001) does make provisions that would reduce multiplicity of unions, reduce the number of 'outsiders' in the executive of a trade union, prohibit a Union or State minister from being a member of the executive of a trade union, etc; even so, it would have been desirable if the Act had also provided for a ceiling on the total number of trade unions of which an 'outsider' can be a member of executive bodies. Amendments made in Section 4 recently appear to disentitle workers in the unorganised sector from getting their trade unions registered. To overcome this difficulty, a specific provision may be made to enable workers in the unorganised sector to form trade unions, and get them registered even where an employer-employee relationship does not exist or is difficult to establish; and the proviso stipulating 10% of membership for registration of trade unions will not apply in their case. One hopes that if the new system of law were to progressively diminish the role of the state in employment relations matters, the number of outsiders will also progressively diminish.

6.51 A wider and deeper look at the Trade Unions Act 1926, than what has been attempted in Act No.31 of 2001 mentioned above, will demand a closer look at a large number of important issues. In the course of evidence, a question was raised whether the right to registration as Trade Unions should be confined to organisations of workers only or employer's organisations should also enjoy this right as provided in the existing provisions. After considering various issues involved we have come to the conclusion that the present system of eligibility for registration may continue. The question whether some sections of workers like security and watch and ward staff, confidential staff and so on be exempted will be relevant only for purposes of collective bargaining, and not for purposes of membership of trade unions, and therefore, does not call for any provision in the law. The Commission also took note of the low level of unionisation as also the fact that all the benefits which accrue to workers as a result of collective bargaining do not distinguish between those who are members of Trade Unions and those who are not. Since all workers in the establishment receive the benefits that come from settlements, we feel that it is desirable to introduce in law a provision according to which :-

"A worker who is not a member of any Trade Union will have to pay an amount equal to the subscription rate of the negotiating agent or the highest rate of subscription of a union out of the negotiating college. The amounts collected on this account may be credited to a statutory welfare fund. Wherever there is no statutory workers' welfare fund these will be credited to a welfare fund set up by the employer for the welfare of the workers of the establishment with the approval of the appropriate Government under clause (ff) of sub section (2) of section 7 of Payment of Wages Act, 1936".

6.52 Flowing from the above, the Commission considers it necessary to provide for resolution of what may be termed 'trade union disputes' which will include any dispute between:

(a) one trade union and another;

(b) one group of members and another group of members of the union;

(c) one or more members of the union and the union; and

(d) one or more workers who are not members of the union and the union.

6.53 Any such dispute, which currently goes under the appellation of inter-union or intra-union rivalries, should be capable of being resolved by reference of the dispute to the labour court having jurisdiction, either suo moto or by one or both the disputing parties or by the state in case it considers it expedient to do so. The present unsatisfactory practice of dealing with such issues, namely, filing a suit and so on, should be done away with. Similar provisions may be incorporated in law, in regard to employees organisations and if necessary, in respect of employers' organisations as well.

6.54 We also recommend that all federations of trade unions as also Central organisations of trade unions and federations should be covered within the definition of trade union and be subject to the same discipline as a primary trade union. The same dispensation will apply to employers' organisations and employees' organisations.

6.55 We do not favour craft based or caste based organisations of workers or employees or employers. The law must specifically provide that any trade union or employers' organisation or employees' organisation which restricts its membership on the basis of craft or caste will not be allowed to be registered, and an unregistered organisation shall not be entitled to any privileges, immunities, and rights.

6.56 Subject to what we have stated in the preceding paragraphs, we consider that the other provisions of the Trade Unions Act 1926 including the provision to set up a separate political fund may be appropriately included in the proposed integrated law. We would recommend that such provisions be allowed to continue.

However, care must be taken to ensure that the general funds of trade unions are not used for political purposes.

6.57 We now come to the crucial question of recognition of bargaining agent or negotiating agent.

6.58 In view of the crucial importance of this question, we would like to make a few observations and, perhaps, an appeal, before we make our recommendation.

6.59 Firstly, we strongly believe in the role that bilateral interaction, dialogue and negotiations can play in promoting harmonious industrial relations. In a sense, bilateralism is the recognition of the stake that workers and the management have in the viability and success of the undertaking. In fact their stakes are higher than those of anyone else. It is, therefore, necessary that both recognise and respect each other's stakes. We have already said elsewhere that the awareness of mutual dependence can create an active realisation of the commonalty of stakes. But the efforts to create and maintain this awareness must be sincere and earnest and not merely cynical lip service. Secondly, as far as the workers are concerned, success in bilateral negotiations will depend on the strength of the union that speaks and acts on behalf of the workers - the more fully the organisation represents the workers the more effective will it be in bargaining or negotiating on behalf of the workers. As the saying goes, unity is strength or strength lies in unity, and fragmentation will fritter away the potential strength of the workers. Our Trade Union movement today is fragmented, on many basis, - but perhaps most of all on political loyalties or considerations. Whatever the basis, the effect of fragmentation is the same, and that is to undermine the unity of the working class and weaken it. Everyone talks of the value of unity, the imperative need of unity today, but in practice, hardly anyone seems to be willing to give up separate identities. This perpetuation of fragmentation is weakening the workers. Friends of the working class, therefore, have to be careful not to recommend any process or system that aggravates or strengthens the tendency for fragmentation. Fragmentation not only weakens the working class but also lets the adversary derive advantages from the divisions on the other side. Closing of ranks, therefore, is the need of the working class, but for various reasons it seems that the incentives for consolidation are still weak. One of the ways to strengthen the incentives can lie in the field of registration and recognition, where the criteria for eligibility can be upgraded or at least proportionately upgraded. We are also aware that any such criteria should not militate against the fundamental rights of association. We, therefore, looked for methods of upgrading the criteria.

6.60 Every one admits that the existing multiplicity of unions weakens the Trade Union movement; but everyone becomes wary when specific steps are suggested to reduce multiplicity.

6.61 One novel suggestion that came from a distinguished trade union leader was that the minimum support required for registration itself should be raised to 51% of the workers and verification of support should be on the basis of check off. This would eliminate the need to prescribe a separate process for the recognition of a negotiating agent. The registered union will automatically be the sole negotiating agent. Strikes by unregistered unions should be treated as illegal and should attract the penalties of an illegal strike. It was also pointed out that there were many countries in the world including industrially advanced countries where there is no provision for registration.

6.62 A second suggestion was that either of the two kinds of bodies may be registered, - one on the basis of the present law with a prescribed minimum support of 10%, and another kind which may be put on a panel of unions that would be considered for recognition as negotiating agent. The minimum support to be empanelled may be prescribed as 25% of workers in an establishment. If this suggestion is approved there can be at most three unions, or in an unlikely case four unions, not more, that fulfil the legal criteria for recognition.

6.63 This would result in a reduction in the number of unions contending to be the negotiating agent. From among those in the panel anyone who has 66% may be recognised as the single negotiating agent. If no one has 66%, one alternative is to have a run off between the two unions at the top of the table, in which all workers in the undertaking may participate, and whichever secures 66% may be accepted as a single negotiating agent.

6.64 The third suggestion was that wherever no union secures 66%, there should be a negotiating agency or negotiating college which has proportionate representation for the unions in the panel.

6.65 The Commission feels that all these proposals need to be discussed further with the trade unions, and perhaps managements, and they should be persuaded to accept any method that reduces or eliminates multiplicity, which is another description of a state of fragmentation.

6.66 If either of these is not acceptable, we fall back on the suggestion that the negotiating agent should be selected for recognition on the basis of the check off system, with 66% entitling the union to be accepted as the single negotiating agent, and if no union has 66% support, then unions that have the support of more than 25% should be given proportionate representation on the college.

6.67 The question of the method that should be used to identify the bargaining agent has been the subject of discussion and debate for many decades now. The first National Commission on Labour examined this question and listed the arguments in favour and against the two systems that have been proposed, the check off system, and the secret ballot. Many committees like the Ramanujam Committee, the Sanat Mehta Committee, the Shanti Patel Committee and the Industrial Relations Bill of 1978 have made recommendations on this question. We have carefully studied all the arguments that have been advanced on either side (and the qualifications that have been proposed for the negotiating agent). We do not want to recount all the arguments.

6.68 To put the arguments briefly, those who support the secret ballot urge; (1) that the system of secret ballot is what is used to elect a representative to the legislature or Parliament; (2) that it is a system that assures a democratic choice; (3) that the secrecy prescribed in it provides protection to the worker, from harassment by the management or other unions; and (4) that there is no better method to verify support. Those who support the check off system argue: (i) that the check off or authorization to deduct union subscriptions from wages clearly shows the respective strength of unions; (ii) that unlike the secret ballot which only shows the preference at the moment, the check off system shows the continued support for the unions over a long enough period of time; (iii) that since the negotiating agent has to represent workers over a period of time till the next negotiations fall, due membership of the union is a far better and more reliable index than a secret ballot (which is more like a referendum); (iv) that the check off system promotes unionisation; (v) that the check off system does not involve any special expenditure for verification, whereas the administrative cost of a secret ballot, especially when it has to be held in a multi-unit undertaking goes to crores of rupees and the deployment of a formidable number of polling officers; (vi) that this raises the question of the source from which the money to defray the expenditure on the secret ballot should come, whether it should be from the management or workers or the Government. The management is reluctant, and some times, unable to find such a large sum of money; the Trade Union does not have the resources, and the Government too is unwilling to find the money from the exchequer; (vii) that the campaign for a secret ballot disturbs the atmosphere, generates intense feelings of rivalry and acrimony and sometimes violent interludes in establishments which adversely affect and disrupt the tenor and volume of work done etc.; and (viii) that it takes many days for the aftermath of the campaign to settle down.

6.69 The Commission carefully considered the advantages and disadvantages of the relevant options. In dealing with this issue, we had to keep in view our belief that collective negotiations require a strong trade union movement which, in its turn, demands an increasing degree of unionisation. Any formula which militates against increasing unionisation should, therefore, ab initio be avoided. Secret ballot as a method of identifying the negotiating agent raises the following questions: - should the electorate for choosing the negotiating agent be the entire corpus of workers in the establishment/ industry/region or should it be limited only to members of registered trade unions? If it is to be the latter, then in a situation where the total unionised strength is less than 50% of the work force, and this is the average scenario in our country, then a minority will be negotiating for the entire establishment/industry/region; on the other hand, if the entire workforce were to participate, then it is argued this may weaken the urge or inducement for non-unionised workers to become members of one or other of the trade unions.

6.70 Also, secret ballot even on a restricted basis is logistically and financially a difficult process in industries like railways, banks, post offices, coalmines and other undertakings operating in a number of states. It has been shown that the expenses run into crores of rupees. For instance, we are informed that in the case of the Food Corporation of India (F.C.I.) the identification of the negotiating agent through secret ballot amongst 50,500 employees undertaken during 2002 involved an expenditure of more than 50 lakh rupees, and the deployment of 3,000 returning officers and polling staff.

6.71 A check off system has the advantage of ascertaining the relative strengths of trade unions based on continuing loyalty reflected by the regular payment of union subscription, even if such subscriptions are deducted from the wages as permitted under the Payment of Wages Act, 1936. Also, the check off system by and large avoids the incidence of dual membership under which, for a variety of reasons, a worker may become member of more than one union. Given the low level of unionisation in India, neither the check off system nor the secret ballot confined to members of registered unions is likely to throw up a negotiating agent which commands the support of the majority of workers, excepting in industries and establishments where the degree of unionisation is very high. The argument advanced against the check off system is that it exposes the loyalty of the worker, and this may make him vulnerable to victimisation by the management or persecution by members of other unions. We feel that this argument does not have much force today, when conscientisation and legal rights have more or less done away with the fear that workers had in the early days of trade unionism in the country. Today, it is commonly accepted – even by employers that workers have the freedom to join Trade Unions of their choice. There may be exceptional cases of victimisation and vendetta. But they are exceptions, and not the vogue.

6.72 We have given consideration to all these arguments and come to the conclusion that the check off system should be the general pattern, and wherever there is legitimate apprehension that the system may not achieve the purpose of verification or may create the possibility of victimisation, it should be open to unions to petition the Labour Relations Commission to determine the method that should be adopted in a particular instance.

6.73 It is needless to stress that for the above proposals to be implemented, the check off system in an establishment employing 300 or more workers must be made compulsory for members of all registered trade unions; each of them will have to indicate to the employer the name of the trade union of which he/she is a member and the worker will also have to issue a written authorisation to the employer to deduct his/her subscription from his/her wages and pass it on to his/her trade union.

6.74 Though the check off system will be preferred in the case of establishments employing less than 300 persons too, the mode of identifying the negotiating agent in these establishments may be determined by the LRCs. Any union in such smaller enterprises may approach the LRCs for conducting a secret ballot instead of employing the check off system, and the LRC will decide the issue after consulting the other Trade Unions operating in the establishment. We are recommending a slightly different dispensation for units employing less than 300 as we feel that it is in such units that the possibility of victimisation has to be provided against.

6.75 The Commission also considered the question of the powers of the single negotiating agent or the negotiating college at the establishment level and at the industry or region levels. It may so happen that at the level of individual establishments, there may be trade unions which have much greater following than is the case at the industry or regional negotiating level where a single federation/centre different from the establishment level union or a composite negotiating college may hold sway. The Commission has taken note of the practice of industry level negotiations on interest issues, which obtain in several industries and would like the practice to continue. However, it would also like that as far as possible, negotiations and decision making on wages, allowances, general conditions including total number of hours of work, leave, holidays, social security, safety and health, productivity negotiations, manpower adjustments, change in shifts etc. should be concluded at the establishment level so as to maximize the efficient functioning of the individual establishments based on the situations that obtain in such establishments.

6.76 We would also recommend that recognition once granted, should be valid for a period of four years, to be co-terminus with the period of settlement. No claim by any other trade union/federation/centre for recognition should be entertained till at least 4 years have elapsed from the date of earlier recognition. The individual workers' authorisation for check off should also be co-terminus with the tenure of recognition of the negotiating agent or college.

6.77 All establishments employing 20 or more workers should have standing orders or regulations which shall cover all areas of working conditions, employment, social security, misconduct, procedure for disciplinary action, suspension, payment of suspension allowance, facilities and protection to be provided to workers against sexual harassment, age of retirement and so on. The Commission agrees with the opinion of the Study Group that there is no need to delimit the issues on which standing orders can or need be framed. However, the Commission does not find it possible to agree with the recommendation of the Study Group that the need for certification of the standing orders by a prescribed authority may be dispensed with. This is because the Commission has brought down the threshold for framing of standing orders from 50 to 20 workers and this would mean that the number of establishments which need to have standing orders will increase. As long as the two parties agree, all manner of things including multi-skilling, production, job enrichment, productivity, and so on can also be added to what we have listed above. These standing orders will be prepared by the employer(s) in consultation with the recognised unions/federations/centres depending upon the coverage, and where there is any disagreement between the parties, the disputed matter will be determined by the certifying authority having jurisdiction, to which either of the parties may apply. The decision of the certifying authority would however be challengeable before labour courts by an appeal by either party. Any amendment to the Standing Orders can be asked for by either party and agreed to by both parties or referred to the certifying authority or the Labour Court for determination. However, no demand for amendment can be made until at least a year has elapsed. The appropriate Government may prescribe a separate Model Standing Order for units employing less than 50 workers. We append a draft of Model Standing Orders for such small establishments. The employer will have to append a copy of Model Standing Orders or the Standing Orders, mutually agreed upon with the workers, to the appointment letter of every employee.

6.78 The Commission has also taken note of the evidence tendered at various venues to the effect that the present Model Standing Orders only speak of punishment of four days' suspension and removal/ dismissal, and there are no intermediate grades of penalties. The Commission does not consider this to be a satisfactory arrangement. The appropriate Government may also frame model standing orders, including the classification of acts of misconduct as major and minor, and providing for graded punishments depending on the nature and gravity of the misconduct, and publish them in the official gazette. Where an establishment has no standing orders, or where draft standing orders are still to be finalised, the model standing orders shall apply.

6.79 Any worker who, pending completion of domestic enquiry, is placed under suspension, by orders in writing giving reasons for his/her suspension and the charges framed against him, should be entitled to 50% of his wages as subsistence allowance, and if the period of suspension exceeds 90 days for no fault of the worker, then for the remaining period of suspension, he/she shall be entitled to subsistence allowance calculated at 75% of the wages, so however the total period of suspension shall not, in any case, exceed one year. If as a result of continued absence of the worker at the domestic enquiry or if the enquiry and disciplinary action cannot be completed in time for reasons attributable wholly to the worker's default or intransigence, the employer will be free to conduct the enquiry ex-parte and complete the disciplinary proceedings based on such ex-parte enquiry and further, there would be no increase in subsistence allowance beyond 50% for the period exceeding 90 days in such cases.

6.80 Every establishment to which the general law of employment relations applies i.e. those with 20 or more workers, shall establish a Grievance Redressal Committee consisting of equal number of workers' and employers' representatives, which shall not be larger than ten members or smaller than two members depending on the employment size of the establishment, as may be prescribed. One member of the committee may be designated as Chairman and another as Vice Chairman and a system may be established to see that one of the two is from the management, and the other from among employees' representatives. The Grievance Redressal Committee shall be the body to which all grievances of a worker in respect of his employment, including his non-employment will be referred for decision within a given timeframe. Where the worker is not satisfied with the decision of the committee, he shall be free to seek arbitration of the dispute by an arbitrator, to be selected from a panel of arbitrators to be maintained in the manner prescribed, or seek adjudication of the dispute by the labour court. The decision of the labour court or arbitrator shall be final.

6.81 One of the contentious issues in the existing Industrial Disputes Act, 1947 relates to Section 9A, more particularly items 10 and 11 of the Fourth Schedule which read as follows: -

"10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control."

6.82 It is being strongly urged on behalf of employers, and not without justification, that this effectively prevents the employer from adjusting the strength of his labour force from time to time to meet exigencies caused by genuine economic reasons and in the best interests of the undertaking. It is no doubt true that consequent on the current situation of globalisation and increasing competitiveness and upgradation of technology, all economic activities become subject to market pressures, compelling employers to do different levels of adjustments, including the size of the labour force, if he wishes to continue in business. We are informed that some of the court decisions include even VRS (Voluntary Retirement Schemes) as actions that would attract the provisions of section 9A. We have carefully considered this issue. We have earlier recommended that the definition of the term 'retrenchment' should cover only reduction of surplus labour or redundancy. We also notice that while the first 9 entries in the Fourth Schedule relate to conditions of service, items 10 and 11, in a manner, deal with the very employment of persons and in the present situation, the size of employment is a matter which can be best decided by the employer himself or herself keeping in view various attendant circumstances. If an entrepreneur starting an activity afresh has the right to decide on the number of persons he/she will employ in various sectors of his activity, there is no reason why this option cannot be exercised by an existing employer in respect of his continuing activity. A prudent employer will, no doubt, not act capriciously, and in the pattern of industrial relations we envisage, he will be ill advised not to consult the negotiating agent on such matters even as he might consult financial institutions, technical experts and others; but, yet, the decision will be his. No doubt, the resulting action may lead to a dispute needing arbitration or adjudication but the main point is that there need be no statutory obligation for the employer to give prior notice, in regard to item 11 of the Fourth Schedule for the purpose of increase in the workforce, as is the position now under Section 9A. We would recommend accordingly. Further the Commission is of the view that notice of change, issued by an employer as per provisions of Section 9A, should not operate as a stay under Section 33 though such a decision of the management will be justiciable under Section 33 A. Section 33 may be amended accordingly.

6.83 Arising out of the above is the need for the employer to foresee and arrange for appropriate training to the workers so that they are equipped and ready for different kinds of jobs that restructuring may entail. In fact, there is continuous need for this kind of training, and only by equipping themselves with the new skills that technological changes demand can workers adapt themselves successfully, if for nothing else, at least for retaining their jobs. We are told that there is sometimes reluctance among workers to undergo such training. This is unfortunate, and we expect the trade unions to use their influence and good offices to encourage the workers to utilise such opportunities, which ultimately are not merely in the interests of the undertaking but of themselves. We would suggest that refusal to go for such training, which must be at the employers' cost and in the employer's time, may be included as an act of misconduct under the standing orders if such refusal is without valid reasons.

6.84 Chapter V B of the Industrial Disputes Act 1947 (ID Act) has of late attracted heavy criticism. It has been argued by the employers that this provision in the law which was enacted during the Emergency must go, as most other manifestations of the Emergency have gone. It has also been contended that the law originally applied to establishments with 300 and more workers which later was brought down to 100 or more workers through an amendment in 1982. The announcement of the Union Finance Minister in his Budget Speech of 2001 that the ID Act will be amended to see that only establishments with 1000 or more workers would be covered by chapter V B, has given further fillip to the demand to scrap V B.

6.85 We are well aware that this is a question that has aroused intense feelings and apprehensions, and touched off a running public debate. We will therefore approach this question from the point of view of society as a whole, not merely of one section or the other, but of the interests of the totality of society, of which sectoral interests are integral parts. If one goes by the declared or ostensible interests, managements feel that they cannot achieve or maintain competitiveness if they are to treat the number of workers employed in their undertakings as fixed. They argue that there are two reasons that compel them to look upon the strength of the workforce in their undertakings as variable: one, the consequences of the induction of new technology that often reduces the number of workers necessary for processes; and two, the economic costs that are at least partial determinants of global competitiveness. They also argue that upgradation of technology is imperative for competitiveness in quality and cost. Trade Unions feel that the total elimination of the existing law that requires the Government’s permission for retrenchment or downsizing will lead to sudden and indiscriminate laying off or retrenchment of workers, resulting in sudden loss of jobs and incomes, uncertainty and possible starvation for themselves and their families. No society can be impervious to the consequences (moral, economic and social consequences) of pushing people into poverty and starvation. Both these are important considerations, and it is their importance that has confronted us with a dilemma. The answer lies in finding a fine balance, because industrial efficiency is essential for social progress and the protection and generation of employment also imperative for social justice and social progress. Industry must be helped to protect its viability and competitive efficiency, and workers must be helped to protect employment and incomes. The best course would have been to seek solutions through bilateral consultations and agreement. (Those who want the state to step aside or fade out of the picture should not be reluctant to accept bilateralism). But leaving matters of this nature solely to bilateralism at this juncture may lead to wide-spread industrial unrest, strikes and lay offs and closures of industrial establishments. This will neither help industry to acquire competitiveness nor help workers to protect their incomes, nor help the society as a whole to move towards economic growth. The situation may have been materially different and easier, if we had a viable and adequate system of social security including unemployment allowances and transitional facilities. But we do not have these, and we cannot set them up in a day.

6.86 The alternative then is to pay adequate compensation, offer outsourced jobs to retrenched workers or their cooperatives, if any enterprise decides to close down give workers or Trade Unions a chance to take up the management of the enterprise before the decision to close is given effect to: underwrite facilities for medical treatment, education of children, etc. 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.

6.87 One of the members of the Commission strongly argued that Chapter V-B should apply to all industrial undertakings employing 20 or more workers; that consequently the need to secure prior permission should be deemed necessary for all establishments employing 20 or more workers. The Commission gave due consideration to this argument. It shares the anxiety to protect workers from the effects of arbitrary closures. But the Commission felt that the effect of the new circumstances on industry cannot be ignored or wished away. 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, one cannot compel non-viable undertakings to continue to bear the financial burden that has to be borne to keep the concern going. There is no justice or benefit in compelling a loss-making undertaking to bear burdens that it cannot carry, to sink further. They should, therefore, have the option to close down. It would be good if there can be a prior scrutiny of the grounds on which the closure is sought, and the reasons for the loss of viability. It is precisely for this reason that the provision for prior permission was incorporated in the Law. But experience has shown that governments do not want to give quick decisions, even though they know that delay in taking decisions only adds to the burdens that such enterprises are forced to carry. Applications to permit closure are kept pending for months and years. Industries are kept waiting. Losses and liabilities are allowed to mount. Stalemates continue. Sometimes managements try to create alibis by manoeuvering disruption in the supply of electricity, or seek some such subterfuges to close the enterprise and disappear from the scene without paying compensation, dues, etc. to workers. Such situations lead not only to de facto closure, but also the loss of compensation and dues. In these circumstances the Commission came to the conclusion that the best, and more honest and equitable course will be to allow closure, provide for adequate compensation to workers, and in the event of an appeal, leave it to the Labour Relations Commission to find ways of redressal :- through arbitration or adjudication. Such an enquiry can also assess whether any exercise in retrenchment during the immediate past, say 18 months or two years was undertaken by the enterprise to scale down to the threshold limit of 300 to exercise the option for closure without obtaining permission.

6.88 The Commission has carefully considered the views of the Study Group and all the evidence and other inputs received in this regard. It agrees with the recommendation of the Study Group that prior permission is not necessary in respect of lay off and retrenchment in an establishment of any employment size. Workers will, however, be entitled to two month's notice or notice pay in lieu of notice, in case of retrenchment. We also feel that the rate of retrenchment compensation should be higher for retrenchment in a running organisation than in an organisation which is being closed. Again, we are of the view that the scale of compensation may vary for sick units and profit making units even in cases of retrenchment. It would however, recommend that in the case of establishments employing 300 or more workers where lay off exceeds a period of one month, such establishments should be required to obtain post facto approval of the appropriate Government. Closure of establishments, either because of sickness or for other reasons like pollution and so on, is quite wide-spread, and the present era of economic reforms, globalisation, competitiveness and so on has also aggravated the situation. The Finance Minister in his 2001 Budget speech had indicated the cut off limit in chapter V B at 1000 workers. It has been reported that the Union Cabinet has also accorded its approval to this proposition in principle. The Commission recognises that such a limit would leave out most employees; and feels that this limit is too high, and would, therefore, recommend restoration of the original limit of 300. The Commission is also inclined to agree with the recommendation of the Study Group that provisions in regard to chapter V B must be made applicable not only to factories, mines and plantations, as is now the case, but to all establishments. We, therefore, recommend that the provisions of Chapter VB pertaining to permission for closure should be made applicable to all establishments to protect the interests of workers in establishments which are not covered at present by this provision if they are employing 300 or more workers. It is, however, not able to agree with the recommendation of the Study Group that the provision of Chapter V A should apply to all establishments. It would rather recommend that this chapter applies to all establishments with 20 or more workers as it is inclined to recommend a separate set of legal provisions covering all aspects of lay off, retrenchment and closure for all kinds of establishments with less than 20 workers. Necessary changes in chapter VA in regard to retrenchment and closure will have to be made accordingly. Every employer will have to ensure, before a worker is retrenched or the establishment is closed, irrespective of the employment size of the establishment, that all dues to the workers, be it arrears of wages earned, compensation amount to be paid for retrenchment or closure as indicated in the next paragraph, or any other amount due to the worker, are first settled as a precondition to retrenchment or closure. These provisions will not bar industrial disputes being raised against a lay off or retrenchment or closure. Having regard to the national debate on this issue and the principles outlined above, the Commission would like to recommend the compensation per completed year of service at the rate of 30 days on account of closure in case of sick industry which has continuously run 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. It would also recommend higher retrenchment compensation at the rate of 60 days of wages and similarly a higher rate of compensation for closure at the rate of 45 days wages for every completed year of service for profit making organisations. For establishments employing less than 100 workers half of the compensation mentioned above in terms of number of days wages may be prescribed. However, these establishments will also be required to give similar notice as prescribed for bigger establishments before retrenching the workers or closing down. We are suggesting a higher rate of compensation to be payable by industries which are running in profit or are not so sick as to necessitate their being wound up, since such industries have the capacity to pay reasonably good compensation, as can be seen from VRS packages.

6.89 We understand that the Employees Provident Fund Organisation is proposing to bring about a scheme by which employees would be provided some benefit if they are rendered unemployed. The Scheme is called " Employees Multi-benefit Insurance Scheme". It would be applicable to all provident fund members. Its aim is to provide benefit to employees during the period of non-voluntary un-employment which may be on account of permanent closure of the establishment and retrenchment of the worker. We feel that such a scheme would provide some sort of a safety net to the workers in times of crisis. The Government may consider the matter favourably.

6.90 It can thus be seen that we are recommending the restoration of the original threshold limit for prior permission: increased rates of compensation; consultation with the representatives of the workers without giving workers a right to veto; judicial review by the LRC in case of dispute; and (legal provisions or review by the appropriate Governments) that make it obligatory for employers to purchase insurance cover for employees.

6.91 Arising out of the above, we recommend that while the lay off compensation could be 50% of the wages as at present, in the case of retrenchment, Chapter VA of the law may be amended to provide for sixty days notice for both retrenchment and closure or pay in lieu thereof. The provision for permission to close down an establishment employing 300 or more workmen should be made a part of Chapter VA, and Chapter VB should be repealed. In case of closure of such establishment which is employing 300 or more workers, the employer will make an application for permission to the appropriate Government 90 days before the intended closure and also serve a copy of the same on the recognised negotiating agent. If permission is not granted by the appropriate Government within 60 days of receipt of application, the permission will be deemed to have been granted.

6.92 We have, at several places so far, referred to arbitration or adjudication for determining disputes between management and labour. We feel arbitration is the better of the two, for the reason that the procedures will be simple, the proceedings will not be tardy and the decision will be rendered by a person in whom both parties have confidence. We would like the system of arbitration to spread, and over time, become the accepted mode of determining disputes which are not settled by the parties themselves. In fact it would be desirable if in every settlement entered into between the parties, (and we would urge that the duration of each settlement be four years), there is a clause providing for arbitration by a named arbitrator or panel of arbitrators of all disputes arising out of interpretation and implementation of the settlement and any other disputes. The law may even lay down that such a provision be deemed to be part of every settlement. By having a named person as an arbitrator during the currency of a settlement, the arbitrator is able to familiarise himself with all aspects of the activity in the establishment and to get to know the parties better; also, the fact that the person will be the arbitrator, for better or for worse, during the entire period of the settlement will, hopefully, make him impartial and also act in the best interests of the establishment.

6.93 Arising out of the above, we would like to suggest that a panel of arbitrators is maintained and updated by the LRC concerned, which would contain names of all those who are willing and have had experience and familiarity with labour management relations; the panel may consist of labour lawyers, trade union functionaries, employers, managers, officials of the labour department, both serving and retired, academics, retired judicial officers and so on. Some ground rules could also be framed in consultation with representatives of employers and workers, and these could include procedures for selecting an agreed person from the panel, the cost of arbitration and so on.

6.94 We recognise that, in the area of determination of industrial disputes in our country, adjudication is still the prevailing mode. We do hope that, over time, collective bargaining and inbuilt arbitration will result in the bulk of the disputes between parties being settled expeditiously. However, there will be at least some instances where adjudication is preferred, where bipartite negotiations do not bear fruit. We envisage a system of labour courts, lok adalats and Labour Relations Commissions as the integrated adjudicatory system in labour matters. The Labour Courts and Industrial Tribunals will stand merged. This system will not only deal with matters arising out of employment relations but also trade disputes in matters such as wages, social security, safety and health, welfare and working conditions and so on. While labour courts will consist of a single presiding officer, the Labour Relations Commission at the State, Central and National level will be preferably bodies that have as presiding officers, a sitting or retired judge of the High Court or a person who is eligible for appointment as a judge of the High Court. Both at the state and central level, the Labour Relations Commission will consist of representatives of employers, workers, economists, leading figures from the trade union movement, labour or public administration, management, etc. as members, besides members from the All India Labour Judicial Service. The composition of the National Labour Relations Commission may also be on similar lines with the presiding officer being a sitting or retired judge of the Supreme Court or a person who is eligible for appointment of a judge of the Supreme Court. Until such a service is constituted, the qualification for appointment to labour courts and Labour Relations Commissions will have to be prescribed, and we are inclined to recommend the adoption of what the First National Commission, the Industrial Relations Bill 1978 and the Indian Labour Code (Draft) 1994 have suggested in respect of the qualifications and powers/functions of labour courts and Labour Relations Commissions. However, we are of the opinion that the machinery for conciliation which the First Commission wanted to be included as a part of the LRC, needs to be kept separate and vested in the executive, namely, the appropriate Government concerned. We are also of the opinion that inspectors should not be appointed as Conciliation Officers as that may undermine their efficiency as Conciliation Officers. The Conciliation Officer should, however, be clothed with sufficient authority to enforce attendance at the proceedings of conciliation. The conciliation officers will carry out such directions as may be given by the Labour Relation Commissions in addition to performing their duties as prescribed under the law. We particularly commend some of the features contained in the Indian Labour Code (Draft) 1994 namely, setting up Labour Relations Commission at the State, Central and National level, the National level Commission hearing appeals against the decisions of the State and Central Commissions, which in their turn would hear appeals against orders of labour courts; clothing the National Labour Relations Commission with the power of the Supreme Court of India as envisaged in Article 32(3) of the Constitution of India and so on.

6.95 Instead of waiting for the publication of the awards in the official gazette, awards of the competent court including the labour courts and the Labour Relations Commissions should be deemed to have come into effect unless an appeal is preferred within the prescribed period. The Labour Courts shall be empowered to enforce their own awards as well as the awards of Labour Relations Commissions. They should also be empowered to grant interim relief in cases of extreme hardship. During the course of evidence, the Commission had come across the widely held view that Government often delays the publication of the awards for long periods. The dispensation that we have suggested would obviate such shortcomings and ensure full autonomy to the judicial process. We also consider it desirable to make officials of labour departments at the Centre and the State who are of and above the rank of Deputy Labour Commissioners/Regional Labour Commissioners with ten years experience in the labour department and a degree in law, eligible for being appointed as presiding officers of labour courts. The Central and State Labour Commissions should be declared as set up under article 323-B of the Constitution. This will do away with recourse to High Courts as is currently the practice. Empowering the National Commission with the powers of the Supreme Court of India will also similarly discourage parties from approaching the Supreme Court either under Article 32 or Article 136. Such a self-contained labour adjudication system will ensure that the adjudicatory process including appellate processes will be speeded up and will also have a greater degree of consistency.

6.96 While on the subject of resolution of disputes between employers and workers, we recommend that all matters pertaining to individual workers, be it termination of employment or transfer or any other mater be determined by recourse to the grievance redressal committee, concilliation and arbitration/adjudication by the labour court. These disputes need not be elevated to the rank of 'industrial disputes' which would then take the form of collective disputes. In this view, section 2A of the Industrial Disputes Act 1947 may be amended to enable such disputes to be treated as individual disputes and defined accordingly in the law. Individual disputes may be taken up by the affected workers themselves or by TUs and the collective disputes by the negotiating agent or an authorised representative of the negotiating college for resolution. Both Individual and Collective disputes not settled bilaterally may be taken up in conciliation, arbitration or adjudication. In our scheme of things a union which does not have at least 10% membership amongst the employees in an establishment should have no locus standi in that establishment. A union which has at least 10% members amongst the employees in a unit should only have the right to represent individual workers in various fora such as conciliation, arbitration or adjudication and a provision in this regard may be made in Section 36 of the Industrial Disputes Act. The appropriate Government may also approach the Labour Relations Commission on any individual or collective dispute in any establishment. Since our emphasis throughout is on expeditious disposal of cases, 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. In this context we considered whether section 11A of the ID Act 1947 should be retained and came to the conclusion that it should be. However, the law may be amended to the effect that where a worker has been dismissed or removed from service after a proper and fair enquiry on charges of violence, sabotage, theft and/or assault, and if the labour court comes to the conclusion that the grave charges have been proved, then the court will not have the power to order reinstatement of the delinquent worker.

6.97 As an alternate and perhaps speedier system for resolution of industrial disputes, the State Government of Punjab has been experimenting with the system of Labour Lok Adalats, and it is claimed to have been a great success. During the Commission's visit to Chandigarh, the representatives of the state Government of Punjab, namely, the Labour Secretary and the Presiding Officer of the Industrial Tribunal spoke commending the role that Lok Adalats are playing. We were told that more than 11,400 pending labour cases, which constituted two third of the total pending cases had been disposed off in three rounds of Lok Adalats, and that this had resulted in the payment of Rs. 8.55 crores to the workers. We feel that this is an experiment worth pursuing by other State Governments and the Central Government. It is of course necessary to ensure that these Adalats are not used to 'browbeat' workers into accepting payments which may be only a fraction of what they may be entitled to under the law. Perhaps a set of do's and dont's can be thought of which may be binding on the Labour Lok Adalat. Can such Adalats be Tripartite bodies or is it better that they are manned by functionaries of the labour judiciary? May be, a panel of advocates or persons well versed in labour laws and labour administration may be maintained, and one or two such persons may be deputed to hearings of Labour Lok Adalats to ensure 'fair-play'. We are not in a position to recommend the actual procedures that would be most suitable. This has to be found out from the experience that a few more states may acquire. However, the system of Lok Adalats on labour matters appears promising, and should be pursued.

6.98 We also recommend that a system of legal aid to workers and trade unions from public funds be worked out, to ensure that workers and their organisations are not unduly handicapped as a result of their inability to hire legal counsels on their behalf. In this context, we also recommend that trade unions must be helped financially by public funds in meeting the cost of arbitration.

6.99 While on the subject of disputes and adjudication, we also recommend that the jurisdiction of civil courts be banned in respect of all matters for which provision is contained in the relevant labour laws. The existing powers regarding consent of the other party for the appearance of legal practitioner should remain. In the case of conciliation and Lok Adalats, appearance of the legal practitioners should not be permitted. We would also recommend levy of a token court fee in respect of all matters coming up before labour courts and labour relations commissions. The State Governments may also decide the differential rates for court fees for the unorganised sector. The procedure followed in the labour courts, arbitration, etc. need not mandatorily be the procedure followed by the civil courts.

6.100 It has been brought to the notice of the Commission that there is a law in England, popularly called the 'Whistle blowers' law' under which workers are protected from being dismissed or penalised for disclosing information, which they reasonably believe exposes financial malpractices, miscarriage of justice, dangers to safety and health, risks to environment and so on. This law, it is learnt, had the support of the government, opposition parties, the Confederation of British Industry and the Trade Union Congress. The Commission would suggest that in India too, Government may examine the feasibility of enacting a law of that kind.

6.101 While discussing the need for retaining a separate category of establishments to be declared as 'public utility services', or essential services we had indicated that there would have to be a strike ballot before a call for strike is given in all cases or industries. Elaborating this we recommend that a strike could be called only by the recognised negotiating agent and that too only after it had conducted a strike ballot amongst all the workers, of whom at least 51% support the move to strike. Correspondingly, 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. The appropriate government will have the authority to prohibit a strike or lock-out by a general or special order and refer for adjudication the issue leading to the strike/lock-out. The general provisions like giving of notice of not less than 14 days, not declaring a strike or lock-out over a dispute which is in conciliation or adjudication and so on will be incorporated in the law. In this context we also recommend that an illegal strike or illegal lock-out should attract similar penalties. A worker who goes on an illegal strike should loose three days wages for every day of illegal strike, and the management must pay the worker wages equivalent to three days wages per day of the duration of an illegal lock-out. The union which leads an illegal strike must be derecognised and debarred from applying for registration or recognition for a period of two or three years.

6.102 Another area which the existing laws do not cover but which in the opinion of the Commission must be statutorily provided for relates to workers participation in management. The provision in section 3 of the Industrial Disputes Act 1947 is a pale version of what is contemplated in Article 43 A of the Constitution of India. We feel that the time has come now to legislatively provide for a scheme of workers participation in management. An earlier Bill introduced a decade back on this suffered from certain inadequacies and generated a lot of debate. We would recommend that a Bill be introduced early, incorporating the provisions of the earlier Bill with such changes as proposed during the debate on the Bill and the ideas unanimously accepted by the Tripartite Committee on Workers Participation in Management & Equity that submitted its report in 1979. It may be initially applicable to all establishments employing 300 or more persons. For the smaller establishments, a non-statutory scheme may be provided. Since we have recommended that supervisors as a category be clubbed with administrative and managerial personnel, the demarcation is clear between workers and management. Furthermore, the system of recognition for the bargaining agent, as also the information available under the check off system will furnish enough data to select representatives of workers at each tier of participation.

6.103 There are a large number of small issues for which provision can be found in the existing laws. The Commission is broadly in agreement with such provisions and to the extent they are not inconsistent with what we have recommended above, all of them may be suitably incorporated in the consolidated law.

6.104 We hope we have covered, in the above paragraphs, all the important issues, and we hope that if all these recommendations are accepted and acted upon, we will embark on an era of sound and efficient labour management cooperation, giving workers a place of dignity and responsibility in the establishment and at the same time providing the management with the necessary freedom to function. We would also urge that in making the above recommendations, we have striven to maintain a proper balance between the interests of workers and those of the managements, all within the paramount consideration of protecting and promoting the health and the growth of the establishments concerned. We would therefore urge that these recommendations are taken up as a whole, and not in a piece meal manner that may destroy the context of inter-relation, and the holistic approach.

6.105 We would also refer to the view that in the enforcement of labour laws, there is discrimination between the private sector and public sector, the latter allegedly being handled leniently. The provision in the Criminal Procedure Code that prior permission or sanction is needed before a prosecution can be launched against the senior functionaries of public sector establishments has, it is urged, contributed to this differential treatment. The Commission feels that no such discrimination should be permitted either by law or in practice, as the purpose of labour laws will be defeated by such discrimination.

6.106 In para 9 above, we indicated our intention to have a separate dispensation for establishments having an employment size of 19 or less workers. In coming to the conclusion that such 'small' establishments need a different and self-contained set of provisions, we were persuaded by the fact that in such establishments, the managerial capabilities are limited, and more often than not, the entrepreneur is himself discharging myriad functions of finance, production, sales, personnel management and so on. Moreover, we learnt that the evil effects of what has come to be known as 'Inspector Raj' are more pronounced in the case of such small establishments. We have therefore decided that all such establishments, be they manufacturing units or service providing units or hospitals or educational institutions or charitable institutions or shops and establishments or cooperatives or consultancy out-fits or lawyers' firms and the like will be governed by simple legal provisions covering all aspects of employment. Where an establishment in its entirety is made up of branches, such as a local body having dispensaries or schools in a large number of locations within its jurisdiction, that will be governed by this dispensation only when the combined strength of all branches is 19 or below. The provisions in respect of such establishments can be in the form of a separate law named Small Enterprises (Employment Relations) Act or be included in the general law as a separate chapter. A draft of such a law has been attempted and is at Appendix-II to this chapter. As may be seen from the same, the law seeks to cover all aspects of employment including wages, social security, safety and health and so on. A system of self-certification has been introduced to offset the criticisms of 'Inspector Raj'. An obligatory provision for social security, with contributions from the employer and from the worker as also a compulsory annual bonus at $8^1/_3\%$ of the wages (a month's wage) are also features of the law that we have proposed. These provisions will ensure that the interests of the workers are fully protected, even while lessening burdens on the management and providing them with vigilance in exercising managerial functions.

Contract Labour

6.107 We are devoting a separate section in our chapter to the question of Contract Labour, both because of its size and the topical nature of the problem. The Study Group was aware of the recent five - judge judgment of the Supreme Court in the case of the Steel Authority of India (delivered on 30.08.2001) overruling the three-judge judgment in the Air India Statutory Corporations Case. We do not want to enter into a critique either of the Air India Judgment or the SAIL Judgment. We are also not making any comments on the decision in the SAIL judgment in respect of 'appropriate government' or the quashing of the December 1976 notification abolishing contract labour system in respect of sweeping, cleaning etc. jobs in all establishments for which the Central Government is the appropriate Government.

6.108 We note that, in essence, the SAIL judgment has overruled the Air India judgment, thus leading to the position that on the abolition of contract labour by the appropriate Government under section 10 of the Contract Labour (Regulation and Abolition) Act 1970, the principal employer is under no obligation to absorb the contract labour concerned as his regular employees, though the judgment enjoins the principal employer to give preference to the erstwhile contract labour while recruiting fresh workers for the jobs in respect of which contract labour system stood abolished.

6.109 The Commission has carefully considered the evidence tendered before it at various centres by both employers and employees and the specific recommendations of the Study Group that the decision to abolish contract labour should not be an executive one based on the recommendations of Contract Labour Advisory Board concerned but must be a judicial one. It is unable to agree with the recommendation of the Study Group that the judicial body vested with the responsibility for making recommendation on abolition should also be empowered to order absorption by the principal employer of such numbers of contract labour as considered just and reasonable. This would amount to a virtual reversal of the Supreme Court judgment in the SAIL case and restoring the judgment of the Air India Statutory Corporation case on the issue of absorption. The Commission is conscious of the fact that in the fast changing economic scenario and changes in technology and management, which are entailed in meeting current challenges, there cannot be a fixed number of posts in any organization for all time to come. Organizations must have the flexibility to adjust the number of their workforce based on economic efficiency. The industry represen-tatives have at various centres deposed before us that their energies are frittered away in taking care of the functions which are not core to their business and therefore, it makes them less competitive in the global market. It is essential to focus on core competitencies if an enterprise wants to remain competitive. We understand that the Maharashtra Government have moved to have such a distinction between the core and non-core functions. We would, therefore, recommend that contract labour shall not be engaged for core production/services activities. However, for sporadic seasonal demand, the employer may engage temporary labour for core production/ service activity. We are aware that off-loading perennial non-core services like canteen, watch & ward, cleaning, etc. to other employing agencies has to take care of three aspects – (1) there have to be provisions that ensure that perennial core services are not transferred to other agencies or establishments; (2) where such services are being performed by employees on the pay rolls of the enterprises, no transfer to other agencies should be done without consulting, bargaining (negotiating) agents; and (3) where the transfer of such services do not involve any employee who is currently in service, the management will be free to entrust the service to outside agencies. The contract labour will, however, be remunerated at the rate of a regular worker engaged in the same organisation doing work of a comparable nature or if such worker does not exist in the organisation, at the lowest salary of a worker in a comparable grade, i.e. unskilled, semi-skilled or skilled. The Commission would further recommend that to ensure that this recommendation is not misused in any manner by the employer, the onus and responsibility of proof to show and ensure that the employer is paying such contract worker the wages of a regular employee doing comparable work or in its absence that of the lowest skilled regular employee, would be on the principal employer. The principal employer will also ensure that the prescribed social security and other benefits are extended to the contract worker. There is a reason that compels us to make this recommendation. At many of the centres we visited, we were told during evidence, that there were cases of contractors making deductions from the wages of contract workers as their contribution towards social security, and then absconding without depositing either the contribution realised from the workers or their own contributions into the accounts of the concerned social security system. It is obvious that contractors should not be allowed to perpetrate this double fraud at the cost of the poor contract workers. It is to guard against such eventualities that we are recommending, that the principal employers should be held responsible for the benefits payable to contract labour, as the principal employers are the ultimate beneficiaries from the work given on contract.

6.110 While on the subject of contract labour the Commission would recommend that no worker should be kept continuously as a casual or temporary worker against a permanent job for more than 2 years unless he is employed on a contract for a specified period.

Law on Wages

6.111 Next only to employment, wages and remuneration are the most important of the issues one has to contend with when dealing with labour management relations. The reasons are obvious. While generally employers view wages and remuneration as an item of cost and hence to be kept in check even if not reduced, these are the wherewithal for the worker to maintain himself/herself and his/her family at least at a level of living that is consistent with human needs and human dignity.

Directive Principles of State Policy in the Constitution have specifically referred to 'living wages' in Article 43. Article 43 is reproduced below: -

"The State shall endeavour to secure, by 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 and, in particular, the State shall endeavour to promote cottage industry on an individual or cooperative basis in rural areas".

6.112 The ILO has also declared, 'the goal is not just creation of jobs but creation of jobs of acceptable quality', and in the Indian context, the level of wages is an index of the acceptability or otherwise of the quality of the job. That is why the Commission is anxious that the minimum wage payable to anyone in employment, in whatever occupation, should be such as would satisfy the needs of the worker and his family (consisting in all of 3 consumption units) arrived at on the Need Based formula of the 15th Indian Labour Conference supplemented by the recommendations made in the Judgment of the Supreme Court in the Raptakos Brett & Co case. We strongly believe that a reasonable wage, keeping in view the needs of the worker and his/her family, will repay itself in many ways to the employer by way of increased productivity, commitment, better labour management relations and all in all, a satisfied and cooperative work force. Also, it is only that kind of wage that will set the wheels of trade and industry moving, by putting in the hands of the worker the money that will enable him to purchase his/her bare needs and a little more. Needless to add, what we state here is applicable to all situations, irrespective of the size of the establishment or the nature of its activity. However, before fixing the minimum wage the appropriate Government should keep in mind the capacity of the industry to pay as well as the basic needs of the workers. The attempt to find such a balance has to be based on a national policy on wages, income and prices about which we are making more observations in later paragraphs.

6.113 The Commission looked at the problem of bonus and the endless disputes regarding calculation of bonus, more particularly the prior charges. The Commission is of the view that in Indian social conditions, there is a necessity to enable the worker to have some ready cash to enable him to celebrate the festival season, with some satisfaction and pride; an ordinary worker will not be able to put by small amounts periodically from his wages for this purpose. In view of this, the Commission recommends that every employer must pay each worker his one month's wage, as bonus before an appropriate festival, be it Diwali or Puja or Onam or Ramzan or Christmas. Any demand for bonus in excess of this upto a maximum of 20% of the wages will be subject to negotiation, as at present. We also recommend that the present system of two wage ceilings for reckoning entitlement and for calculation of bonus should be suitably enhanced to Rs. 7,500/- and Rs. 3,500/- for entitlement and calculation respectively.

6.114 The Commission also considers it necessary that a competent expert body be appointed to examine the question of a national minimum wage that the Central Government may notify. This minimum must be revised from time to time. It should, in addition, have a component of dearness allowance to be declared six monthly linked to the consumer price index and the minimum wage may be revised once in five years. This will be a wage below which no one who is employed anywhere, in whatever occupation, can be paid. Each State/ Union Territory should have the authority to fix minimum rates of wages, which shall not be, in any event, less than the national minimum wage when announced; where a state is large, it may, if it chooses, fix different rates of minimum wages for different regions in the state but no such wage can be less than the national minimum wage. The Commission also recommends the abolition of the present system of notifying scheduled employments and of fixing/revising the minimum rates of wages periodically for each scheduled employment, since it feels that all workers in all employments should have the benefit of a minimum wage.

Piece Rate Wages

6.115 In quite a few of the employments that are covered under the Minimum Wages Act 1948, workers are paid wages on piece rate basis. It so happens that apart from other shortcomings, the piece rates may be fixed so low that a diligent worker, even after 8 hours of work may not be able to earn what would amount to the notified time rated wage for a day. The existing provisions of lay off deal with a similar situation in industry where the employer is unable to provide work to the workers for part of the day or for full day. We agree with the recommendation of the Study Group that where wages are fixed purely on piece rate basis the employer should pay at least 75% of the notified time rated wage to the piece rated worker if the employer is not able to provide him with work.

6.116 In the case of home-based work, where apart from the main workers, other members of his/her family also contribute significantly to the production, the piece rate earnings of all of them put together adds up to only a fraction of notified time rated minimum wage for a single worker. We, therefore, recommend that fixation of piece rate wages must be so done as to enable a diligent worker to earn after 8 hours work what would be the time rated daily rate.

6.117 In some earlier paragraphs, we have already stated our view that every worker engaged in any employment should receive the minimum wage prescribed for that employment. Every one who works for eight hours is entitled to this minimum wage. We have been asked whether those who are employed in the relief works organized directly by the Government – or by NGOs on behalf of the Government – should also be paid the minimum wage. We will of course like them to receive the minimum wage. But we have to point out that those who are employed in relief works in areas struck by calamities are in a category of their own. Due to reasons beyond their control, they have lost their employment or means of livelihood. The State wants to ensure that they are not reduced to starvation, and so organises works in return for which they offer food or some monetary compensation. The alternative is to provide free doles to all those who are affected by the calamity. The arguments against doles are well known. Even the recipient generally prefers to receive a remuneration rather than a dole. There is therefore, a case to distinguish between regular wage employment or food or remuneration in return for some token work for which opportunities are created. Where the nature of the work cannot be described as token, where it is a full day's work on a project that builds durable common assets, there is a case to insist that the remuneration must be equivalent to the minimum wage (for the employment). We will, therefore, recommend that this distinction may be borne in mind in determining whether the law on minimum wages should be deemed applicable to the situation. (If there is a dispute in this regard, it can be raised before the National Labour Relations Commission, and the Commission's decision will be regarded as final – binding on both parties to the dispute). This will ensure that workers in calamity stricken areas are protected from exploitative wages, and yet receive at least half a bread to fend off starvation.

6.118 By way of simplification, we have attempted a draft law on wages, which is Appendix-III to this chapter. If this kind of law gains acceptance, it will result in the repeal of existing laws like Minimum Wages Act 1948, Payment of Wages Act 1936, Equal Remuneration Act 1976 and Payment of Bonus Act 1965. In addition to this, the Commission does not consider any need for statutory wage boards. There is no reason why relatively better organised sets of workers should not use the method of collective negotiations to get their wages fixed from time to time. Also, the Commission is not sure that successive Wage Boards have really solved the problem. In fact, the Commission is of the view that there is no need for any wage board, statutory or otherwise, for fixing wage rates for workers in any industry.

Law Relating To Working Conditions and Welfare

6.119 Issues relating to working conditions and welfare account for a big part of the labour laws. Broadly, these laws can be classified into two groups, one dealing with specific activities, such as Factories Act 1948, Mines Act 1952, Building and other Construction Workers Act 1996, Plantations Labour Act 1951, Beedi and Cigar Workers (Conditions and Employment) Act 1966, Motor Transport Workers Act 1961, Shops and Establishments Act and so on; the other relating to activities across the board, as for example Contract Labour

(Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulation) Act 1986, Dangerous Machines (Regulation) Act, 1983, Inter State Migrant Workmen Act 1979, and so on. Besides these, there are also specific welfare laws providing for a levy of cess on the activity at a prescribed rate, and the constitution of welfare funds out of which welfare activities for the benefits of workers and their families are taken up; it is in the nature of such funds that they seek to provide welfare outside the work place, unlike the earlier Acts mentioned above where, essentially, welfare is provided only to workers at the work place, excepting for crèches which are meant for the children of workers (An exception to this will be the Plantations Labour Act 1951 where welfare of the extended type is statutorily provided for). Examples of the genre of welfare fund laws in the central sphere include Beedi Workers Welfare Fund Act 1976, Mica Mines Labour Welfare Fund Act 1946, Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act 1976, Limestone and Dolomite Mines Labour Welfare Fund Act 1972 and Cine Workers Welfare Fund Act, 1981 with their accompanying Cess Acts. There are even a larger number of welfare laws enacted by the states for different categories of workers; Kerala state perhaps takes the lead in the number of welfare funds, both statutory and non-statutory.

6.120 The list of laws seems to be growing. Yet it is not clear why one needs so many laws, if the basic idea of all these laws is to provide safe and humane working conditions, health and safety both at the work place and outside, welfare too, both at the workplace and outside. It may be that in respect of safety, the dispensation may have to be different for different work situations, but surely this does not call for separate laws. The safety requirements and precautions including protective equipment can be suitably incorporated in manuals, drawn up by experts well versed in the technology that is used, in the nature of activities carried out by an establishment, in its effect on work situations and on human beings who work at these places and so on.

6.121 We would recommend consolidation of all laws of the kind described in para 6.119 above and the enactment of a general law relating to hours of work leave and working conditions, at the work place. For ensuring safety at the work place and in different activities, one omnibus law may be enacted, providing for different rules and regulations on safety applicable to different activities. (We have appended a draft indicative law on hours of work and other working conditions after this chapter and an omnibus draft indicative law on safety in the chapter Labour Administration). Similarly, there should be a consolidated law governing the welfare provisions in various laws at the work place or it can be combined with the laws on wages whereas those relating to provisions on welfare outside the workplace should be merged with the law on social security. The question then arises what should such a consolidated law contain? It should apply to all establishments where 20 or more workers are employed, irrespective of the nature of activity carried on, be it manufacturing or mining or transport or services or any other.

a) It should provide for certain basic rights of the workers; indicate a minimum age (say 14 years) below which no person can be employed; should have a provision for letters of appointment along with a copy of Standing Orders of the establishment (in the local language); and issue of a photo identity card giving details of the name of the worker, name of establishment, designation, and so on. The appointment letter and the card should clearly mention the wages and the entitlements of leave, social security and other benefits along with the term of appointment and condition of separation, etc.

b) The law must provide for specifying the maximum number of working hours in a day/week, payment of overtime at double the rates of wages. However, the limitation on employing workers on over time by way of monthly and quarterly ceiling needs to be relaxed, and we recommend that the present ceilings be increased to double to enable greater flexibility to the employers in meeting the challenges of the market without being required to seek approvals etc. The Commission however is not in a position to agree with the general recommendation of the Study Group to bring uniformity in the daily and weekly hours of work of industrial establishments and workers in other kinds of employments, manual or otherwise, in view of the fact that the work ethic currently obtaining in both the sectors needs substantial improvement. During the evidence received at various centres by the Commission we were told of the need to provide flexibility in the daily hours of work in the context of global competition and technological changes. Sub section (2) of Section 64 of the Factories Act contains a provision that the State Government can give exemptions in certain circumstances by prescribing the conditions of exemptions from the provisions of daily and weekly hours of work, rest intervals, weekly holidays and spread over in the rules. We recommend that the list of such contingencies may be suitably expanded in consultation with the representatives of the industry to include more occupations, processes and contingencies for which exemptions can be provided including the conditions of such exemptions. However we also recommend that the workers right to wages for overtime work at the prescribed rate of overtime wages if they are asked to work beyond 9 hours a day and 48 hours a week should be ensured.

c) Likewise, law must provide for restrictions on employment, such as reduced working hours for adolescents, prohibition of underground work in mines for women workers, prohibition of work by women workers between certain hours and so on.

d) On the question of night work for women, the Commission would urge that there need not be any restriction on this if the number of women workers in a shift in an establishment is not less than five, and if the management is able to provide satisfactory arrangements for their transport, safety and rest after or before shift hours.

e) At the same time, the Commission is not in favour of any exemptions being granted in respect of establishments in export promotion zones or special economic zones.

f) The Commission feels that the appropriate Government may be empowered to grant exemptions from different provisions of law in case of emergent situations that may arise in the workload of an establishment or in cases of extreme hardship. However, there should be guidelines in the respective laws for granting such exemptions.

g) Each establishment having an employment size (including all the shifts) over a specified limit must provide for a canteen.

h) Normal provisions as now obtaining in several laws regarding washing facilities, lavatories and urinals (separate for men and women workers) and rest rooms may also be incorporated in the law.

i) The help of municipal and other local bodies and NGOs may be taken for the creation of these amenities, common to a market or small industrial areas.

j) As regards Crèches, the Commission is convinced of the need for this facility and this should not be dependent on the number of women workers or the number of children between the ages of 0 to 6. Childcare is of great social importance and where both husband and wife go out to work, arrangements must be available for parent(s) to leave the child in the care of a Crèche. Moreover, the provision of crèches frees the elder sibling (usually the girl) to attend school instead of having to stay at home to look after the young ones. In this view, the Commission recommends that every establishment employing 20 or more workers must run a crèche, properly manned and equipped either singly or in association with other employers and/or local bodies. In the case of smaller establishments, it must be possible for them to jointly provide crèche facilities, again, where necessary with the help of local bodies.

k) The law must provide for holidays, earned leave, sick leave and casual leave at an appropriate scale to the workers, apart from maternity benefits for women workers. On holidays, we would urge the formulation at the National level of a clear policy. We would suggest that apart from the three existing National Holidays, namely 15th August, 26th January and 2nd October, the other holidays should be declared in consultation with the unions or elected representatives of the workers, and there should be a limit on the total number of holidays that can be declared in a year. All these holidays should be paid holidays. We do not approve of the practice of declaring a holiday, with or without wages, and usually at very short notice on the death of a person, howsoever eminent he or she may be. Likewise, we do not also see the necessity to declare polling days as holidays. Only half a day's holiday may be permitted on such a day to those who have to go to cast their votes, the timings of which should be decided by mutual consultation amongst employers and workers. A clear national policy is called for in respect of such matters.

6.122 What we have said above is nothing new, except perhaps what we have said about crèches; these are found in the various laws that exist today, and we are merely emphasising that these can all be consolidated into a single legal framework. These are minimal provisions, and can be improved in individual establishments through negotiations.

6.123 When we come to welfare outside the workplace, the position is not so simple. As already pointed out, the Welfare Fund Acts enacted by Parliament provide for a levy of cess on the product of the industry/ activity. There is no contribution made by the workers towards such funds. Even here, it is pointed out that some of the larger establishments provide far more benefits than what these funds provide. As against this, there are general labour welfare funds set up by statutes in several States which cover factories and other notified establishments, and the fund is created out of contributions made by the employer, by the worker and by the government, normally in the ratio of 2:1:1. Such funds, which do not add up to much for each State, are essentially utilised for recreational and educational purposes, including some craft training to wives and wards of workers. There is a third type of welfare fund, very popular in Kerala and some other states; these funds are set up for each category of workers like coir workers, motor transport workers, construction workers, head load workers and so on, and the funds are made up of contributions by employers and workers at stipulated rates per worker per month. Some of these funds have very large corpuses of money, sometimes running into tens, if not, hundreds of crores of rupees. Quite a large number of welfare activities, including a modicum of social security, are carried out by the funds each of which has an administrative set up to carry out these functions. It is increasingly being recognised that such funds may be the most suitable vehicles for providing social security coverage to the workers, particularly those in the unorganised sector. However, it is also seen that the size of the funds depends very much on the nature of the activity concerned, with the result that while some funds are affluent, others are not, leading to differences in the levels of benefits provided. And it is not easy to persuade different categories of workers to pool the resources of their welfare funds with a view to providing uniform benefits. At the same time, there is recognition of the need to integrate at least the administrative structures so that the cost of administering the fund is kept at a minimum. The Commission has considered the pros and cons of all matters pertaining to social security, and made its recommendations in the chapter on social security and also in the chapter on unorganised workers. We would only say at this point that the present laws on welfare outside the workplace should be integrated as far as possible with the laws on social security.

Laws Relating to Social Security

6.124 The Commission has also considered the recent Workmen's Compensation (Amendment) Act 2000, which came into effect on 8th December 2000. By this amendment Act, the words 'other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business' have been omitted in section 2, in subsection (1), in clause (n) of the Act. We are not able to appreciate the implication of this amendment and considering that Schedule II of the Act is a very long list, we are not sure whether the deletion of words 'and who is employed otherwise than for the purpose of the employer's trade or business' will not cause unintended hardship; also, all the entries in Schedule II refer to person "employed ….." in some specific activity and therefore the need for deleting the above mentioned words is not clear. We would urge the Government to reconsider the matter as the Commission feels that amendment has in fact extended the Act to the domestic sector. The Commission recommends that the domestic sector be kept out of the purview of the Act.

6.125 While on the subject, we would also like to suggest that Schedule II to the Act though long is not complete, in so far as it leaves out a lot of other situations where bodily injury leading to loss of earning capacity or death may be occasioned arising out of, and in the course of employment; is there any virtue in only singling out those situations covered by Schedule II. The schedule can be widened. 'Many employers' organisations have drawn our attention to item No. (ii) of the schedule and have suggested that there is no reason why persons working in clerical capacity should be excluded form the provisions of Workmen's Compensation Act as they are frequently required to go on the shop floor for performing their functions and are equally exposed to risks.

6.126 Also in the context of Workmen's' Compensation Act 1923, we do not see why we should still have on the statute book laws like Employers Liability Act 1938 and the ancient Fatal Accidents Act 1855; if necessary, the relevant provisions of these Acts may be suitably incorporated into the Workmen's' Compensation Act 1923.

Laws Relating to Miscellaneous Matters

6.127 Besides the laws that we have so far looked at, there are still some laws, even among those enacted by

Parliament, that are remaining; there are also other matters, not necessarily statutory, on which we would like to offer brief comments.

6.128 To begin with, we take the Apprentices Act 1961. We want to take the opportunity to point out that the small enterprises are presently deprived of the opportunities of having apprentices, since the law lays down a minimum strength of tradesmen of different categories in an establishment for allowing apprentices on a proportionate basis. There is need to provide flexibility so that even if the strength of different categories of tradesmen in a small enterprise does not match up to what is required to keep apprentices, if the combined strength is such as to allow keeping an apprentice of a particular category as per the proportion laid out, the small enterprises should be allowed to engage such apprentices. The Commission has separately dealt with matters relating to improving the necessary infrastructure for making the workforce more skilled and for coping with the challenges that come with increasing globalisation. Our suggestions in this regard can be found in the chapter on Skill Development.

6.129 The Commission carefully considered the recommendation of the Study Group to provide statutory shape to bodies such as the Indian Labour Conference, Standing Labour Committee, State Labour Advisory Boards, Industrial Committees, and so on. We propose to deal with the matter in detail in the chapter on Labour Administration.

6.130 We come back to our earlier task of looking at such central laws, as have not so far been considered in the earlier paragraphs. We begin with the following enactments namely, Personal Injuries (Compensation Insurance) Act 1963, Personal Injuries (Emergency Provisions) Act 1962, and Public Liability Insurance Act 1991. The Ministry of Labour does not seem to be involved in the implementation of these laws. Also, the first of these two laws seems to apply only when there is an emergency, and the third law applies to persons other than workmen (section 3(i) of the Act). We therefore do not make any comments on these. Likewise there are a large number of environmental laws which also find place in the books on Labour Laws, and we are not making any comments on them either.

6.131 However, there are a large number of laws which indisputably are labour laws which we have not dealt with so far. We deal below with the remaining laws briefly:

(i) Bonded Labour System (Abolition) Act, 1976. In a manner, it can be argued that this is not a labour law but only a welfare legislation. While all the other labour laws relate to situations where there is an employer-employee nexus, this is about the only law where the reverse takes place i.e. even the existing relation of master-servant is snapped, the affected person released from bondage and provision sought to be made for his/her rehabilitation. The Commission regards the implementation of this law by the Ministry of Labour as appropriate, as it emanates from Article 23 of the Constitution and deals with working people.

(ii) The Commission has dealt with the Child Labour (Prohibition and Regulation) Act 1986 in the chapter on Women and Child Labour, and has suggested a new law on the subject to substitute its provisions to the benefit of children which would also aid the abolition of child labour.

(iii) Children (Pledging of Labour) Act 1933. We are not sure of the need for such an Act, and even if a situation of pledging of child labour obtains, surely that can be incorporated as part of the general law. Also, we are shocked at the proviso to the definition of 'an agreement of pledge of the labour of child' which reads as follows: "Provided that any agreement made without detriment to a child and not made a consideration of any benefit other than reasonable wages to be paid for the child's services and terminable at not more than a week's notice, is not an agreement within the meaning of this definition". This proviso would amount to approving child labour if reasonable wages are paid. We think that, given this proviso, the entire purpose of the law is vitiated. Pledging of child labour can be made a crime under the criminal law of the land. The punishment proposed in the existing law is also inadequate, considering the nature of the offence and modern thinking on the subject. We are in the era of the Convention of the Rights of the Child and would, therefore, recommend the repeal of this law.

(iv) Dock Workers (Regulation of Employment) Act 1948

Dock Workers (Safety, Health and Welfare) Act 1986

Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act 1997

These Acts, other than the last, are applicable to both major and minor ports, but in effect, the first two laws have been applied only to major ports. The State governments which are the appropriate governments in respect of minor ports do not appear to have taken any recourse to these laws. Even in major ports, to the extent that Dock Labour Boards are being abolished and the entire workforce merged with the port trust workers, the application of the third law comes into operation and may be, over the next few years, the first law namely Dock Workers (Regulation of Employment) Act 1948 will cease to have any relevance for major ports. We are also not sure how far state governments will be willing to adopt this 1948 law in respect of minor ports in their jurisdiction. So, perhaps, the repeal of the 1948 law, may be only a question of time. However, the other law namely Dock Workers (Safety, Health and Welfare) Act 1986 should be of much importance to workers of minor ports too. We would recommend that the Director General (Factory Advisory Services and Labour Institutes) under the Ministry of Labour, who looks into these matters as far as major ports are concerned, be enabled to advise suitably State governments as well, at least in respect of some of the larger minor ports and also the newly established private sector ports, to deal with the problems of safety, health and welfare of dock workers in minor ports.

(v) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.

This Act is essentially designed to know the nature of vacancies that may arise in establishments to which the Act applies, and to facilitate the Employment Exchange Organisation to sponsor suitable candidates for filling up such vacancies. The act also, helps to generate information relating to the employment market in a region, state and the country as a whole, and incidentally will enable to identify pockets of scarcity in stipulated trades and alert the training authorities to provide for training in such trades. In the context of likely requirements of workers with specified multiple skills, we feel that a strict and imaginative implementation of this law will help in the long run. We therefore recommend that the provisions of this law be made applicable to all establishments to which the general law of employment relations will apply i.e. these employing 20 or more workers. This should include central/state government offices also, as at present. In passing, we would also like to point out that the salary level of rupees sixty per month, above which alone vacancies will have to be notified, is raised suitably keeping in view the current levels of wages and emoluments.

(vi) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993.

We see that the Act applies in the first instance to the states of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all Union Territories, and that it also applies to such other states which adopt the Act by resolution passed in that behalf under clause (1) of Article 252 of the Constitution. We do not know whether any other State has passed the necessary resolution in this regard. Nor are we aware of the extent to which the implementation of the law in States already covered, namely, Andhra Pradesh, Goa &

so on, has been effective. The Human Rights Report of 1999 has adduced evidence that should shock, and cause concern and shame. We refer to it in detail in the succeeding chapter devoted to the unorganised sector. We strongly urge that the law be made universally applicable without further delay with deterrent penalties for infringement.

(vii) Equal Remuneration Act 1976

In our suggested law on wages, we have incorporated the provision of equal pay for equal work. We reiterate the same. The Commission however, recommends that the important provisions of the Equal Remuneration Act other than on wages i.e. Prohibition of discrimination against female workers in matters of recruitment, training, transfers and promotions should be incorporated either in the employer-employee relations law or in the law on Working Conditions.

(viii) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

This is a well-intentioned piece of legislation but implementation has not been easy because of the involvement of both the State Governments-the state of origin of the worker and the State in which he works. The matter is further compounded by the fact that very often the workers do not happen to have been recruited by contractors and come to work at the destination state on the basis of information gathered from their relatives, friends, etc. During its visits to States particularly like Orissa, Bihar, Chattisgarh which have a history of sending large numbers of unskilled workers to other states the Commission came across the view expressed both by workers' organisations and the State Governments, that the Act should apply whether or not the workers have been recruited by contractors. The Commission has seriously considered the matter, and although we are fully sympathetic to the position that workers from other states who may not have been recruited by contractors, should not be subject to exploitation or discrimination; we feel that the Government may not be in a position to legislate separately for such workers or provide the benefits of the present Act by extending coverage to them in view of the Constitutional provisions enabling a citizen to seek employment anywhere in the country (Article 19). It will not be proper to provide legal protection over and above what is available to workers born or resident in the host State to those who have come from outside. However, these observations should not be construed to mean that we do not endorse the need to deal with the problems of migrant workers. Adequate provisions will be made in the general law that we are recommending. We would also recommend that to keep proper records and access to information, employers in the host state be required to inform the state Government as well as the Government of the state to which the worker belongs whenever they engage any worker hailing from another state to work in the unskilled category. As for conferring more powers to the originating state than what the Act presently provides so as to prevent exploitation and non discrimination vis. a vis. the workers belonging to the state where the establishment is located, the Commission would only observe that the matter involves Centre- State relations, and should, therefore, be taken up by the Labour Ministry in the appropriate forum.

(ix) Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

This is an enactment intended to provide exemption to employers in small and very small establishments from furnishing returns and maintaining registers under certain labour laws. 'Small establishment' has been defined to mean an establishment in which not less than ten and not more than nineteen persons are employed or were employed on any day of the preceding twelve months; 'very small establishment' has been defined to mean an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months. The laws in respect of which this law provides for exemption from filing returns and maintaining registers as prescribed are the following: - Payment of Wages Act, 1936; Weekly Holidays Act 1942; Minimum Wages Act 1948; Factories Act 1948; Plantation Labour Act 1951; Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955; Contract Labour (Regulation and Abolition) Act 1970; Sales Promotion Employees (Conditions of Service) Act 1976 and Equal Remuneration Act 1976.

The law thus will cover all those establishments for which we have proposed a separate simple law (see para 6.106 above). However, the 1988 law does not extend to all labour laws but only to those listed above. There is no reason why the simplification of returns to be sent and registers to be maintained cannot be extended to all aspects, including social security. In fact, we would suggest that simplification can be extended to all establishments irrespective of the employment size. We would suggest the setting up of a high power group which can deal with this question and come up with recommendations. After all, it must be recognised that the returns are being asked for, essentially for statistical purposes and in some cases for information on compliance with safety regulations. But considering the delays, the gaps and unevenness of data, these returns in the aggregate do not serve much purpose. It may be desirable to rely on periodic sample surveys which will furnish the data necessary for policy formulation. We would urge that this matter be pursued vigorously. Some States have already simplified the forms that are to be submitted, and are experimenting with one simple form. There is no reason why this should not be prescribed and given effect to.

6.132 Though there is merit in what has been stated by the Study Group in Para 90 of its Report regarding constituting tripartite boards based on the Mathadi Boards in Maharashtra. As per the evidence received by the Commission with regard to the Mathadi Workers in Maharashtra and Headload workers in Kerala, the system seems to have lent itself to certain abuses such as the closed shop system of working where new entrants are not allowed, and proxy work is allowed, whereby those who are actually enrolled with these boards engage others to work in their places by paying a part of the remuneration received. The closed shop system also creates problems for the employers who hire workers but are not able to get the work done as per their requirements. Perhaps better results can come from the system if due steps are taken to prevent the closed shop system and work by proxy.

6.133 The Study Group examined a suggestion to provide an 'infancy clause' in labour laws by which all new establishments are exempted from the operation of labour laws for the first few years, say 5 years, of its operation. Section 16 of the Payment of Bonus Act 1965 has been referred to, in this context. We are not sure that there is merit in this request. We have repeatedly pointed out earlier that social security protection, including economic security, is a sine qua non and also the starting point of labour protection and in such a scheme of things, infancy clauses have no place. Any prudent entrepreneur starting a business should take note of all the legal provisions he will be subjected to and plan his operations accordingly. We therefore do not consider it necessary or desirable to incorporate an infancy clause in respect of any matter covered by labour laws. The State may consider assisting new enterprises in other ways. Some of us, however, do consider that there is need for such assistance from the Government, for a variety of reasons, including the need to induct new entrepreneurs who otherwise may feel nervous about venturing out.

6.134 Of course, there is no question of exemption when the law does not apply to an establishment or class of establishments; such may be the case in respect of central or state governments which are discharging 'sovereign' functions. The question, what are 'sovereign' functions, may be the subject of contentious debate. We do not propose to enter into such a debate. We would broadly exclude from the coverage of labour laws that we propose, all functions and functionaries, including defence forces, para military forces, police, fire services and prison services, services connected with law and order, tax levy and tax collection, internal and external security, law making, administration of justice, and external relations. Where in a case, the functions are not so very discreet and include other activities which do not fall in the above mentioned categories of 'sovereign' functions, then we may stretch the point a little and designate all such as 'sovereign'. We may leave this matter to be decided by the appropriate government, whose decision will be final. At the same time, we strongly urge that persons employed in these 'sovereign' tasks are also adequately protected, including protection of their 'right to form associations and unions' as enshrined in Article 19 of the Constitution of India. We recommend accordingly.

6.135 We have given considerable thought to the question of the workers who are engaged in the khadi industries, spinners and weavers and also to crafts persons engaged in programmes and projects co-ordinated by the KVIC. We are fully aware of their special position, and we have the utmost sympathy for them. This is particularly so because of the traditional and unique position of khadi and the fact that spinning and weaving and handicrafts are today providing employment, and therefore, livelihood to many lakhs of women and men in the rural areas where this category of people have hardly any other means of livelihood. These are days when people are being retrenched from jobs, and are not able to find alternative jobs. The protection of avenues of employment is, therefore, an imperative need. We are, therefore, very keen that our recommendations should not result in anyone losing even the half bread that he or she is able to earn today. Even so, we are equally keen that anyone who does an eight hour job gets a minimum wage. We have made strong recommendations about minimum wages and said that all jobs and any regional or state legislation on minimum wage should not go below the national minimum that Government may prescribe. So, we cannot recommend exemption from the national minimum. However, we also do not want to recommend anything that may lead to instant loss of means of livelihood for large numbers of persons. We, therefore, recommend that the KVIC reviews it remuneration system to reach the level of the prospective or prescribed national minimum as soon as possible, within five years at the latest; that the KVIC ensures that its activities are confined to facilitation and sale-purchase, and as far as possible organised on the basis of cooperatives; that its system of remuneration does not lend itself to the description of wages and employment; that it adjusts its piece rates for hours of work to reach the relation that is being prescribed with time rates; that the workers whom it serves or organises have access to a security system that is equivalent to what is available to workers in small scale industries with 19 or less workers or that prescribed for workers in the unorganised sector.

6.136 We have not, in the earlier parts of our Report, made any recommendations on the penal part of Labour laws. We recommend that any violation of a law or rules thereunder be treated as an offence, which must be made triable by a labour court which will have to be empowered for the purpose. We also recommend that any offence that is not merely a violation of labour laws but also a violation of basic human rights should attract more stringent punishment. This category of offences will include engagement of child labour, discrimination between men and women workers in matters of wages/ remuneration, opposition to the formation of trade unions by workers in the establishment, recourse to bonded labour and others i.e. all those where basic human rights are infringed.

6.137 On the other hand, there are 'technical' offences, such as non maintenance of registers, non furnishing of returns and the like, for which law may provide for compounding; such compounding may be permitted, provided it is approved at an appropriately senior level in the administration. We also recommend that at least 75% of the proceeds of such 'compounding' be credited to an appropriate welfare fund for being used for the benefit of workers. It may also be provided that a subsequent offence of the same type by an employer will not be allowed to be compounded, but will invite double the penalty in addition to imposition of fine for each day of continuance of offence or infringement.

6.138 We also recommend that where in the case of an offence coming up for hearing it becomes necessary for the complainant worker to attend hearings more than once, the worker must be reimbursed for loss of wages and expenditure incurred by him for travel etc., in respect of the second and subsequent hearings, unless the complainant-worker is at fault. Such payments may be either recovered from the employer and paid to the worker, or in the alternative, the expenditure may be borne by the state.

6.139 We also consider it necessary to look into the problems or delays in labour courts/industrial tribunals. Very recently, the High Court of Ranchi delivered severe strictures on the Chief Minister of Jharkhand for the state of Labour Courts and Tribunals in the State. The Chief Justice said " it would withdraw judges from Courts (Labour Courts) as they were drawing salaries without work because there was no infrastructure for discharging their duties". These observations were made by the Chief Justice while hearing a Public Interest Litigation (PIL) from Ranchi Labour Lawyers Association against the Government's failure to even provide premises for Labour Courts. Given the number of cases pending in labour courts/ industrial tribunals, it becomes necessary to devise methods by which cases get disposed of with reasonable dispatch. The suggestion in the earlier paragraph to compensate the worker for loss of wages and expenditure incurred by him, in respect of the second and subsequent hearings will hopefully expedite matters. Further, a provision may be made in the laws that all cases must be disposed off in a span of three hearings, and where this is not possible, the labour court should in its award give reasons for taking more hearings. In the scheme of adjudication the hierarchy, namely, labour courts and Labour Relations Commissions, that we have proposed, the Labour Relations Commissions may also be entrusted with the responsibility to assess the work of the labour courts, particularly in the matter of expeditious disposal of cases. With the constitution of an All

India Labour Judicial Service that we are recommending in the succeeding paragraphs, we hope that we will have a dedicated and competent set of men and women as presiding officers of labour courts who will be able to discharge their responsibilities efficiently and expeditiously.

6.140 We have looked at the provisions in several labour laws regarding the sanction of prosecution and taking cognisance of offences. Generally it is the inspector alone who can file a prosecution, and only a magistrate of First class who can take cognisance of the complaint. Latterly we see a certain relaxation of such provisions. In the Equal Remuneration Act, 1976, it is provided in section 12(2)(b) that cognisance can be taken of a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation. Section 16 (1) of the Child Labour (Prohibition and Regulation) Act 1986 enables any person, police officer or inspector to file a complaint of the commission of an offence under the Act. Section 54 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, provides for cognisance to be taken only on a complaint (a) made by or with the previous sanction in writing of the Director General or the Chief Inspector; or (b) made by an office bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or (c) made by an office bearer of any concerned trade union registered under the Trade Unions Act, 1926.

6.141 Thus we see that there is a progressive liberalisation in the law and we would recommend that the right to file a complaint in the court of competent jurisdiction may be vested, in addition to an inspector or an officer authorised for the purpose, in the person aggrieved or an office bearer of a trade union of which the aggrieved person is a member or in a recognised welfare institution or organisation. Where a vexatious malicious or flippant complaint has been made, the complainant may be visited with a stringent fine.

6.142 We also recommend that all Rules and Regulations under the law must be first published as draft Rules or draft Regulations, giving a period of ninety days for comments, and must be finalised only after the comments, if any, received within the stipulated period are examined.

6.143 We have so far dealt with issues with reference to only Central laws. Excepting for some passing references to Shops and Establishments Acts and Welfare Fund Acts of States, we have not examined the State laws in any detail. There is, no doubt that such an examination would have enhanced the value of our Report. We consider that having looked at all issues - employment relations, wages, welfare, safety and health, working conditions and social security - in a 'macro' context i.e. at the level of the whole country, our recommendations can validly apply to situations in all the States. Further, where a State considers it necessary to legislate for an issue or problem which it considers unique and peculiar to its area, it can have a legislation on the subject, subject to what is contained in the relevant articles of the Constitution. We would only urge that when a State goes in for special legislation, it observes all the recommendations that we have incorporated in our report.

6.144 We think it is proper and necessary that we devote here some attention to the subject of labour administration (we have devoted a separate chapter which deals with the subject in detail). Essentially, labour administration in India consists of implementation of labour laws, though we recognise that the labour administration may consist of non-statutory activities like workers' education, craftsman's training other than the Apprentices Act, and so on. Though labour administration is the executive arm of the State, we would like to see the administration as the guide, philosopher and friend of both workers, and their organisations, and employers and their organisations, rather than be a policeman, finding faults and prosecuting parties. It becomes necessary therefore not to judge the performance of a functionary in the labour administration merely on the basis of the number of inspections carried out, number of defects noticed, number of prosecutions launched, percentage of 'success' in these prosecutions and so on. This calls for appropriate orientation and training to the functionaries at all levels. Equally it becomes necessary to expose the functionaries at various levels to the changing situation, occasioned by globalisation, liberalisation and privatisation, all of them demanding a high level of competitive performance and ever increasing productivity.

Despite the emphasis we have laid in our Report on diminishing the role of the State qua state, what we have stated above vis-à-vis labour administration is valid. We therefore, strongly recommend that every large State and groups of small States set up Institutions for training and research in labour matters to which labour administration functionaries can be sent from time to time, for in-service training, refresher training and so on. We emphasise the need for such institutions to develop research capabilities too, as such research will aid the training programme, and vice versa. These institutions should also develop into resource centres with a sound statistical base. We do not want these institutions to be a mere arm of the government but want them to be endowed with sufficient autonomy. Such institutions already exist in some States though not endowed with the kind of autonomy that we would like them to have but we want them in all states or groups of states, equipped with a good library, up-to-date computer equipment and computerised data and so on, and manned by persons with both academic credentials and labour administration experience. We want the V.V. Giri National Labour Institute and other institutions to assist state governments in this effort. We hope that the V.V. Giri National Labour Institute will take the lead in this regard, and along with other institutions, help the State Governments in their efforts to transform the calibre of labour administrators.

6.145 While on the subject, we would also recommend that the law may provide for bipartite committees or tripartite committees to be set up in areas of industrial and/or commercial activities to function as watchdogs to ensure the implementation of labour laws by the establishments and to bring to the notice of the administration any cases of violation. Such committees may be set up even at the level of local bodies including Panchayats. As a watchdog from within, we think that these bodies would be in a good position to know which establishments do or do not follow the laws, and to what extent. Such a step would also, in our view, facilitate the formation of strong and viable organisations of workers and employers at various levels.

6.146 One of the issues that merit

consideration in the administration of labour laws is whether there must be compulsory registration of all establishments. While such registration is feasible, and is provided for in respect of factories, plantations, motor transport undertakings and so on, the task becomes stupendous when we come down to shops and establishments and all the establishments covered under the Minimum Wages Act. The Commission has carefully examined this, and is of the view that while it is tempting to recommend that all the establishments including even those where the number of employees is one should be registered, it is expedient to make registration compulsory initially only for all establishments employing ten or more workers, and to progressively reduce the employment limit to five in due course. Provision could also be made for the renewal of registration once every five years. A nominal fee may be charged for registration and for renewal. We recommend accordingly.

6.147 We have earlier recommended an integrated labour judiciary system, with labour courts at the base and with State/Central/National Labour Relations Commissions at the top. In our scheme of things, the labour relations commissions have multiple duties including the important task of identifying collective bargaining/ negotiating agents. We have also suggested that all matters in the labour field needing adjudication, be it a labour-management dispute (except collective disputes) or a workman's compensation claim or disputes arising out of and relating to coverage of labour laws or disputes relating to social security and the like, will have to be determined by the labour courts at the lowest level, with appeals to the Labour Relations Commissions. Collective disputes between the negotiating agent and employer, if not resolved bilaterally or in conciliation should be dealt with by appropriate Labour Relation Commission if the parties do not agree for arbitration. This will need considerable increase in the number of labour courts in the first instance, particularly when we have recommended that labour courts be vested with magisterial powers to try cases relating to offences under the labour laws. The setting up of labour relations commissions also increases the demand for high-level labour adjudicating functionaries. All these compel us to recommend an All India

Labour Judicial Service which in the new dispensation will be viable and necessary. We recommend accordingly.

6.148 Equally important in our view is the need for constituting an All India Labour Administrative Service. Labour being in the concurrent list of the Constitution, the advantages of such a service, which will also enable exchange of officers between the Centre and the States, are obvious. It must be recognized that the bulk of the labour administration in the States and union territories relates to implementation and enforcement of labour laws which are centrally enacted. Though there may be some State level amendments to some of these laws, the main provisions of these laws are common to all States and union territories. We are of the view that if all the posts of the labour department of and above the rank of Dy. Labour Commissioners/Regional Labour Commissioners at States and Centres are included in the service and also senior level appointments such as Executive Heads of Welfare Funds, Social security administration and so on, there will be an adequate number of posts justifying such a service. Moreover, those who are in charge of Labour administration need some specific skills and attitudes, and aptitudes to which we have made reference. Some of these have to be identified and developed. Considering all this we recommend the setting up of such an All India Service.

6.149 Lastly, we refer to the paramount need for generating employment, employment of the 'decent work' type. Labour laws have often been accused of being stumbling blocks in the creation of employment, and we hope that what we have recommended in the above paragraphs will not lead to such an accusation. Even so, we would urge that the feasibility of generating further employment through all practical means including systems of tax incentives be examined.

6.150 In spite of the paucity of the time at our disposal, we have attempted to make a draft of what a comprehensive Law on Labour Management Relations, as visualised in this Chapter would look like. It is obvious that for various reasons, including the absence of technically competent legal experts, we have not put the draft in the shape and terminological precision that a piece of legislation should have for introduction in the Parliament. Since the draft could be made ready only towards the very end of our work, it could not be vetted in a sitting of all the Members. It should, therefore, be taken as our indicative draft, not one on which the Commission has arrived at a word-by-word agreement. Even so, it has been drafted incorporating the recommendations in the Chapter, more to provide an approximate picture of the system that is visualised than to propose a cut and dried piece of legislation.

APPENDIX - I

MODEL STANDING ORDERS

(For establishments employing 20 or more but less than 50 workers)

1. **Classification of Workers**

(1) Workers shall be classified as: -

(i) Permanent: - A worker who has been engaged on a permanent basis or who has satisfactorily completed his probation period.

Provided that if no appointment letter is issued or where the worker has been appointed on probation no letter of confirmation is issued at the end of the probation period, the worker shall be deemed to be a permanent worker.

(ii) Probationer: - A worker who has been employed to fill a permanent vacancy but is on trial.

Provided that period of probation shall be one year which may be extended by three months at a time so, however, that the total period of probation shall in no case exceed eighteen months.

Provided further that if the employer fails to issue the letter of confirmation after the maximum period mentioned in the first proviso the worker shall be deemed to have been confirmed.

(iii) Temporary: - A worker who is engaged for a fixed term for work which is temporary or for temporary increase in normal work.

(iv) Apprentice: - A person appointed under the provisions of the Apprentices Act, 1961.

(v) Trainee: - A person appointed for the purpose of being trained provided that such worker shall be paid at the same rate as a temporary worker.

(vi) Badli : - A person who is appointed to work in the place of a regular or temporary worker who is on leave of absence.

(2) Every worker shall be issued token number or identity card containing his name, his father's name, address, name of the establishment where he is employed, his designation, and classification such as permanent, probationer and so on.

2. **Appointment Letter**

(1) Every worker shall be issued appointment letter containing the following details:

(i) Name of the Worker

(ii) Father's name

(iii) Residential Address – Local & Permanent

(iv) Designation

(v) Date of appointment

(vi) Classification

(vii) Terms of Appointment

(viii) Nominee for Social Security purposes

(2) The letter of appointment shall be issued by a person duly authorised in this behalf by the employer.

3. **WORKING HOURS**

(1) The working hours of the establishment shall be ______ to ______ (here give details of the timings of the establishment and also of the worker) and any change in this regard shall be communicated to the worker 24 hours in advance.

(2) All workers shall be at work at the time fixed and notified. Workers attending late would be liable for deductions of wages.

(3) For the work, beyond normal working hours overtime wages shall be paid to the workers as prescribed in the Law on Hours of Work, Leave & Other Working Conditions at the Workplace at double the rate of his normal wages, on a hourly basis.

4. Shift Working

Workers may be required to work in shifts, provided that no worker shall be required to work continuously for more than fifteen days in the night shift.

5. LEAVE

(1) Every worker who has worked for 240 days or more shall be allowed during the subsequent calendar year one days earned leave with wages for every 20 days work in case of all establishments above ground and one days earned with wages for 15 days work in case of a worker working in a mine where the work is carried on below ground, provided that the employer may allow leave on a pro rata basis to the workers even before the completion of one year.

(2) A worker who desires to go on leave shall apply to the employer or any other officer of the establishment specified by the employer who shall issue orders on the application within a week of its submission or two days prior to commencement of leave applied for and where the leave application is made three days before its commencement, the order shall be given on the same day and if the leave is refused or postponed, the fact of such refusal or postponement shall be recorded in writing in the register to be maintained for the purpose and the worker shall be supplied with a copy of the entry made in the leave register. If the worker desires an extension thereof he shall apply to the employer or to the specified officer who shall send a written reply either granting or refusing extension of leave to the worker at his address maintained in the record or given in the original application for leave.

(3) If the worker remains absent for more than 10 days beyond the period of leave originally granted or subsequently extended he shall lose the lien on service unless he explains to the satisfaction of the employer his inability to return before the expiry of his leave.

6. Casual Leave and Sick Leave

(1) Every worker shall be allowed 8 days casual & sick leave in a year.

(2) Casual leave shall not be granted for more than three days at a time except in case of sickness. The casual and sick leave is intended to meet special circumstances which cannot be foreseen. Ordinarily previous permission of the employer or the Head of the Department or Section shall be obtained before availing such leave and where the same is not possible the Head of the Deptt. shall be informed as soon as is practicable.

7. Festival Holidays

Every establishment shall observe 8 holidays in a year, out of which 3 would be National Holidays, i.e. Republic Day, Independence Day & Gandhi Jayanti and the remaining holidays shall be declared every year and notified to the workers by displaying the same on the notice board.

8. Attendance

All workers shall be at the workplace specified for them and shall not leave the place of work without permission during working hours or without sufficient reasons and any unauthorised absence shall be treated as absence liable to deductions being made from the wages pro-rata to the period of absence.

9. Stoppage of Work

The employer may in the event of breakdown of machinery, stoppage of power supply, raw material or for any other reason stop the working of the establishment and in the event of such stoppage the workers shall be notified by notice put up on the notice board. The workers shall be required ordinarily to remain within the establishment after commencement of stoppage for not more than 2 hours unless the employer has declared the lay off. In the event of lay off or if they are not required after remaining 2 hours in the establishment they shall be paid the lay off compensation. In case the lay off continues for more than 45 days the employer may retrench the workers as per law on the subject.

10. Termination of Service

(1) For termination of employment of a permanent worker a one month's notice shall be required to be given either by the employer or the worker or either party may make payment of wages for one month in lieu of the notice period.

(2) No notice shall be required by either side for termination of employment of a temporary, probationer or a badli worker unless the termination is on account of misconduct.

(3) Where an employment of any worker is terminated or he or she quits, the wages earned by him or her and the other dues shall be paid before expiry of 48 hours of termination or as the case may be quitting of employment.

11. Discipline, Misconducts and Disciplinary Action

(1) All workers shall perform the duties entrusted to them by the management from time to time.

(2) All workers shall maintain discipline in the establishment and with respect to the work of the establishment.

(3) The following is an illustration of acts or omissions which shall be treated as misconduct: -

(a) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.

(b) Theft, fraud or dishonesty in connection with the employer's business or property.

(c) Wilfull damage to or loss of employer's goods or property or to the work in progress.

(d) Taking or giving bribes or any illegal gratification.

(e) Habitual absence without leave or absence without leave for more than 10 days.

(f) Habitual late attendance.

(g) Habitual breach of any law applicable to the establishment.

(h) Riotous or disorderly or violence behaviour during working hours at the establishment or any act subversive of discipline.

(i) Habitual negligence or gross neglect of work.

(j) Resorting to 'go-slow' or 'work to rule'.

(k) Striking work or inciting others to strike work in contravention of the provision of any law, or rule having the force of law.

(l) Conviction in any Court of Law for any criminal offence involving moral turpitude.

(m) Drunkenness, fighting or riotous, disorderly or indecent behaviour while on duty at the place of work.

(n) Failure or refusal to wear or use any protective equipment given by the employers.

(o) Failure to comply with norms relating to safety or working in a manner which is likely to cause an accident.

(p) Causing sexual harassment to female workers.

(q) Sleeping on duty.

(r) Malingering or slowing down the work.

(s) Leaving work without permission or sufficient reason.

(t) Threatening or abusing or assaulting any superior or co-worker.

(u) Preaching of or instigating others to resort to violence.

(v) Going on illegal strike either singly or with others.

(w) Disclosing to any unauthorised person of any confidential information in regard to the working or process of the establishment which may come into the possession of the worker in the course of his work.

(x) Refusal to accept any order or notice or any communication in writing.

(4) No order of punishment under the Standing Orders shall be made unless the worker concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. A departmental inquiry shall be instituted before dealing with the charges or awarding any punishment.

(5) Where a disciplinary proceeding against a worker is contemplated and where the presence of such worker is likely to, in the opinion of the employer, create indiscipline or jeopardise the investigation into alleged misconduct, the employer may suspend the worker pending enquiry.

Provided that during the pendency of suspension, the worker shall be paid subsistence allowance at the rate of 50% of the wages for the first three months and 75% wages thereafter and if after enquiry, the charges levelled are not proved, the worker will be entitled to full wages.

Provided further that if the delay in completion of proceedings and enquiry into misconduct is attributable to the worker the subsistence allowance shall not exceed 50% of his wages.

(6) Where a worker is found guilty of misconduct after an enquiry, the employer may warn the worker or impose the punishment of suspension without wages for a period of not exceeding 15 days or stoppage of increments or demotion or termination or dismissal from service depending on the gravity of the misconduct.

Provided that no such punishment shall be imposed without giving an opportunity to the worker to explain his position except if he or she is only warned.

(7) If a worker is arrested on charge of offence relating to moral turpitude, the employer may suspend the worker without pay till such time the worker is honourably acquitted and where the worker is held guilty and sentenced, the employer may terminate the services of such a worker.

12. Payment of Wages

(1) The employer shall specify a wage period and the date on which wages shall be paid, provided that no wage period shall exceed one month.

(2) Wages to monthly paid workers shall be paid by the seventh day of the succeeding month and in other cases as per provisions of Wages Act.

13. Transfer

Every worker shall be liable for transfer from one department to another and from one unit to another provided such units are under the same management.

14. Retirement

A worker will be liable to retirement on attaining the age of superannuation, i.e. 58 years.

Provided that a worker may be retired earlier on medical grounds.

15. Certificates on Termination of Service

Every permanent worker shall be entitled to a service certificate at the time of his dismissal, discharge, resignation or on termination of employer - employee relationship for any other reason or retirement from service.

16. Providing a Copy of Standing Orders to the Workers

A copy of these Standing Orders shall be given to every worker along with the appointment letters.

APPENDIX - II

THE SMALL ENTERPRISES (EMPLOYMENT RELATIONS) ACT 2002

An Act to regulate the employment in small enterprises.

WHEREAS it is expedient to consolidate and amend the laws relating to regulation of employment in small enterprises and for certain other purposes hereinafter specified, it is hereby enacted as follows:

CHAPTER I

Preliminary

1. **Short Title, Extent, Commencement and Operation**

   (1) The Act may be called The Small Enterprises (Employment Relations) Act 2002.

   (2) It extends to whole of India

   (3) It shall come into force on —— or from the date notified by the Central Government in this behalf.

   (4) It shall apply to all establishments or enterprises in which not more than 19 workers are employed.

   Provided that nothing in this Act shall apply to an establishment of a Government.

2. **Definitions**: In this Act unless there is anything repugnant in the subject or context

   (1) Appropriate Government in respect of an establishment under this Act shall mean the Government of the State in which the establishment is situated

(2) **Charitable institution:** A Charitable institution means an institution which is established for the purpose of charity to any living being or formed for not any profit motive or formed for the welfare of living beings or for preservation of environment or of heritage or for religious purposes.

(3) **Child:** Child means a person who has not completed his 14th year of age

(4) **Day:** Day means a period of 24 hours beginning at mid night.

(5) **Worker:** Worker means a person who is wholly or principally employed directly for wages or reward in connection with the work of any small enterprise or establishment to which this Act applies but does not include a supervisor or manager.

(6) **Employer:** Employer means an owner or who has the ultimate control over the affairs of the small enterprise or establishment.

(7) **Establishment:** An establishment or enterprise means manufacturing (except of hazardous nature), or mining (except underground mining) activity, plantation, construction, service, transport or other enterprises and include hospitals, dispensaries, nursing homes, restaurants, eating houses, hotels, shops and establishments, charitable, research, training and educational institutions, consultancy and solicitors or lawyer organisations and other professions such as C.As., Architects, etc.

(8) **Factory:** A factory means a place where any manufacturing process is carried on and wherein not more than 19 workers are employed.

(9) **Hotel:** Hotel means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of a sum of money by a traveller or any member of the public or a class of the public and includes a club.

(10) **Inspector:** Inspector means a person appointed as inspector by the Government for securing the compliance of this Act, and the Chief Inspector and the Dy. Chief Inspector mean the Chief Inspector and the Dy. Chief Inspector of small enterprises appointed under this Act.

(11) **Restaurant:** Restaurant means any premises in which is carried on wholly or principally the business of the supply of meals or refreshment to the public or a class of the public for consumption on the premises.

(12) **Shop:** Shop means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or commercial establishment.

(13) **Weekly Off:** Weekly Off means a day on which a worker shall be given a holiday under the provisions of this Act.

(14) **Wage:** Wage means the basic wage, dearness allowance, city compensatory allowance or house rent allowance or overtime wages or wages for leave period or bonus.

(15) **Young Person:** Young person means a person who has not completed his eighteenth year of age.

(16) The terms used in this Act but not defined shall have the same meaning as assigned in the relevant laws.

Chapter II

Registration of Small Enterprises

3. Procedure for Registration.

(1) Within 30 days of commencement of this Act, every employer shall furnish an affidavit on a non-judicial stamp paper of Rs. 10/- to the Chief Inspector or Dy. Chief Inspector of the State appointed for the area or district where the small enterprise is located along with the information in Form 'A' appended to this Act and the fee for registration of his establishment.

(2) The affidavit shall contain the name and address of the employer, the name and address of small enterprise and such other information as may be prescribed and an undertaking that information furnished by him in the Form is correct to his knowledge and belief and nothing material has been concealed.

(3) A fee as may be prescribed shall be payable by an employer along with affidavit filed by him for seeking registration.

(4) If an employer seeking registration under this Act has furnished the information and fee as required in Sections (1) to (3) above, the Chief Inspector shall forthwith issue the certification of registration and make an entry in this behalf in a register maintained for the registration of small enterprises and If at any time any change occurs subsequently in the information submitted by an employer along with the affidavit, the same shall be intimated by the employer within 30 days of occurrence of such change by a written communication by the Chief Inspector.

(5) A registration granted under Section (4) shall be valid for five years and the registration may be renewed by following the procedure provided in Section (1) to (3) by making an application within 30 days before the expiry of registration and if an employer fails to make an application before 30 days of expiry of the registration his registration may be renewed provided he pays double the fee for registration prescribed in Sub Section (3).

Chapter III

Conditions for Employment of Certain Persons

4. **Prohibition of Employment of Children:** No child below the age of 14 years shall be permitted to work in any establishment and a young person who has completed 14 years but not completed 18 years of age may be employed after he has been declared fit by a qualified medical practitioner. In mining establishments any person who has not completed 18^{th} years of his age shall not be employed.

5. **Non-Discrimination against female workers**

   The female workers shall not be discriminated against in matters of recruitment, training, transfers or promotions.

Chapter IV – Conditions of Work

6. **Health –**

(1) Every employer shall ensure to keep the enterprise clean and free from harmful material including gases, dust and fumes. He shall ensure that there is no overcrowding and there is proper light and ventilation at the place of work and shall provide facilities such as toilets, drinking water and for washing either individually or collectively.

(2) He shall ensure disposal of wastes and effluents properly and in case he is not able to arrange the disposal of wastes and effluents by himself he shall with the cooperation of other enterprises in the same area take effective steps for disposal of wastes and effluents.

(3) The State Government may provide facilities for toilets common for a cluster of shops or establishments by seeking cooperation of local bodies.

7. **Safety**

(1) Every employer of the enterprise where manufacturing, construction or mining activity is carried on shall ensure the following safety measures at the work place

(a). Every employer shall ensure that all moving parts of the machines are properly secured, fenced and guarded.

(b). Every employer shall ensure that Lubrication or adjusting operation or mounting or shipping of belts and other hazardous work near or on the machinery in motion is not allowed except by a specially trained male worker and proper care of the safety of the operator is taken.

(c). Safety measures in respect of the hoists, lifts, chains, ropes and tackles shall be taken wherever the same are used and it shall be ensured that they are of good mechanical construction and safe for working at the rated capacity.

(d). Young persons are not allowed to work on dangerous machines or engaged in actual mining of the minerals.

(e). The equipment using/operating at more than atmospheric pressure shall be ensured to be safe for working.

(f). Wherever there is danger of injury or irritation taking place to the eyes of the operator/worker proper protective equipment shall be provided to prevent the eye injury.

(g). In mining activity the working is done by making benches of not more than 6 metres height from the superjacent ground.

(h). In case of construction work proper scaffolding is provided where the construction of building is being done at the height of 6 ft. or above and in roofing no substandard material shall be used.

(2) Every Employer of the enterprise shall ensure that

(a) Necessary fire-fighting equipment and arrangements for the safe exit of the persons employed in the event of the fire is provided.

(b) First aid facilities within the enterprises and the medical care in case of accidents requiring immediate medical attention is provided.

(c) Where in any enterprise an accident occurs resulting in death or bodily injury to any person which prevents the concerned person from working for a period of 48 hours or more, the same shall be reported by sending a notice to the Deputy Chief Inspector in form 'E' with a copy to the Commissioner for Workmen's Compensation.

8. **Application of Factories Act and Other Laws:**

The Factories Act and other relevant laws shall apply to small enterprises wherever storage and handling of hazardous acids, chemicals, gases or explosives material is involved.

9. **Welfare**

(1) The employer shall provide shelters/rest rooms/lunchrooms for the workers if employing 10 or more workers.

(2) In case of a cluster of establishments the employer may in cooperation and combination with other employers in the area take steps to provide measures for the welfare of the workers such as latrine and urinals, canteen, crèche for the children below the age of 6 years of the women workers and a local dispensary or hospital for the immediate medical care of the workers.

10. **Hours of Work**

(1) No adult worker shall be required to work for more than 48 hours in a week and 9 hours in a day and no worker shall be asked to work continuously for more than 5 hours unless he has been given a break of not less than half an hour provided that limit of working hours or of weekly rest may be relaxed in case of urgent repairs.

(2) The total number of hours of work including the rest interval shall not exceed 10½ and in case a worker is entrusted with intermittent nature of work, urgent repairs and for shops the spread over shall not exceed 12 hours.

(3) Women workers shall not be asked to work normally between 9 pm and 6 am and during these hours women workers can be asked to work only if not less than five women are working during this period at the workplace and the employer takes proper steps for the security of the women workers and provides a transport from the place of work to their residences.

(4) The total number of hours of work including overtime shall not exceed 60 hours in a week.

11. **Annual Leave & Holidays**

(1) Every worker shall be allowed a weekly holiday with wage for the whole day as may be fixed by the employer in respect of the worker and any change in the weekly holiday shall be notified to the worker at least a day in advance provided that State Government may fix different days as weekly holidays for different establishments or areas.

(2) Every worker shall be entitled to eight days casual and sick leave with wages every year. A worker who has joined after 1st January shall be entitled to casual leave pro-rata.

(3) Every worker who has worked for at least 240 days in a calendar year shall be entitled to 15 days earned leave in the following calendar year and a worker who has put in less than 240 days work in the previous calendar year shall be entitled to earned leave proportionate to his attendance.

(4) A worker shall be permitted to accumulate leave upto 45 days in addition to the leave entitlement of the current year earned on the basis of the work done by him in the previous year and he shall be entitled to encashment of entire accumulated earned leave including leave earned during the current year pro rata in case his services are terminated or he quits the service.

(5) A worker shall be entitled to three holidays in a calendar year, namely, Independence Day, Republic Day and Gandhi Jayanti.

Chapter V

Wages, Bonus and Social Security

12. **Wages**

(1) The State Govt. may fix the minimum rates of wages in respect of the enterprises covered under this Act. The Minimum Wages may be fixed area wise if required and the minimum wages shall be revised once in

five years. However, the State Govt. may declare DA twice a year on the minimum wages. All the minimum wages shall be fixed or revised after consulting the committee or an advisory board set up in this behalf for the purpose and any contract or agreement whereby a worker agrees to work for less than minimum wages shall be void ab initio.

(2) A female worker shall be paid same wages as are paid to a male worker if the work performed by the female worker is same or similar as that performed by the male worker.

(3) Nothing shall prevent the employer from paying better wages than the minimum fixed by the State Government by mutual agreement with the workers.

13. **Payment of Wages and Deductions from Wages**

(1) Every employer, manager or occupier shall be responsible for payment of wages to all person employed by him before the expiry of the 7th day after the completion of the wage period.

(2) No wage period shall exceed one month.

(3) All the wages shall be paid in current currency and coin and it may be paid by cheque drawn in favour of the worker or by transfer to his account in the bank.

(4) All wages shall be paid on a working day during the working hours and every employer shall issue a wage slip to every worker containing the wage period, name, token number, designation, number of days worked or units produced, gross wages payable, deductions and net wages payable at least 24 hours in advance.

(5) The wages of a person whose employment has been terminated shall be paid before the expiry of the second working day after the day on which his employment is terminated.

(6) Where a worker has worked for more than 48 hours in a week or 9 hours in a day the employer shall pay extra wages at the rate one and half times of the ordinary wages and where the total hours worked by an worker exceeds 9 hours in a day and 56 hours in any week the wages for the hours of work put in by the worker above 56 hours he or she shall be paid at the rate of twice his ordinary wages.

(7) The employer shall keep a record of all wages paid by him to his workers including the signature/thumb impressions obtained by him while making the payment of wages. Such records shall be maintained for a period of three years.

(8) Deductions may be made from the wages or bonus payable to workers on account of the following: -

(a) For absence from duty in proportion to the period of absence (in terms of hours or days).

(b) For causing loss or damage to the property of the employer specifically entrusted to him and in such a case the employer shall issue a prior notice to the worker and give him an opportunity to be heard.

(c) For recovering the instalments of loans or advances given by the employer to the worker.

(d) On account of subscription of the worker towards social security under this Act or subscription to any welfare fund constituted by the state govt.

(e) On account of Income Tax or any other tax payable by the worker to the extent the employer is responsible to recover the same from the worker from his wages under the relevant tax law.

(f) The cost of any amenity such as electricity or water supplied at the residence of the worker by the employer or the rental of accommodation provided by the employer.

(g) The subscription or recovery of loans/advances of any cooperative credit and thrift society or cooperative store or any other cooperative for which the worker has authorised the employer.

(h) Any donation to Prime Minister Relief Fund or any other relief fund if so authorised by the worker.

(i) Any subscription made by the worker to a union if so authorised by the worker.

(9) The employer shall ensure that the recoveries/deductions from wages of workers are so arranged that a worker receives at least 50% wages in cash after such recoveries or deductions.

14. **Bonus**

(1) Every worker who has put in at least 90 days work in a calendar year shall be entitled to annual minimum bonus at the rate of 8.33% of wages earned by him during the previous year.

(2) The bonus will be disbursed to the workers within three months from the close of the accounting year of the enterprise and where the workers desire that the same may be paid to them at the time of mutually agreed festival the employer shall pay the bonus at the time of the festival.

(3) An enterprise which has not been established with a view to make profits and which is in the nature of charitable or religious institution, educational training and research institutions, a construction establishment shall be exempt from payment of bonus.

(4) Any new establishment will be exempt for first three years from payment of bonus.

(5) A worker who has put in 90 days or more but has not worked for all the days worked by the establishment in the previous calendar year shall be paid bonus proportionately to the wages earned by him during the calendar year.

(6) The salary limit for eligibility or for calculation of bonus as prescribed in the general law shall apply to small enterprises.

15. **Recovery of unpaid wages, illegal deductions etc.**

(1) Where a worker (including a worker who has been retrenched, removed/ dismissed or who has resigned) has not been paid wages on the due date, or has been paid less wages than that are payable as per this Act or has not been paid over time wages, leave wages, bonus, retrenchment compensation or any other dues by his employer he may himself or a union of which he is a member or an inspector appointed under this Act may file a claim before the prescribed authority within a period of one year from the date such unpaid dues became payable or came to be detected and the application shall contain the name of the employer and his address, the name and address of the enterprise, the name and address of the manager if any, the nature of dues which are unpaid or have been paid less, the period to which such dues pertain, or illegal deductions if made from the wages and wage period to which the illegal deduction pertain.

(2) The authority shall immediately proceed to hear the claim by calling the employer or the manager of the enterprise and the complainant and pass an order rejecting or upholding the claim. Any person aggrieved by the order of the authority may file on appeal before the Labour Court.

(3) Where an authority upholds the claim either wholly or in part it shall require the employer to make payment to worker and furnish proof of making the payment or require the employer to deposit the amount by cheque or demand draft of the amount ordered drawn in favour of the worker with the authority.

(4) If the employer fails to make payment as prescribed in Sub-Section (3) the authority shall issue a certificate to the collector of the district who shall recover the same and send it to the authority for payment to the concerned worker.

(5) The State Government shall designate one of the official of the Labour Department not below the rank of an Asstt. Labour Commissioner to be authority to hear the claim cases under this Section.

16. **Social Security**

(1) Every worker shall be entitled to following social security benefits

(a) Medical Care for self and dependents

(b) Compensation in respect of employment injury as prescribed under the Workmen's Compensation Act or according to law on social security applicable to the worker.

(c) Provident Fund equal to 8% of wages of employers and 8% of wages as his own contribution plus interest and/or a pension at the prescribed rate.

(d) In case of a female worker the maternity benefit i.e. 12 weeks leave with wages upto two surviving children.

(e) Gratuity at the rate of 15 days of wages for every completed year of service provided the worker has put in uninterrupted service for at least five years provided further that the condition of completion of five years shall not be necessary for receiving gratuity in case of death or permanent total disablement of the worker.

(f) Any other benefit such as unemployment insurance or pension, as may be introduced under the social security law by the government.

(2) The social security benefits mentioned at sub section (1) above will be provided out of the fund consisting of contributions from the employer @ 16% of wages paid by him to the workers, contributions by workers @ 12 % of the wages and contributions equal to 2% of the wages by the State Government.

(3) The implementation of social security programme will be on the lines of the recommendations made by the National Commission on Labour on social security.

(4) Till such time the new social security system is set up the present system will continue.

Explanation 1- for the purpose of this section the dependents include the spouse, dependant children below 18 years of age, dependant parents or parents-in-laws, unmarried daughter and invalid children.

Explanation 2 – Wages for the purpose of this section means the basic wages and dearness allowance but does not include any house rent allowance, C.C.A. or leave encashment money received from the employers w/o actually availing the leave or any travelling allowance or bonus or overtime wages.

Chapter VI

Lay Off, Removal from Service and Settlement of Disputes & Closure

17. **Lay Off:** An employer may lay off his workers for the reasons of shortage of power, coal, raw material, accumulation of stocks, break down of machinery, natural calamity or for lack of orders. He shall pay to his workers lay off compensation at the rate of 50% of wages for the period of lay off and unless mutually agreed a worker shall be entitled to lay off compensation if he presents himself daily at the appointed time at the gate of the enterprise/establishment. If the lay off continues for more than 45 days , it shall be lawful for the employer to retrench the workers.

18. **Separations/Removals from Service**

(1) An employer may dispense with the services of a worker who has been in his employment for five years or more by giving one months notice or wages in lieu of the same and by paying separation compensation calculated @ 20 days wages for each completed year of service and a

worker who has not completed five years of service shall be entitled to one-month notice or notice pay in lieu and separation compensation of 15 days wages for each completed year of service.

(2) The employer may dismiss or remove the worker from service without giving any notice or paying any compensation on account of proven misconduct which may include absence from duty without notice or without sufficient reasons for more than ten days, for going on or abetting a strike which is illegal prima-facie or for grave violent behaviour at the workplace or for causing wilful damage or loss to the property of the employer or for misappropriation or theft.

(3) A worker who is retrenched as per provisions of sub-section (1) or is dismissed by the employer or resigns from service by the employer shall be paid his wages and other dues if any and retrenchment compensation within 48 hours of such retrenchment removal/dismissal or resignation.

(4) If a dispute arises between the worker and the employer on account of any condition of service excluding wages but including removal or dismissal from service the same shall be resolved as under: -

(a) The aggrieved worker will first approach his immediate superior who in consultation with the head of the establishment will try to resolve the grievance and give a suitable reply to the worker within 15 days.

(b) If the worker is not satisfied with the reply received from the immediate superior he shall make an application within 10 days to the head of the establishment for personal hearing and on receipt of such application the head of the establishment will give a personal hearing to the worker and also give his decision, after personal hearing within 10 days of making of application by the worker.

(c) In case the worker is not satisfied with the decision of the head of the establishment he may approach the conciliation officer of the appropriate Government within 45 days who shall hold conciliation proceedings in the matter to resolve the grievance of the worker and make efforts to resolve the same within three months.

(d) If the conciliations fail the dispute shall be referred to a mutually agreed arbitrator and where there is no agreement regarding the appointment of an arbitrator, the appropriate Government shall appoint the arbitrator who shall give his award within a period of four months.

(5) An aggrieved worker may be represented in any conciliation or arbitration proceedings by a trade union registered under the general law, provided such a union has at least 30% membership amongst the workers of the establishment where such aggrieved workman is or was employed.

19. **Closure**

Where an employer intends to close down his establishment he shall serve one month's notice to the workers before the intended date of closure or pay wages in lieu thereof and he shall also have to pay compensation @ 15 days wages for every completed year of service to his workers.

20. **Collective Disputes**

(1) Any collective dispute between the workers and an employer or employers arising out of employment, non-employment, terms of employment or conditions of labour of the workers may be settled between the workers and the employer by negotiations between the employer and the trade union if there is a union in existence in the establishment failing which the employer or union may take the help of conciliation officer of the state government for resolution of their collective dispute.

(2) If the collective dispute is not resolved bilaterally or in conciliation the same shall be required by the employer and the workers to be referred to a mutually agreed arbitrator.

(3) The bilateral settlement will be valid for a period of four years or for a period mutually agreed upon by the parties.

(4) Where the dispute has been referred to an arbitrator the arbitrator shall give his award within six months from the date of reference. If there is no mutual agreement regarding appointment of the arbitrator the same shall be appointed by the Appropriate Government.

(5) In any collective dispute in a small enterprise the workers may be represented in conciliation or arbitration proceedings by a union which has at least 40% membership amongst workers of the establishment to which such dispute pertains.

Chapter VII

Miscellaneous

21. **Registers/Records**

(1) Every employer shall maintain a register of workers, in form 'B', a register of leave in form 'C' and a register of muster roll cum wages in form 'D' which will also show the attendance put in by the workers during the wage period, the total wage earned and the deductions made from the wages of the workers.

(2) The employer shall exhibit at a prominent place in his establishment in the language understood by the majority of his workers, the notice/ notices containing information on registration number and date of registration of the establishment, the hours of work and the weekly off, the list of holidays, the wage period, the wages and allowances payable to workers and the date of payment and the name and address of the employer and the manager and name and address of inspector under the Act.

(3) Every employer shall submit a return to the authority with whom the enterprise is registered within 30 days after the close of the calendar year. The return shall contain the following information:

(a) Name of the establishment and its complete address

(b) Name and address of the employer

(c) Name and address of the manager (if employed)

(d) The nature of business, occupation, trade or industry

(e) The date of commencement of the business, occupation, industry or trade

(f) Average number of persons employed including the break up of male, female and young persons (above 14 years but below 18 years of age).

(g) The number of man-days actually worked during the calendar year

(h) The number of persons taken on rolls as new recruits during the year

(i) Number of persons whose services were dispensed with during the year

(j) The number of accidents that have taken place during the year (fatal and non fatal)

(k) The total wages paid to the workers during the year

(l) Information on the strike or lockout if it has taken place or was declared during the year under report and the period of strike or lockout, the nature of loss of production and loss of wages to the workers.

(m) Any other information as may be prescribed.

(4) The employer shall issue an identity card to every worker employed by him containing such details as may be prescribed.

22. **Self Inspection/Inspection**

(1) Every employer, within 30 days after the end of the calendar year shall certify confirming in form 'F' that all requirements of safety, health, welfare and payment of wages have been complied with by him and the certificate will be sent by the employer to the Dy. Chief Inspector with a copy to the Inspector of the area by registered post and where the employer fails to send the self certificate the Deputy Chief Inspector shall direct the Inspector concerned to carry out the inspection of the enterprise and the inspector shall after carrying out the inspection furnish a report of the violations committed by the employer to the Chief Inspector who shall issue a show cause notice to the employer to rectify the same specifying the period for carrying out rectification.

(2) Any complaint about violation of this law received from the workers shall be taken note of by the Deputy Chief Inspector himself whereupon he shall direct an Inspector to look into the complaint and furnish a report to him and in case the Deputy Chief Inspector finds that the employer has violated any provisions of the law he shall call upon the employer by a written communication to rectify the same within the specified period.

(3) In case the employer fails to rectify the same in spite of the show cause notice of the Deputy Chief Inspector as provided in sub section (1) or sub section (2) in writing the Deputy Chief Inspector will take up the matter with the trade or business organisation of which the employer is a member. In case it is still not rectified within 30 days, the Deputy Chief Inspector shall be free to take steps to prosecute the employer and where the employer is not a member of any trade or business organisation the Deputy Chief Inspector may take steps to prosecute the employer if the employer has not rectified the violations in spite of issue of show cause notice.

(4) The State Government shall appoint the Chief Inspector, Joint Chief Inspector, Deputy Chief Inspectors and Inspectors of Small Enterprises area-wise or district-wise as deemed appropriate and may distribute the work jurisdiction amongst them.

(5) The officials mentioned in sub sec (4) shall be deemed to be public servants within the meaning of sec 21 of IPC (Act XLV of 1860).

23. **Non Application of Certain Laws**

(1) Subject to the provisions contained in sub sec (4) of Sec 1 and Sec 8 of this Act where this Act applies to an establishment nothing in the following laws shall apply to that establishment.

i) The Factories Act, 1948 (except those covered by Sec.8)

ii) The Industrial Disputes Act, 1947

iii) The Industrial Employment (SO) Act, 1946

iv) The Minimum Wages Act, 1948

v) The Payment of Wages Act, 1936

vi) The Payment of Bonus Act, 1965

vii) The EPF& Misc. Provisions Act 1952

viii) The Employees State Insurance Act

ix) The Maternity Benefit Act

x) The Workmens' Compensation Act

xi) The Equal Remuneration Act, 1976

xii) The Contract Labour (R&A) Act, 1972

xiii) The Interstate Migrant Workmen (RE&CS) Act 1979

xiv) The Shop & Establishment Act

xv) The Mines Act 1951 (except the mines where work is being carried on below ground)

(2) If the Shops & Establishment Act of a State confers better benefits than provided under this Act, the State may make amendments in this Act.

24. **Penalties**

(1) Fines may be imposed by Chief Inspector or the Joint Chief Inspector as specified below:

(a) Any person who violates any provisions of this Act as mentioned in Part I of the Form F shall be punishable with a fine which shall not be less than Rs. 1000/- but which may extend to Rs. 2,500/-.

(b) For any second or subsequent offence of the same nature and where an employer is held guilty of furnishing false information as contained in Part-I of Form 'F' a fine may be imposed which shall not be less than Rs. 2,000/- but which may extend to Rs. 5,000/-.

(c) Where a violation as mentioned in Part I of Form F has not been rectified by an employer in spite of the notice issued by the Deputy Chief Inspector or Inspector for rectification of any violation, a fine of Rs.100/- per day for each violation may be imposed for the period till the violation is rectified.

(2) Before imposing fine the Chief Inspector or as the case may be the Joint Chief Inspector shall give an opportunity to the person or the employer concerned to show cause why the fine as proposed should not be imposed on him.

(3) Without prejudice to any other provision contained in this Act, the Chief Inspector or the Joint Chief Inspector shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while exercising any powers under this section, in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(4) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section.

25. **Trial of Certain Offences**

(1) Whosoever wilfully obstructs the Chief Inspector, the Jt. Chief Inspector, the Dy. Chief Inspector or the Inspector in the exercise of any power under this Act or in carrying out the purposes of this Act including by prevention of any worker from appearing before the above mentioned authorities shall be punishable with a fine which shall not be less than Rs. 5000/- but which may extend to Rs. 10,000/- or with imprisonment for one month or both.

(2) Whosoever furnishes false information as given in Part II of Form 'F' shall be punishable with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000/- or with imprisonment which may extend to one year or both.

26. **Cognizance of offences and competence of courts**

(1) No court shall take cognisance of any offence under this Act unless it is filed by a Deputy Chief Inspector or an Inspector appointed under this Act.

(2) No court lower than that of a Metropolitan Magistrate or a First Class Magistrate shall try any offence as prescribed under Section 25 of this Act.

27. The State Government may grant exemption to any establishment from any provision of this Act in any case of emergency occurring in an establishment or in case of hardship.

28. **Rules under Act**

State Government may make rules in respect of any provision of the Act for securing the implementation of this Act.

29. **Protection to Official Persons Acting Under This Act**

No suit, prosecution or other legal proceedings shall lie against any public servant or any other person in the service of a Government acting under the direction of any such public servant for anything done in good faith or intended to be done in pursuance of the provisions of this Act, rule or order made thereunder.

30. **Power to Remove Difficulties**

The Central Government shall have powers to remove difficulties if any that arise in the implementation upto a period of 3 years.