

CHAPTER-XI

LABOUR ADMINISTRATION

There is perhaps no Department or Ministry that deals so exclusively with human relations as the Labour Ministry, and that too, largely by persuasion and introspection rather than coercion. It does have the responsibility of enforcing laws that relate to employment and industrial relations, but its role in this field too is not punitive, but one of vigil and prosecution before a court of law.

11.2 It does not need many arguments or adducing of evidence to prove that the health of the economy of the country, and consequently, the daily life of the common people as well as the elite depends upon harmony in industrial relations. It is difficult, therefore, to over-state the importance of good industrial relations. It is not often realized that even the defence of the frontiers or the internal security of the country depends ultimately on a viable and efficient economy, and this, in turn, depends on industrial relations. There is no reason to think that the maintenance of good industrial

relations which is the responsibility of the Ministry of Labour is less important than the responsibility that any other Ministry holds. Unfortunately, this realization has not been very much in evidence. Perhaps the reasons for this are:

- (a) A perception, which sees the Ministry more as related to the welfare of labour, and a paternalistic attitude.
- (b) The fact that the performance of the Ministry of Labour is not quantifiable.

These attitudes miss the crucial role of industrial relations as the fulcrum on which the efficiency of the economy rests and turns.

11.3 Those who lead and 'man' the Ministry should therefore, have the highest degree of competence, vision, empathy, tact, skill in the arts of persuasion and inducing introspection, and activating social and group consciences. We, therefore, think that these considerations

should govern the choice of the Minister as well as the top echelons of the bureaucracy that bear responsibility for the functioning of the Ministry. They should also, *mutatis mutandis*, govern the recruitment and placement of officers and staff at every level, and every department of the Ministry.

11.4 In the field also, officers must be invested with sufficient authority to attract due deference and compliance, and should be provided with adequate infrastructural facilities that they require to carry out their arduous work over far-flung areas. In the course of our tours to hear evidence, we were struck by the total inadequacy of these facilities. Many officers told us that they had to work from offices that were apologies for rooms, with inadequate and shoddy furniture. They were expected to receive managers of industries and leaders of trade union organizations in such rooms. Often the unseemly conditions of the office made officers of managerial levels or high-level leaders of trade unions reluctant to answer calls and attend discussions in such ramshackle offices, housed in dirty buildings that belonged to others. The officials of the Labour Department/Ministry were hamstrung

to the point of being crippled by the absence of transport and telephone facilities. During our visit to various State capitals, we were informed that the Chandigarh region of the Central Industrial Relations Machinery (CIRM), which comprises the States of Haryana, Punjab, Himachal Pradesh, J&K and the Union Territory of Chandigarh, has only two vehicles, one at Chandigarh and another at Jammu and this made it difficult for officers to travel, visit places on duty, either to nip disputes in the bud or deal with emerging situations of dispute and conflict. The alternative was to borrow transport from the very people whose conduct the officer was expected to inspect. We were told that in many cases this was what was being done. We need not comment on the credibility that this kind of dependence creates in the minds of leaders of enterprises or trade unions. We do not want to suggest that this situation is allowed to continue by connivance. But we do not believe that those who have the responsibility of correcting the situation and generating the credibility, without which officers cannot discharge quasi-judicial functions or functions of vigilance, are unaware of what is happening in the

field. We cannot understand how field officers of this kind can function without instruments of communication or mobility. We will, therefore, strongly recommend that officers of the Labour Department should be provided with offices, infrastructure and facilities commensurate with the functions they have, and the dignity they should have.

11.5 Labour Administration means public administration activities to translate the national labour policy into action. As we have said earlier, labour policy in India draws inspiration and strength partly from the ideas and declarations of important national leaders during the freedom struggle, partly from the debates in the Constituent Assembly, partly from the provisions of the Constitution, and partly from International Conventions and Recommendations. It has also been significantly influenced by the deliberations of the various sessions of the Indian Labour Conference and the recommendations of various National Committees and Commissions, such as, the Royal Commission on Labour, the National Commission on Labour 1969, the National Commission on Rural Labour 1991, and the like.

11.6 India has ratified a total of 39 Conventions adopted at different sessions of the International Labour Organisation. These include conventions on hours of work, unemployment, night work, minimum wages, weekly rest, workers' compensation, forced labour, labour inspection, child labour, underground work and equal remuneration for men and women for work of a similar nature. We are appending a list of the 39 Conventions, as Appendix I at the end of this Chapter.

11.7 With growth in the dimensions and variety of industrial activity and changes in the agricultural sector, the task of labour administration has become increasingly difficult. It calls for comprehension, sensitivity, expedition and efficiency at every stage. To enable industries to be competitive in the present context, and at the same time to protect the rights of workers, labour administration has to provide an industrial relations system, which induces the adoption of a new mindset and participatory culture including the development of appropriate skills. On the enforcement side, labour administration has to ensure effective enforcement of labour laws.

11.8 Labour Administration in India is mostly rooted in labour laws. There are only a few activities that are not based on laws. They are mostly in the field of workers' education and craftsmen training other than apprenticeship training, etc.

11.9 At the Centre, the Ministry of Labour, and in the States, Labour Departments are responsible for labour administration in India. 19 enactments are enforced by the Ministry of Labour. Out of these enactments, the enforcement of 14 enactments is secured through the organization of the Chief Labour Commissioner (Central). The organization of the Director General Mines Safety enforces the safety provisions of the Mines Act, and the Director General Factory Advice Service and Labour Institute (DGFASLI) advises government, industry and other interests concerned on matters relating to health, welfare and the safety of workers. It also provides training to the workmen on safety in factories. The organization of DG FASLI is also charged with responsibility for the enforcement of the Dock Workers (Regulation of Employment) Act, 1948.

CHIEF LABOUR COMMISSIONER (CENTRAL)

11.10 The Chief Labour Commissioner's organization has the responsibility to enforce the Industrial Disputes Act, 1948, the Payment of Wages Act, 1936 and Rules in respect of Mines, Railways and Air Transport Services, the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Equal Remuneration Act, 1976, the Interstate Migrant Workmen (RE&CS) Act, 1979, Payment of Bonus Act 1965, Child Labour (Prohibition and Regulation) Act, 1986, Payment of Gratuity Act, 1972, Labour Laws (Exemption from furnishing and maintaining registers by certain establishments) Act, 1988, Building and Other Construction Workers (RE&CS) Act, 1996, Chapter VI(A) of the Indian Railway Act and Hours of Employment Regulations for Railway Employees, Industrial Employment (Standing Orders) Act, 1946, and the Maternity Benefit Act, 1961 (Mines and Circus Rules, 1963) for organisations where the Central Government is the appropriate government. The Central Provident Fund Commissioner enforces the Employees Provident Fund Act. The

Director General, Employees State Insurance Corporation enforces the ESI Act.

11.11 The Organisation of the Chief Labour Commissioner (Central) known as (CIRM) was set up in April 1945, in pursuance of the recommendation of the Royal Commission on Labour in India with the specific duty of preventing and settling industrial disputes, enforcing labour laws and promoting the welfare of workers in the undertakings falling in the sphere of the Central Government. Combining the former Organisation of Conciliation Officers (Railways), Supervisors of Railway Labour and the Labour Welfare Advisors, it started with a small complement of staff, comprising the Chief Labour Commissioner (Central) at New Delhi, 3 Regional Labour Commissioners (Central) [RLCs(C)] at Bombay, Calcutta and Lahore, 8 Conciliation Officers and 18 Labour Inspectors. As a consequence of the increase in the number of labour laws, and the number of industrial establishments, the responsibilities of the Organisation have increased enormously, and the number of officers too has increased.

11.12 The present set-up of the Organisation consists of the Chief Labour Commissioner (Central) at the Head Office in New Delhi, 3 Zonal Offices headed by Deputy Chief Labour Commissioners(C) at Bangalore, Dhanbad and Mumbai, and 18 Regional Offices headed by Regional Labour Commissioners(C) at Ahmedabad, Ajmer, Asansol, Bangalore, Bhubaneswar, Chandigarh, Chennai, Cochin, Dhanbad, Guwahati, Hyderabad, Jabalpur, Kanpur, Kolkata, Mumbai, Nagpur, New Delhi and Patna. The Chief Labour Commissioner (Central) is assisted at headquarters by a Joint Chief Labour Commissioner(C), a Chief Advisor (Labour Welfare), 3 Deputy Chief Labour Commissioners(C), a Director (Training), 3 Regional Labour Commissioners(C), an Administrative Officer and 5 Assistant Labour Commissioners (C), along with supporting staff. The fieldwork is done by Labour Enforcement Officers(C), Assistant Labour Commissioners(C) and Regional Labour Commissioners(C).

11.13 The Office of Chief Labour Commissioner (Central) performs various duties relating to several laws

and regulations. It performs three types of jobs while implementing the labour laws – enforcement, conciliation and quasi-judicial.

11.14 The Organisation of the Chief Labour Commissioner (Central) is responsible for:

- (a) Prevention and settlement of industrial disputes in the Central sphere, i.e. mines, oilfields, major ports, banking and insurance companies, industries carried on by or under the Central Government or by a railway company, controlled industries specified by the Central Government, Employees State Insurance Corporation, Employees Provident Fund Organisation, air transport services, agricultural financial

corporations, Industrial Development Bank of India, Deposit Insurance Corporation, Unit Trust of India and cantonment boards;

- (b) Enforcement of awards and settlements in the Central sphere; and
- (c) Administration and enforcement of the labour laws mentioned at para 11.10.

PROSECUTION

11.15 On an average, 34 to 35 thousand inspections are conducted in a year and 12 to 16 thousand prosecution cases are filed. These have resulted in conviction in 6000 to 7500 cases. Only 2 to 5% cases have ended in acquittal.

Year	No. of inspections	No. of Prosecutions	No. of convictions	No. of acquittal
1999-2000	34515	11764	5938	108
2000-2001	34968	16070	7475	386

CLAIM CASES

11.16 On an average, 1500 to 2200 claim cases are disposed of in a year, and a sum of Rs.1 crore to 1.5 crore is awarded to the workers as difference in wages and compensation under the Minimum Wages Act.

QUASI JUDICIAL FUNCTIONS

11.17 The quasi judicial functions performed by the officers of Organisation of the Chief Labour Commissioner (Central) are:

Designation	Quasi-judicial functions performed
CLC(C)	<ul style="list-style-type: none"> i) Director General under Building and Other Construction Workers (RE&CS) Act; ii) Appellate Authority under Industrial Employment (Standing Orders) Act
Joint CLC(C)	<ul style="list-style-type: none"> i) Appellate Authority under Industrial Employment (Standing Orders) Act
Deputy CLC(C)	<ul style="list-style-type: none"> i) Appellate Authority under Industrial Employment (Standing Orders) Act; ii) Authority under Rule 25(2)(v)(a) & (b) of Contract Labour (Regulation & Abolition) Central Rules to determine same and similar work for payment of same wages to contract labourers as payment to workmen of principal employer and to specify wages and working conditions of contract labour.
RLC(C)	<ul style="list-style-type: none"> i) Authority under Minimum Wages Act; ii) Certifying Officer under Industrial Employment (Standing Orders) Act; iii) Appellate Authority under Payment of Gratuity Act; iv) Appellate Authority under Contract Labour (Regulation & Abolition) Act; v) Supervisor of railway labour for recommending reclassification of railway employees under Hours of Employment Regulation of the Indian Railways Act, 1989; vi) Appellate Authority under Equal Remuneration Act; and vii) Appellate Authority under Building and Other Construction Workers (RE&CS) Act.
ALC(C)	<ul style="list-style-type: none"> i) Controlling Authority under Payment of Gratuity Act; ii) Authority under Equal Remuneration Act; iii) Registering & Licensing Officer under Contract Labour (Regulation & Abolition) Act; and iv) Registering Officer under Building and Other Construction Workers (RE&CS) Act.

11.18 Besides, the Organisation of the Chief Labour Commissioner (Central) is also responsible for :

- (a) revising Dearness Allowance under the Minimum Wages Act for Central sphere establishments,
- (b) verifying the membership of unions affiliated to Central Trade Union Organisations for the purpose of giving representation in national and international conferences and committees, as also of unions for the purpose of recognition under the Code of Discipline;
- (c) verifying membership for the appointment of Workmen's Director in the State Bank of India and other nationalised banks, etc.,
- (d) advising the Ministry of Labour and employing Ministries on labour matters as and when required,
- (e) collecting statistics regarding industrial disputes, work-

stoppage and lockouts, wages etc. in the Central sphere establishments;

- (f) inquiring into breaches of Code of Discipline,
- (g) coordination of the work of Assistant Labour Welfare Commissioners and Deputy Labour Welfare Commissioners posted in Central Government undertakings, and giving them guidance in their day-to-day work, and liaison with State Government Labour Departments for collection of information as per the direction of the Ministry of Labour.

APPROPRIATE GOVERNMENT

11.19 Under each enactment, enforced by the Organisation of the Chief Labour Commissioner (Central) and the State Labour Commissioners, there is a separate definition of the "appropriate government" except under the Industrial Disputes Act, the Payment of Bonus Act and the Contract Labour (Regulation & Abolition) Act. The Payment of Bonus

Act has the same definition of appropriate government as the Industrial Disputes Act. Initially, at the time of enactment, the definition of appropriate government in Contract Labour (Regulation & Abolition) Act was different. In 1986, Contract Labour (Regulation & Abolition) Act too adopted the same definition of appropriate government as in the Industrial Disputes Act. This has given rise to a problem. The definition of the appropriate government under the Industrial Disputes Act is based on the nature of industries etc. and the Contract Labour (Regulation & Abolition) Act applies even to government departments. As per the definition of appropriate government in the Contract Labour (Regulation & Abolition) Act, even the Central Government departments do not come under Central sphere.

11.20 Under the Minimum Wages Act, the Central Government is the appropriate government for corporations established by Central Acts. This is not the case in other enactments except the Payment of Gratuity Act and the Industrial Employment (Standing Orders) Act.

11.21 Under the Payment of Gratuity Act, the Central Government is the appropriate government for all Central Government public sector undertakings and establishments having branches in more than one State.

11.22 Under the Building and Other Construction Workers (RE&CS) Act, the Central Government is empowered to notify central public sector undertakings for which the Central Government is the appropriate government.

11.23 The definition of the appropriate government under the Trade Unions Act is not based on the kind of industry or establishment where the union is operating. Under the Trade Unions Act, the Central Government is the appropriate government for trade unions that are operating in more than one State. This means that though the Central Government is the appropriate government under the Industrial Disputes Act for some establishments, it may not be the appropriate government under the Trade Unions Act for trade unions operating in the same establishments and vice versa.

11.24 Different definitions of the appropriate government under different enactments cause confusion in the minds of common workmen, sometimes, even in the minds of experts. The expression "under the authority" has been interpreted by the court in different ways from time to time leading to considerable confusion and doubts.

11.25 In the Heavy Engineering Corporation (1969 I SCC 765), the Hon'ble Supreme Court relied on the private law interpretation of the definition of the appropriate government, and held that the Central Government was not the appropriate government for central public sector undertakings. By relying on the common law interpretation, the apex court in the Air India Statutory Corporation case (1997 I LLJ 1151 SC) held that the central public sector undertakings were the instrumentalities of the Central Government, and, as such, the Central Government was the appropriate government for all central public sector undertakings. Again in the SAIL Vs. National Waterfront Workers Union on 30 August 2001, (2001 II LLJ 1087 SC) a five judge Constitution Bench of the

Apex Court observed that the private law interpretation in the HEC case was correct. The Central Government is not the appropriate government for all public sector undertakings, as the mere fact of instrumentality of the Central Government does not mean they are under the control of the Central Government. The apex court, while clarifying the expression "by or under the authority of Central Government", has observed that such authority may be conferred by a statute or by principal and agent relationship between the Central Government and the public sector undertakings or by delegation of powers by the Central Government. It is this situation that makes it necessary to have a clear and unambiguous definition of the 'appropriate government'.

11.26 We have already referred to the need to have uniformity in the definition of the term 'workman' that appears in many laws.

11.27 We hope that both these difficulties will be resolved when the amendments that we have suggested in Chapter VI are adopted.

SIMPLIFICATION OF REGISTERS AND RETURNS

11.28 Many enactments require maintenance of different registers, display of different sets of notices and submission of different returns. A railway contractor, employing 20 workers, is required to maintain 2 dozen registers, display a dozen notices, and submit 6 returns every year. Though there is provision under the Payment of Wages Act, Minimum Wages Act and Contract Labour (Regulation & Abolition) Act to maintain combined registers with the approval of the Chief Labour Commissioner (Central), the process has proved to be time-consuming and cumbersome.

11.29 The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act 1988 made an attempt to simplify registers and returns. Under this Act, only 2 or 3 registers need be maintained, and only one return need be submitted in lieu of registers and returns prescribed under several enactments mentioned in the schedule to the Act. But this law has proved inadequate

since it applies to establishments employing workmen not exceeding 19, and the penalty prescribed under the Act is higher than that in the Act that it replaces. High penalties also discourage employers from taking advantage of the Act.

11.30 We have recommended elsewhere that the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 should be made applicable to all establishments, and the penalty prescribed under the respective laws should be enhanced to make it at par with the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

PLACE OF MAINTENANCE OF REGISTERS AND DISPLAY OF NOTICES

11.31 Different enactments prescribe different places for maintenance of registers and display of notices. For instance, the Minimum Wages Act lays down that registers should be maintained and notices displayed at the work spot. Under the Payment of

Wages Act, registers are to be maintained as near as possible to the work spot. Under the Contract Labour (Regulation & Abolition) Act, registers are required to be maintained within a radius of 3 Kms from the workspot. Thus, an inspector intending to inspect an establishment under different enactments may be required to visit several places. We therefore, recommended that the existing provisions should be amended to provide for maintenance of registers and display of notices at the work spot.

SIMPLIFICATION OF PROCEDURES

11.32 To launch prosecution for non-payment of wages under the Payment of Wages Act, or for payment of less than minimum rates of wages under Minimum Wages Act, the inspector is required to file a claim first before the Payment of Wages Authority or Minimum Wages Authority respectively. After admission of the claim either in full or in part, the inspector has to obtain sanction for prosecution from the Payment of Wages Authority in the case of claims under Payment of Wages Act. In the case of the

Minimum Wages Act, after admission of the claim, sanction is to be obtained from the appropriate government. We recommend that the procedure for prosecution for non-payment of wages or payment of less than minimum rates of wages should be simplified. We have referred to this in detail elsewhere.

PENALTY

11.33 The penalty prescribed under different enactments does not act as a deterrent. For an employer, it is easier to pay penalty than to appoint a person and pay him wages for maintaining records and registers. We therefore, suggest that to make the enforcement effective, there should be commensurately deterrent punishment under all enactments.

RECOVERY PROVISIONS

11.34 One of the difficulties in the effective enforcement of labour laws is the procedure for recovery. Under most of the enactments, officers of the labour departments or the quasi-

judicial authorities are required to file a certificate before the district administration for recovery of the amount as arrears of land revenue. The Authority under the Minimum Wages Act has to submit a petition before the Judicial Magistrate to recover the awarded amount as the fine imposed by the Magistrate. Applications filed before the district administration do not get the priority they deserve, resulting either in delay or non-recovery of the workers' dues, when the receipt of the dues are of urgent importance to the workers. Similarly, when petitions are filed before Magistrates, many of them start hearing de novo resulting in either delay or non-recovery of dues. We, therefore, suggest that the enactments like Payment of Wages Act and Minimum Wages Act should contain a provision for recovery officers appointed by the Labour Department, as has been done in the case of EPF Act (Section 8-B).

POWER TO EXEMPT

11.35 Often the industries working in export processing zones, export-oriented units and employers of information technology industries demand exemption from certain

provisions of the Acts. There can be other situations also in which exemption from a law may merit consideration. Some of our present laws already have provisions for exemption from some or all the provisions (We have referred to this subject in the Chapter of Review of Laws also). We, therefore, recommend that provisions to grant exemptions in cases of extreme emergency or hardship, should vest with the appropriate government, and should be vested in officers not below the rank of Joint Secretary. The advantage in such a system is that if there is any abuse of exemption, it can be withdrawn by an administrative order. However, if the exemption is granted by amending the provisions of law, an abuse, if it takes place, cannot be checked until the provisions are suitably amended again.

MINIMUM WAGES ACT

11.36 At present, the Minimum Wages Act applies to only scheduled employments. Therefore, minimum wages cannot be enforced in non-scheduled employments. This difficulty can be obviated if the Schedule is amended to include an

entry "Other Employments not covered in the Schedule" or all schedules are given up as recommended in the Chapter on Review of Laws. This will ensure payment of minimum wages to all workmen.

TRIAL OF CASES UNDER LABOUR LAWS

11.37 Witnesses who appeared before us mentioned that there is inordinate delay in the disposal of penal cases filed before the Courts. These Courts deal with prosecutions, not only under labour laws, but also other laws, such as, those relating to Weights & Measures, Traffic, Prevention of Food Adulteration, etc., and also look after criminal matters relating to specified Police Stations. To avoid delays, we recommend that criminal cases under labour laws be tried by Labour Courts, as is being done in Madhya Pradesh.

CONCILIATION

11.38 There is a popular perception that the process of conciliation is not

effective in resolving industrial disputes. This perception is only partially correct as the record of conciliation efforts by the Central Industrial Relations Machinery shows. Conciliation has not been as effective in the case of rights disputes, as in the case of interest disputes. In fact, conciliation has an impressive record in interest disputes.

RIGHTS DISPUTES

11.39 In rights disputes over dismissal, denial of regularisation, promotion, etc., conciliation should be optional. The party should have the right to approach Labour Courts and the Labour Relations Commission straightway. However, conciliation should be compulsory in case of industrial disputes related to interests disputes, like wages, allowances, fringe benefits etc. Conciliation proceedings should also be compulsory in the case of strikes and lockouts over any issue. The success of the Central Industrial Relations Machinery in the case of intervention on threatened strikes in the years 1999-00 and 2000-01 may be seen from the table given on the next page

Year	Brought Forward	Received	Total	No. of strikes Averted	Success rate
1999-00	41	742	783	741	94.6%
2000-01	42	586	630	622	98.7%

This undoubtedly shows a high degree of success.

ARBITRATION

11.40 Industrial disputes not settled in conciliation should go for either voluntary arbitration or by arbitrators maintained by the Labour Relations Commission or adjudication. In the case of essential services like health and sanitation, transport, power and water supply etc., the dispute should go for compulsory arbitration. In other cases, it should go for adjudication. Arbitrators should be chosen from eminent persons in industry, conciliators, trade unionists and labour judiciary.

RECOGNITION OF TRADE UNIONS- BARGAINING AGENT/ NEGOTIATING COUNCIL

11.41 We have already dealt with this question in the Chapter on 'Review of Legislation'.

LABOUR ADJUDICATION

11.42 Labour adjudication in the Central sphere has all along been based on ad hoc arrangements. Retired High Court judges or District judges are appointed on the basis of availability with no procedures for selection etc. Retired High Court judges or judges often bring with them the criminal or civil law orientation not suited to labour jurisprudence. At any point of time, 50% or more tribunals remain vacant because of non-availability of judges or retired High Court judges. As a result, the disposal of cases referred to the tribunals gets inordinately delayed. The number of cases pending can be seen from the table we given on the next page.

The number of Industrial Disputes & Applications handled by the CGIT-cum-Labour Courts during the year 2000 (As on 30.11.2000)

S. NO.	Name of the CGIT	Number of Industrial Disputes			Number of Applications				
		B/F as on 1 Jan, 2000	Received during 1 Jan, 2000 to 30 th Nov. 2000	Disposed during 1 Jan, 2000 to 30 th Nov. 2000	Pending as on 30 th Oct 2000	B/F as on 1 Jan. 2000	Received during 1 Jan, 2000 to 30 th Nov. 2000	Disposed during 1 Jan, 2000 to 30 th Nov. 2000	Pending as on 30 th Nov. 2000
1	Asansol	309	97	-	406	47	4	-	51
2	Bangalore	441	78	4	515	448	-	10	438
3\$	Calcutta	184	41	20	205	33	21	22	32
4*	Chandigarh	1374	272	19	1627	313	27	27	313
5	Dhanbad 1	1286	326	83	1529	295	29	15	309
6^	Dhanbad 2	1170	82	-	1252	63	-	-	63
7	Jabalpur	1229	198	62	1365	570	115	5	680
8	Kanpur	624	118	116	626	687	159	357	489
9	Mumbai 1	189	54	40	203	66	9	1	74
10	Mumbai 2	292	112	133	271	429	432	14	847
11+	New Delhi	1057	108	80	1085	350	132	64	418
12	Jaipur	141	67	92	116	27	39	27	39
13	Lucknow	31	205	23	213	-	232	190	42
14**	Nagpur	71	166	29	208	-	-	-	-
15	Chennai	-	88	21	67	-	111	103	8
16^	Bhubaneshwar	-	23	-	23	-	-	-	-
17#	Hyderabad	-	-	-	-	-	-	-	-
	Total	8389	2035	722	9711	3328	1310	835	3803

Source : Annual Report 2000-2001, Ministry of Labour

* upto August 2000

\$ upto September, 2000

+ upto October, 2000

** upto July, 2000

started functioning w.e.f. October 20, 2000

11.43 Industrial tribunals/ labour courts are also not empowered either to issue decrees or to initiate contempt proceedings to enforce their awards. The only course available under law to secure implementation of awards/settlements is prosecution under section 29 of the Industrial Disputes Act by the officers of the Central Industrial Relations Machinery or the State Labour Departments. As officers or establishments, like the CPWD, Defence, Department of Telecom, Archaeological Survey of India or Railways, enjoy protection against prosecution under Section 197 of the Criminal Procedure Code, permission of the employing Ministry is necessary to prosecute them. This permission from the employing Ministry, under Section 197 of the Criminal Procedure Code, is seldom granted. As a result, a large number of awards relating to Railways, CPWD, P&T, ASI, etc. remain unimplemented for long periods. We recommend that all employing Ministries be advised to implement awards or sanction prosecution within one month of the matter being referred to them, failing which it should be deemed that the sanction has been given.

NON - IMPLEMENTATION OF AWARDS AND DENIAL OF JUSTICE

11.44 Many witnesses have complained to us that the awards of Labour Courts and Tribunals are not implemented by employers. The delay in implementation of awards causes lot of hardships to the concerned workmen and virtually amounts to a denial of justice. The remedy in the existing law is for the enforcement authorities to launch prosecution u/s 29 of the Industrial Dispute Act (ID Act). This remedy has not proved effective. It consumes time at every step. Moreover the law as it stands only empowers the courts to impose fines. It does not empower the courts to ensure the implementation of awards.

11.45 In the Central sphere itself, the number of unimplemented awards is approximately 2,500. These involve approximately 20,000 workers. Most of these awards of Labour Courts/ Tribunals have granted relief of reinstatement or regularization from certain specified dates. Many of these awards lie unimplemented for five to fifteen years or more.

11.46 We find that non-implementation of the awards of Labour Courts and Industrial Tribunals has become a major problem that paralyses the effectiveness of the dispute resolution machinery and thwarts the basic intentions of the ID Act. Many big employers prefer to challenge every award in the High Court by filing writ petitions. At present, the award has to be implemented within 30 days from the date of publication (Section 17A). However, the employer files a petition in the High Court only when the notice of the Labour Department is received. The Labour Department issues notices only when the aggrieved worker files a complaint of non-implementation of the award, after submitting many requests to the employer for implementation. Thus, it is only after a considerable period of time that the employer/management files a writ petition so as to avoid prosecution by the enforcement authorities. In the process the employer/management obtains a stay order from the High Court, and the awards remain suspended till the High Court decides the case or vacates the stay order.

11.47 In 70 to 80% of Writ Petition cases the employer/management does

not get success, and the award is upheld. But the decision of the High Court comes after three to five years, and sometimes after seven or eight years.

11.48 The management again takes their time, and if the worker again makes a demand for the implementation of the award, or if the Labour department issues a legal notice for the implementation, they again go on appeal to a larger bench of the High court. Or if it is not feasible, they approach the Supreme Court through special leave petitions for obtaining further stay and prolonging the case. Even after losing in the Supreme Court, the employer/management does not implement the award. If the enforcement authorities file a suit for prosecution, the prosecution is challenged in the High Court. In some awards, petitions are filed in the High Court as well as in the Supreme Court bifurcating issues to confuse the authorities and tie them up in legal complications. Another ten or fifteen years pass in this way, and the poor workman is kept waiting for justice. The law thus becomes a mockery.

11.49 Most of the awards which employers/management challenge relate to the regularization, reinstatement, back wages, etc. of large numbers of workers. Many times, awards in respect of individual workers too are challenged.

11.50 After ten or fifteen years when the employer/management loses in every court, it is often that the concerned worker has disappeared from the scene. Otherwise, the management invokes sec. 19 (6) of the ID Act and terminates the award in a clandestine and perfunctory manner, even though this action of the management is not in conformity with the statutory provision. An award can be terminated under section 19(6) if it satisfies the condition that it has been in operation for a period of one year as provided for in section 19(3). And certain awards that relate to reinstatement, regularization or the payment of back wages etc. cannot be terminated at all. Only awards that relate to service conditions, promotional policies, automation etc. or settlements, can be terminated as provided for in Section 19(6).

11.51 It must be pointed out here that the Hon'ble Supreme Court had directed the Government of India to

set up a committee consisting of representatives of the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Laws to monitor disputes between ministries, and between ministries and PSUs, to ensure that no litigation went to the Court or a tribunal without the matter being examined and cleared by the Committee for litigation. (Order dated 11 October 1991 in Civil Appeal Nos. 2058-59 of 1988 in the case of ONGC V/s Collector of Central Excise).

11.52 The Hon'ble Supreme Court further directed that every Court and every tribunal where such a dispute is raised should first demand a clearance from the Committee, and, in the absence of the clearance, refuse to take further proceedings. The intention of the apex court's order is clearly to prevent litigation between departments, and agencies of the Government.

11.53 But it has been seen that Public Sector Undertakings (PSUs) often file writ petitions against the Labour Ministry, impleading the Labour Secretary, the Labour Commissioner and the Enforcement Officer as main respondents. And they

file such cases in High Courts and the Supreme Court without obtaining clearance from the Committee, and sometimes, from their own Ministries. PSUs involved in such litigation include Coal India Ltd., Telecommunication Department, CPWD, Railways, ONGC, SAIL, ASI, Public Sector Banks, etc.

11.54 The situation in the state sphere private industrial units is even worse. They often make it a point of prestige. Furthermore, awards with high financial implications are hardly ever implemented. Quite often that they fail to enable workers to receive financial dues or back wages or compensation in spite of clear orders from the Courts.

11.55 Poor workers or their unions often find it difficult to defend their cases in the High Court or the Supreme Court, as it costs them huge sums of money. Many times they approach employers or the Labour Commissioner for partial implementation of the award. After losing from all the Courts and feeling pressurized from all corners, the employer pressurizes the workers or unions to accept much less than what the award has given them. For

instance, instead of reinstatement with full back wages of five to ten years or more, the management often tries to bring pressure on the worker to settle for much less, say 10%, as back wages and reinstatement without any service benefits. The management may even offer to settle the case by paying a lump sum amount, The poor worker is thus badgered or coaxed into accepting much less than what the Courts had awarded. One of the methods employed is to threaten to go on appeal to a Higher Court if the employee does not agree to compromise on a lower figure or packet of benefits.

11.56 When an aggrieved workman or union raises a dispute, the matter goes for Conciliation. Conciliation takes two months to one year. On the failure of conciliation, a report is sent to the Government. The Government takes its time, and often, one or two years elapse before action is taken. The case is then referred for adjudication to the Labour Court/Tribunal. The Labour Court/Tribunal submits its award to the Government after two to three years. By then, often, six years time has elapsed. Even so, the matter does not end,

and the employee does not get the redress he had sought six years ago. The employer does not implement the award. He goes on appeal to the High Court or the Supreme Court. It takes another few years for hearings, adjournments and further hearings. The aggrieved worker has still to wait for these processes to end, nursing the hope that the redress he had sought would arrive. But by the time these processes are over, sometimes a decade or more has passed. The worker may have died. He might have changed his employer, and taken up employment somewhere else. The industrial establishment may have closed down. Records may not be traced, and the worker's quest for justice may end in disillusionment and suffering.

11.57 We, therefore, feel that if the existing unethical system of continuous denial of justice is not changed, the workers will lose faith in the law, in labour administration and in the labour judiciary. To remedy the situation it is essential that the award is implemented immediately and the payment to the worker is started on the basis of last salary drawn. This principle would apply to workers both in the private and in the public sector

organisations. However, for public sector organisations, which want to prefer appeal against the orders of Labour Court, they should obtain permission of a Screening Committee to be set up by the appropriate Government.

11.58 If the above recommendation is accepted, it would go a long way in providing relief to the workers.

QUALIFICATIONS FOR PRESIDING OFFICERS

11.59 To ensure that there is no dearth of presiding officers in labour courts/tribunals, we recommend that qualifications for appointment of presiding officers be relaxed to enable experienced conciliation officers not below the rank of Deputy Labour Commissioner and Regional Labour Commissioner, with LLB degrees and at least 10 years' experience in the labour department, to be considered for appointment as presiding officers. This will help the Ministry to appoint presiding officers for all the tribunals and labour courts, and thereby to expedite the disposal of cases pending with the tribunals.

11.60 We also recommend that Labour Courts be given powers to

issue decrees or initiate contempt proceedings for non-implementation or non-compliance of awards. In the new dispensation that we have recommended, there will only be Labour Courts (no separate tribunals).

INDUSTRIAL RELATIONS COMMISSION

11.61 As we have said elsewhere, a Central Labour Relations Commission should be set up for Central sphere establishments, and State Labour Relations Commissions should be set up for establishments in the State sphere. Above the Central and State Labour Relations Commissions, there will be the National Labour Relation Commission (NLRC) to hear appeals against the decisions of the two other Commissions. The National LRC, Central LRC and the State LRCs will be autonomous and independent. These Commissions will function as appellate tribunals over the Labour Courts. They will be charged with the responsibility of superintendence of the work of Labour Courts.

CENTRAL LABOUR SERVICE

11.62 Central Labour Service (CLS) was formed in February 1987

comprising the officers of the Organisation of Chief Labour Commissioner (Central), Labour Officers of the Central Pool and officers of the Welfare Commissioners on the basis of the recommendation of the cadre review committee of Labour Officers of the Central Pool. The objective of the merger of these 3 constituent Services was to provide an integrated structure to inculcate professionalism and provide better promotional avenues to Labour Officers. Originally, the object of recruiting and providing the services of Labour Officers/Senior Labour Officers (now known as Assistant Labour Welfare Commissioners/Deputy Labour Welfare Commissioners) to the industrial establishments of various Ministries/Departments was to allow these officers to function independently, with a certain amount of neutrality and to enable them to look after the welfare of workers in these establishments without fear or favour.

11.63 At present, nine Welfare Commissioners and four Assistant Welfare Commissioners of the Welfare Organisation implement the welfare schemes of different welfare boards. Though the work assigned to

Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners varies from establishment to establishment, they are engaged in an advisory capacity for the implementation of statutory welfare measures under the Factories Act and non-statutory welfare measures, viz. JCM etc., of the industrial units. As they are not required to deal with personnel matters, they do not have knowledge about service conditions, recruitment rules, pay & allowances, leave, etc. In fact, Factory Welfare Officers Rules forbid these officers from attending conciliation proceedings or other quasi-judicial proceedings on behalf of the employer. The only work they are required to do is to prepare a monthly welfare report. Much of their time remains unutilised. The Deputy Labour Welfare Commissioners, wherever posted, attend to the same responsibilities. No instruction or professional advice is given to them by the management of the industrial units where they are posted, since they are not treated as part of the establishment. They learn what they can on their own.

11.64 The Job content of the Assistant Labour Welfare

Commissioners and Deputy Labour Welfare Commissioners is nowhere near or comparable to the job contents of Assistant Labour Commissioner (C) or Regional Labour Commissioner (C). There is hardly any opportunity to develop professional expertise while working as Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners. Over the years, with poor job content and a lot of unused time, Assistant Labour Welfare Commissioners / Deputy Labour Welfare Commissioners have not kept abreast of developments in their fields and often lack initiative and drive. Even experienced Assistant Labour Commissioners (C) of the Central Industrial Relations Machinery, after serving a 4 year tenure as Assistant Labour Welfare Commissioner in industrial establishments, tend to become out of date on developments in the field of labour laws and related judicial pronouncements.

11.65 Grouping of Assistant Labour Welfare Commissioners/Deputy Labour Welfare Commissioners with Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C), who have different kinds of duties and

different degrees of responsibility, has not only told upon the efficiency but also diluted the independence and impartial character of Assistant Labour Commissioners(C) and Regional Labour Commissioners(C). After the formation of the CLS, the posts of Assistant Labour Welfare Commissioner and Deputy Labour Welfare Commissioner have become interchangeable with the posts of Assistant Labour Commissioner(C) and Regional Labour Commissioner(C) respectively. Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C) are posted as Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners in Govt. factories and departments, like the CPWD, under the same employer against whom they had enforced labour laws or decided quasi-judicial cases. Similarly, Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners, employed and paid by the government factories and departments, when posted as Assistant Labour Commissioners(C)/ Regional Labour Commissioners(C), enforce law, take legal action and hear and decide cases against the General Manager of the factory under whom they had

worked. Labour Enforcement Officers, conscious of the fact that, on promotion, they may be posted as Assistant Labour Welfare Commissioners under a General Manager, can hardly be expected to prosecute the General Manager fearlessly, for payment of less than minimum rates of wages to casual labourers under the Minimum Wages Act or for violation of provisions of Contract Labour (Regulation & Abolition) Act. This is also contrary to the recommendation 20 and Convention 81 of the ILO, under which the inspecting staff should not have any direct or indirect interest in the establishment where they are expected to enforce labour laws.

11.66 The functions of the Assistant Labour Commissioner(C) and the Regional Labour Commissioner(C) involve conciliation, a highly personalised art acquired over years of practice, and quasi-judicial functions of authority under the Minimum Wages Act, Payment of Gratuity Act, Equal Remuneration Act and Industrial Employment (Standing Orders) Act.

11.67 As the number of Assistant Labour Welfare Commissioners is

twice the number of Assistant Labour Commissioners(C) and the number of Deputy Labour Welfare Commissioners is 4 times the number of Regional Labour Commissioners(C), each officer may, at best, work one stint of 4 years as Assistant Labour Commissioner(C), another tenure of two years either as Regional Labour Commissioner(C), or Deputy Chief Labour Commissioner(C). In other words, for every tenure of work in the Central Industrial Relations Machinery, an officer has to work two or three tenures as Assistant Labour Welfare Commissioner or Deputy Labour Welfare Commissioner in industrial units. This has resulted in loss of expertise to the Central Industrial Relations Machinery and consequent dearth of experienced officers to train new recruits.

11.68 We see that the system of recruitment and posting of Assistant Labour Welfare Commissioners/ Deputy Labour Welfare Commissioners who work as Welfare Officers in factories etc. by the Ministry of Labour has outlived its utility. Under the provisions of the Factories Act, it is the statutory responsibility of the employer to appoint Welfare Officers as in the case of other enactments

related to the activities of factories such as Safety Officers, Fire-fighting Officers, and Boiler Supervisors etc. The appointment of Assistant Labour Welfare Commissioners through the Ministry of Labour has also added to the problems of officers. Rotational transfers do not give them the opportunity to develop a sense of belonging and commitment to the unit. The Central Working Group on Labour Administration of the First National Commission on Labour made the following observations in Chapter VI of its Report:

“As the Labour Officers of Central Pool posted to different factories/undertakings are not taken a part and parcel of the establishment and considered rather as outsiders, their utility is somewhat neutralised. They should form an integral part of the management set-up by each employing Ministry having its own cadre as far as possible”.

11.69 The Administrative Reforms Committee recommended that the Labour Officers of the Central Pool maintained by the Ministry of Labour, in suitable cases, should be

permanently absorbed in the services of public sector undertakings. A labour administration mechanism can function effectively, only if the men in charge are knowledgeable, motivated and experienced in the field of labour administration. We therefore recommend that the Ministry of Labour should not depute its officers to employers' establishments. Different employing Ministries, where Assistant Labour Welfare Commissioners and Deputy Labour Welfare Commissioners are posted, should be advised to absorb them in the cadres of the officers of the respective Organisations. Officers who are not willing to get absorbed or who cannot be absorbed by different Ministries, should be withdrawn in phases, and posted in the other two streams of the CLS, i.e. Central Industrial Relations Machinery and the Welfare Commissioners' Organisation. They may also be considered for deployment in the Organisations of CPFC, ESIC and DGET so that officers of the CLS can be groomed to take higher responsibilities in at least 25 % posts of the Ministry of Labour, particularly the IR & Implementation Division, and in the Office of the DGLW. This will also promote professional expertise and efficiency in the system.

11.70 It is also necessary to improve the knowledge, skills and competence of the officers of the CLS to enable them to win the confidence of the employers and workmen. It is necessary to upgrade the skills of labour adjudicators to enable them to perceive the changes in their roles as labour adjudicators and the impact of their decisions on the national economy. Induction, training and periodical refresher courses are necessary to improve the efficiency and effectiveness of officers of the CLS. To improve the status of these officers, engaged in conciliation, adjudication, etc., there is need for an All India service, like the Indian Labour Judicial Service. These officers should be given proper staff, infrastructural backup, and support facilities, like office equipment, library, transport and communication. There should be access to information on all matters concerning industrial relations, like industrial statistics, long-term settlements, retrenchments, dismissals, strikes and lockouts and judicial pronouncements. A database should be built up on all aspects relating to industrial relations and the officers of the CLS should have access to such database through computer connectivity.

11.71 The question of dealing with the existing posts of Assistant Labour Commissioners of the Central Labour Service at the Central level and its equivalents at State level and other Central Government bodies, as part of the proposed All India Labour Administrative Service, all needs to be looked into carefully. While on the subject of creating an All India Labour Service to substitute the cadres of the Central Labour Service. We reproduce our views mentioned at para 84 of Chapter VI on Reivew of Laws :

“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 bulk of the labour administration in the States and union territories relate 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 officials of the

labour department of and above the rank of Deputy Labour Commissioners / Regional Labour Commissioners 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 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”.

The related question of their interchangeability to man posts under the State Labour Departments needs to be looked into. This would necessarily mean State based cadres of All India Labour Service to man senior level posts available at respective state levels and having the necessary components of Central Deputation Reserve, leave reserve, ‘foreign’ service reserve, etc. The related issues of the level at which the officials proposed to constitute the All India Labour Service are to be inducted, which has to be necessarily

at Class I level on par with other All India Services, and consequently the issue of dealing with members of CLS below the Class I level as also the Subordinate Services for whom they function as promotional level, also need to be sorted out. Similarly, the feeder services at the state level at Class I level which would function as the promotional base of officials for promotion to the Senior Class I level of the proposed All India Labour Service, also need to be agreed upon in consultation with the State Governments. The Commission is conscious of the fact that no new All India Service was created since the Indian Forest Service has been re-created in the mid 60s, and the earlier attempt in the late 70s for creation of All India Engineering and Health & Medicine Services, did not bear fruit. However, in the interest of uniform standards in administration of labour laws which impact upon the life and conditions of work of the entire working class and its importance for the maintenance of peaceful industrial relations and to national economy, the Commission feels that it would be worthwhile for the Government to initiate appropriate steps in this regard.

Mention must also be made of the significant number of Indians who have migrated to some West Asian and other countries in search of employment. Our attention was drawn to some cases where such workers were deprived of their rights. While these workers will no doubt conform to the laws of the host countries, they may still need advice to resolve their cases. We, therefore, recommend that in countries which have sizeable Indian workers' population, our Embassies must have Labour Attaches, drawn from officials of the Labour Departments or the CLS and later from the proposed All India Labour Administrative Services.

STATE LABOUR ADMINISTRATION

11.72 In the preceding paragraphs, we have talked of the structure, role and the infrastructure of labour administration at the central level. The role of the labour departments of the States and the Union Territories is almost identical, and so are their problems. However, problems relating to infrastructure, both in terms of manpower and other resources, seem more acute in some States. The nature of the work handled by the Labour Departments of States/Union

Territories is much more diverse than what the Central Government handles. While the Central Government is broadly responsible for Public Sector Undertakings and some large Private Sector Organisations, the State/UT Governments look after a vast spectrum of organisations ranging from five-star hotels to road-side *dhabas* and tea shops, from large automobile companies to small workshops that operate with the assistance of one or two persons, from multi-unit multinational organisations to a small family concern functioning from a portion of the residence of the proprietor.

11.73 We have also seen that almost in all labour departments, there is a certain percentage of persons who are not from the cadre of the department but are deputed for varying periods. In the National Capital Territory of Delhi, the basic Labour Inspectorate is drawn from the common Subordinate Services cadre. This does not have salutary effect on professionalisation in the labour departments.

11.74 The problems of the States/UT labour enforcement machinery are the same as what we have highlighted

in respect of the Central Industrial Relations machinery. We hope that the State Governments will pay due attention to the professionalisation and empowerment of the Labour Department because of the crucial role that it has to play in strengthening the economy.

11.75 We would also like to recommend that the Central Government determine some norms for the laws – inspector ratio and the infrastructure of the Labour Departments. Such norms should, no doubt, be determined after due deliberation and after taking into account the International Labour Standards concerning Labour Administration formulated by the International Labour Organisation in 1978. We append the text of the ILO's Conventions on Labour Administration (1978) and the related recommendation at the end of this Chapter (Appendix II).

ENFORCEMENT AND CONCILIATION MACHINERY

11.76 Efficiency and effectiveness of inspections and conciliation contribute greatly to the observance of labour laws. Complexity in laws makes a very heavy demand on the poorly staffed

and poorly equipped labour inspection and conciliation services. The machinery has to be equipped adequately. There are obvious limitations on increasing staff. The concern should, therefore, be on improving the efficiency of the existing staff and infrastructure, without depending on increasing the size of the machinery. For this purpose, the enforcement and conciliation machinery in the Central and State Governments need to be equipped with suitable office accommodation, facilities for transport and communication, like fax machines, telephones with STD facilities and computers in the offices of the Central and State Labour departments. All offices of the CIRM and the State Industrial Relations Machinery should have the benefit of computerization. Regional Labour Commissioners(C) must have telephones in their residences and offices, serviceable and adequate number of vehicles, and well-equipped libraries in regional and zonal offices etc. All this is necessary so that the enforcement and conciliation machinery can keep abreast of latest case law.

11.77 All inspecting officers charged with the responsibility of the

enforcement of multiple enactments should be of Group 'A' status. Their knowledge and experience should be updated through short-term and long-term training and refresher courses.

EFFECTIVE AND INNOVATIVE WAYS OF INSPECTION

11.78 Apart from the provision of material and human resource inputs and rationalisation and simplification of laws, it is necessary to evolve a rational system of identifying establishments that need to be inspected. The Labour Enforcement Machinery receives a number of returns from employing units. These returns provide sufficient information on whether minimum wages are paid and whether reasonable terms and conditions of employment and safety exist in the units. Labour Enforcement Officers(C) may draw up their programme of selective inspections keeping in view these functions. Returns with self-certification can be treated as self-inspection report from the establishments. Labour Enforcement Officers(C) are of course free to check the correctness of the information whenever they have doubt or on the basis of random sampling or complaints. Considering the

limitations of the inspection machinery and the fact that the workers engaged in organised industries do have means of collective bargaining, routine inspections in the organised industries may be reduced, except where conditions of safety are concerned. However, routine inspections are necessary in the unorganised sector to protect the interests of the workmen. To make the enforcement machinery accountable, there should be at least 10% check of inspections by superior officers at all levels.

STATUS OF THE CONCILIATION OFFICER

11.79 To make conciliation effective, it is necessary to improve the status and competence and calibre of conciliation officers through proper recruitment, training and placement. A Labour and Judicial Service can be formed with the officers of the Central Labour Service and future recruitment may be made through the UPSC by holding a competitive examination, followed by two years' probation in the departments of the Labour Ministry, tribunals, CIRM, employment wings of the DGET, ESIC, EPFO, etc., to develop professional expertise and

high standards of efficiency necessary to render effective conciliation and adjudication services.

SOCIAL SECURITY BOARD

11.80 As per the existing system, Employees State Insurance Corporation enforces the ESI Act and provides medical facilities, sickness benefits and temporary and permanent disablement benefits etc. with periodical contributions from both the employers and the employees. Similarly, the EPF Act is enforced by CPFC with the PF contribution of employers and employees. Workmen's compensation is paid to workmen by the Workmen's Compensation Commissioner, after realising the money from the employers. The employer pays gratuity to the workmen at the time of termination of service. In case of non-payment, the aggrieved workers may approach the Controlling Authority for direction to the employer for payment of gratuity. Unlike the PF and ESI, workers do not have to pay contributions for payment of gratuity. As a result, at the time of closing down of the establishment, in many cases, workmen do not get payment of gratuity in time. We have already

recommended that workers should be supplied with a social security card to enable them to get social security benefits wherever they are in the country.

POLICY RECOMMENDATIONS

11.81 For effective labour administration, there should be legislative backup for the simplification of laws and procedures through uniform definitions of 'appropriate government', 'workmen', 'employer', etc., enabling provisions to cover all employments in the unorganised sector under the Minimum Wages Act, speedy recovery of the dues payable to workers, empowerment of the appropriate government to exempt from the provisions of the laws in deserving cases, ensuring that the employment of contract labour is restricted for areas beyond those of core competence, deterrent punishment to make the cost of violation dearer than the cost of implementation, clubbing of the existing set of labour laws into five or more groups pertaining to (i) industrial relations, (ii) wages, (iii) social security, (iv) safety and (v) welfare and working conditions etc., and reduction in the number of registers to

be maintained and returns to be submitted.

11.82 The changes brought about by globalisation, liberalisation and the market driven economy, require that Indian industry should be competitive, both in quality and cost. In order to be competitive, voluntary resolution of disputes should be encouraged over the legalistic approach of settlement of disputes through adjudication. Labour administration should encourage information-sharing, better human resource practices, the emergence of a participative workforce, relationship and trust building, workplace cooperation between the employers and the workers and other cooperative practices. Workmen should take more and more decisions at the workplace. The focus should be on bipartite consultation at enterprise level and voluntary arbitration rather than resolution of disputes by adjudication.

11.83 There should be a legislative framework for voluntary dispute settlement. The first and foremost requirement should be to place a system of recognition of negotiating agency on the statute. It is difficult for the employer to deal separately

with multiple unions having different ideologies. Once there is a system of recognition of a negotiating agency, the employer can negotiate with the recognised negotiating agent or the negotiating council. The responsibility of conducting verification of trade union membership for recognition of trade unions and the formation of a negotiating council should be vested on the Central Labour Relations Commission in the case of the Central sphere and the State Labour Relations Commissions in the case of the State sphere establishments. The Works Committee to be constituted under Section 3 of the Industrial Disputes Act (IDA) should be substituted by an Industrial Relations Committee to promote in-house dispute settlement and resolve all the differences at the unit level as far as practicable.

11.84 Adhocism should end in the appointment of presiding officers of the industrial tribunals. There should be regular a cadre of labour adjudicators drawn from experienced judges and conciliators to improve the quality of adjudication as well as to improve prospects of their professional advancement. We have already said earlier that we visualize only labour courts – not tribunals as

different from courts. These Courts should work under the superintendence of the Central LRC or the State LRC respectively. LRCs should also function as appellate tribunal in respect of decisions given by the labour courts to bring uniformity. At present, there is no appellate jurisdiction against the decisions of the tribunal. However, the aggrieved parties take recourse to the writ jurisdiction under Article 226 in different High Courts. There is lack of uniformity in the decisions of the different High Courts. The National LRC which should function as the appellate authority against the decision of the Central and State LRCs, as national appellate tribunal, may bring uniformity speed and consistency in the decision making process on appeal.

INDIAN LABOUR CONFERENCE

11.85 The Commission has given considerable thought to the role that the Indian Labour Conference (ILC) can, and should play, and the role that it is playing today. The Conference came into being in 1940. We have had the benefit of about 62 years of experience now, and have gathered enough experience to assess the

shortcomings and the utility of the institution. Neither the State Governments nor the organisations of employers and employees are satisfied with the way the Conference has worked.

11.86 According to our Constitution, Labour is a concurrent subject. There are innumerable industrial agricultural and service enterprises in the country. The states have different levels of organization of workers and entrepreneurs. There are problems that are special to some states. There are differences in priorities in the problems that demand attention. There are also problems and goals that are common to all states. In such circumstances, policies can be evolved and some degree of uniformity in directions and programmes achieved, only through frequent and meaningful consultations at high level. The ILC must provide such a forum for consultations. Its sessions should not become an annual ritual that contents itself with platitudes, and declarations. It should be an effective forum for review, consultation and formulation or evolution of perspectives and policies. This is all the more necessary because it is the only high-level tripartite forum that we have.

11.87 The Conference has to be as representative as possible. It should therefore, have representation from the organisations of employers and employees, and the Governments at the Centre, the states and Union territories. Up to now, representation of workers has been on the basis of the Central Trade Union Federations in the organized sector. Some means must be found to include representatives from the unorganised sector and from Central organisations that are not affiliated to the Central Trade Union Federations. There is no reason to hold that workers in the unorganised sector need not be represented at such a forum. Nor is there any insurmountable difficulty.

11.88 We have studied the proposals that the Draft Indian Labour Code, prepared by the National Labour Law Association, has made on strengthening the ILC. We are in general agreement with the proposals in the Code. We agree that the Conference can be used as a sounding board for proposals of legislation. We also agree that the Government can benefit immensely by the advice that it may receive from the conference both in honing and refining proposals and in maximizing support from all

concerned sections. But to begin with, we may not prescribe that every proposal the Government wants to make should first be discussed and approved by the Conference. This may involve incursions into the rights of other statutory bodies or institutions that are charged with the responsibility for immediate action. However, there can be no doubt that where measures can be or have to be anticipated or visualized in a long range perspective, the way of prior consultation is possible and highly desirable.

11.89 We agree that the Conference should:

- a) Review the labour situation in the country;
- b) Consider the Conventions and Recommendation of the International Labour organisation for adoption;
- c) Consider the legislative proposals of the Central Government that are referred to it, before or after being moved in Parliament. We believe that it will be advantageous to elicit the views of the ILC on laws that are to be introduced in Parliament.

Except in emergency situations, we would therefore recommend prior consultation with the ILC;

- d) Provide a forum for consultation and hearing of complaints regarding violation of the rights of labour;
- e) Review the implementation of the conventions and recommendations of the International Labour Organisation, Directive Principles of the Constitution concerning labour and the provisions of labour laws;
- f) Review the implementation of the programmes drawn up by the Central Government for the benefit of labour;
- g) Coordinate the conclusions and recommendations of the Standing Labour Committee;
- h) Review the implementation of its own recommendations;
- i) Adopt such resolutions and make such recommendations as it may deem necessary; and
- j) Do such other things as may be decided in the Conference itself;

11.90 We also agree that the Standing Labour Committee should prepare the agenda of the Conference, that there should be a Director General of the Indian Labour Conference; and that the functions of the Director-General should include:

- a) collection and distribution of information relating to conditions of work and life of labour;
- b) examination of the subjects which are proposed to be brought before the Standing Committee and the Conference;
- c) conduct of such special investigations as may be ordered by the Standing Committee and the Conference;
- d) preparation of documents on the various items of the agenda for the meeting of the Standing Committee and the Conference and sending them to participate two weeks in advance;
- e) preparation of the proceedings of the Conference and the meetings of the Standing Committee and issues relating to them;
- f) editing and issuing publications in English, Hindi and regional

languages, dealing with problems of labour;

11.91 We agree too that the ILC should set up tri-partite Standing Committees to consider and review problems, legislation and implementation into main areas like: (a) employment b) labour relations c) safety and health d) living condition of labour e) technological developments and their effects on labour and industry.

11.92 We also support the suggestion that tripartite National and State level Councils of employment should be set up to monitor and plan problems related to employment like:

- a) the development and adoption of an employment policy designed to promote full productive and freely chosen employment;
- b) co-ordination between employment policy and the overall economic and social policy and development programmes;
- c) assessment of the incidence of unemployment and under employment and the measures

- that may be taken to provide relief to the unemployed and the under employed;
- d) promotion of employment overseas;
 - e) development of short-term employment programmes;
 - f) Employment Market Analysis and manpower planning;
 - g) Prevention of discrimination in employment;
 - h) Monitoring the status of women workers;
 - i) Related matters.

COMMITTEES/BOARDS UNDER THE MINISTRY OF LABOUR

11.93 There are 41 Tripartite Committees/Boards under the Central Ministry of Labour. These committees are mainly advisory or consultative bodies that the Government consults in relation to the implementation/enforcement of different labour laws and policy formulation. A few of these committees are non-statutory, like the Industrial Tripartite Committees on various industries like sugar, cotton, textile, jute, engineering, chemical,

road transport etc. and safety committees, the governing body of the Central Board of Workers' Education etc. The Committees constituted under specific labour laws have special roles, albeit, advisory and therefore, require a certain degree of expertise. The non-statutory committees examine, and deliberate on a variety of issues. These committees promote tripartism and democratic functioning in labour administration. Although, the Labour Ministry has not conducted studies to examine the efficacy of these committees, quite a few witnesses have expressed their dissatisfaction with the functioning of these committees. Some of the main committees are listed in the table that we append.

11.94 The members of most of these committees are nominated from employers' organisations, trade unions, academicians and other interest groups without much emphasis on or evaluation of the quality of the contribution that is expected. Sometimes, the Minister chooses them. Sometimes they are chosen by the Secretary or other officers. There is no fixed criterion for their selection and nomination.

The meetings of these committees are held as and when the Ministry considers it necessary or when some members mount pressure. There is no fixed periodicity. These committees also constitute sub-committees. The agenda of the meetings of these committees are prepared by officers. Very often, members come to attend these meetings without adequate preparation. This affects the quality of deliberations in such meetings, and sometimes the meetings are reduced to rituals. In many meetings, divergent views are expressed on small points, and discussions get stuck.

11.95 The meetings of these committees are held at various places, and a lot of expenditure is incurred on travel and arrangements. A lot of logistical support and secretarial assistance have to be made available for facilitating the meetings of these committees.

11.96 In the State sphere too, there is the practice of setting up of many committees and sub-committees. In most of the states, the number of committees is below twenty.

11.97 The Commission feels that the Labour Ministry should scrutinize the

necessity, utility and efficiency of these Committees rigorously. There is no doubt that Committees enable access to a wide range of views from interested or affected groups, and provide a channel for democratic interaction and consultation. But Committees should have specific areas of responsibility or expertise for consultation. Their meetings should be on specific agenda. Discussions should not be a formality, but should lead to the crystallization of views or advice. Members should be chosen for their expertise, experience and/or representative capacity. They should not be sinecure committees, and become the cause of avoidable expenditure from the exchequer.

SAFETY

11.98 Safety, in industrial and agricultural operations, is a necessity not only for the worker and the enterprise, but also for society itself. Occupational hazards and dangers to health and accidents affect all. This means that conditions in an enterprise or industrial activity must be conducive to the protection of human life and limb. If the work place is not safe, clean and congenial, the workforce will tend to be alienated

from it, and such alienation, as opposed to involvement, physical, emotional and psychological, will adversely affect industrial production, productivity and growth.

11.99 Wanting to be safe is a basic instinct. However, the human being has to take risks, even for survival. Sometimes, we take several risks that are not warranted or justified. We carry this tendency to our place of work. Neither the employer nor the employee is free from this malaise. The employer sometimes does not take adequate precautions or does not provide the machines and devices necessary to ensure safety because he is keen to save on costs. Employees do not conform to safety norms, either because they find them irksome or because they feel that they affect the speed of work. If we look at the number of accidents, for instance in mines, it can be said that over a period of years the accident figures have come down. If one examines the accidents in detail, it can be seen that causes of accidents repeat themselves in a disturbing manner. Statistics by themselves, may not give the full picture. The present system of data collection and compilation has its own limitations,

and as such, the figures presented can only be taken as indicators.

11.100 In India, laws on safety of industrial workmen precede the Constitution. Under the Indian Factories Act, 1881, the District Magistrate was designated as the enforcing agency for safety. Factory Inspectors were appointed as early as 1911 even though the Factories Act in the present form came into being only in 1948. Today, we have a number of laws for the safety of persons working in industrial and commercial organisations. Some of them are listed below: -

- (a) The Factories Act, 1948
- (b) The Indian Explosive Act, 1884
- (c) The Petroleum Act, 1934
- (d) Inflammable Substances Act, 1952
- (e) The Insecticides Act, 1968
- (f) The Indian Electricity Act, 1910
- (g) The Indian Boilers Act, 1923
- (h) The Environment (Protection) Act, 1986
- (i) The Public Liability Insurance Act, 1991

- (j) The Dangerous Machines (Regulation) Act, 1983
- (k) The Atomic Energy Act, 1962
- (l) Building and other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996
- (m) Fatal Accidents Act, 1885
- (n) Dock Workers (Safety, Health and Welfare) Act, 1986
- (o) Shops & Establishment Acts of various States
- (p) Plantations Labour Act, 1951
- (q) Mines Act, 1952

Some of these Acts have a slew of rules, which are more exhaustive than the Acts.

11.101 In spite of so many laws, for some strange reason, we tend to take safety lightly at home and outside. Even when we observe laws, we often do so to avoid getting into trouble with the law, not because we feel that observing the laws of safety is a duty we owe to others and ourselves around us. It is perhaps this attitude, which was responsible for the holocaust at Bhopal in the night of December 2/3, 1984.

11.102 Bhopal, the capital of Madhya Pradesh had a population of approximately 8,00,000 at the time of the accident. The Union Carbide plant was first built on the outskirts of the city itself. Soon, it was surrounded by shantytowns. These habitations grew up in violation of all municipal laws and the Government did not realise the dangers of habitation so near a hazardous industry, and hence, did not take timely action, including precautionary steps, to remedy the situation.

11.103 Most of the evidence available indicates that the initial reaction was caused by leakage of water into the Methyl Isocyanate (MIC) tank which led to increase in temperature, the transformation of stored liquid MIC into vapour, the increase in the pressure of tank number 610 to nearly 50 psi, the opening of the rupture disk and the safety valve leading to the vent pipe, and finally the escape of the gas through the pipes and then into the atmosphere through the vent. The question of how the water entered the tank has been a matter of speculation, some ascribing it to carelessness and some to a possible conspiracy. However, it is evident that there were

adequate warnings given by even the outmoded system that was in place, and there are enough indications available to show that adequate time was available to take remedial actions to prevent the accident or at least to reduce the magnitude of the accident.

11.104 Operational and safety failures included storage of MIC for a period longer than permissible, non-functional and non-existent devices for detection and warning, insufficient and untrained staff, failure of Union Carbide to respond to defects and lapses pointed out earlier, shutdown of the MIC refrigeration unit, perhaps to save cost, shutdown of the caustic soda spray system, an out of order flare tower, excess of MIC in the tank, lack of a spare tank for diversion of MIC from other tanks, misinformation about the toxic effects of MIC and treatment and so on.

11.105 Two factors increased the magnitude of the tragedy. The first was the delay in starting the warning signals. Although the impending danger of leak was detected at 11.30 p.m. on December 2, the siren was started at only 1.30 a.m. on December 3, 1984. Some reports also suggest

that the siren actually became operational as late as 2.15 a.m. by which time a number of people had already awakened, and some had already reached the hospitals. Of course, the fact that the accident took place at night also added to the adverse elements in the situation.

11.106 Secondly, the local administration was given wrong information about the toxicity of MIC. The officials of Union Carbide initially maintained that it was not lethal.

11.107 A number of warnings had been given prior to the December 3 incident. In May 1982, a team of American experts from Union Carbide had inspected the Bhopal plant, and were extremely critical of the operation of safety measures.

11.108 In retrospect, the most noteworthy warnings came from the Indian journalist Raj Kumar Keswani who wrote a series of articles in a local Hindi weekly in 1982. Again, on June 16, 1984, about five months before the accident, Keswani reiterated his fears through an article in another major Hindi newspaper '*Jansatta*'.

11.109 After the Bhopal Gas Tragedy that resulted in loss of human lives on an unprecedented and startling scale, the Government initiated a series of amendments in the Factories Act, 1948. These amendments ranged from minor amendments, which specified the location of drinking water to major amendments that introduced a new Chapter IV A, in respect of provisions relating to hazardous processes. There were other amendments too. Safety was made the responsibility of the top person in the organisation, further stipulations were laid down on the general duties of the occupier and the general duties of manufacturers, etc. as regards, articles and substances meant for use in factories and so on. The Factory Inspectors were given powers to prohibit work, where serious hazard is anticipated. Finally, the penalties prescribed in the Act were increased manifold in order to have a deterrent effect.

11.110 Chapter IV A, which has been added, contains provisions relating to the Constitution of Site Appraisal Committees to give opinions on the initial location of a factory involving a hazardous process or for the expansion of any such factory.

The Chapter also casts specific responsibility on the occupier to maintain accurate and up-to-date health records of workers in the factory and appoint persons who possess qualification and experience for handling hazardous substances that were being used in the factory. It also has provisions for compulsory disclosure of information by the occupier to the workers, the Chief Inspector, the local authority and the general public in the vicinity, and provisions for workers' participation in safety management and the right of workers to warn about imminent danger.

11.111 While a number of factories have finalised 'on-site plans' for meeting exigencies of accidents, the progress in respect of 'off-site plans', which is a natural extension of the on-site plans, leaves much to be desired. Similarly, mock trials of off-site plans are an exception rather than the rule. It may be added that the success or otherwise of on-site plans can be judged only when the mock trial takes place, and they prove the efficacy of systems.

11.112 The power conferred by section 87-A, to prohibit employment

where there is serious hazard, has been used by the Factory Inspectorate on few occasions. What is comforting to know is that fortunately, up to now, there have been no occasions on which the Inspector of Factories failed to exercise the power that he should have used.

11.113 The enhancement of penalties under the Act has had a mixed effect. Whilst earlier, persons who were accused of violations of the provisions of the Factories Act would go to the Court, plead guilty and pay fines, the tendency now is to contest cases because penalties have become higher. This implies that today, the quality of evidence presented by the Inspector of Factory has to be much stronger than before, and when it is not so, the Courts tend to acquit the accused. Similarly, since the quantum of penalty is higher, and persons contest cases, the Inspector of Factory has now to spend more time in the Courts, and as a consequence, he has less time to spend in the field for inspections.

11.114 The Factories Act, in the present form, has drawn from the international experience on safety

management. All these amendments graphically show that lessons have been learnt from the grave industrial tragedies which had taken place in the world, and that if the revised safety measures are implemented, they would go a long way in ensuring the safety not only of persons working in the factory but also those living in the vicinity.

11.115 Overall, the amendments made in the Factories Act after the Bhopal Tragedy have been salutary and the spirit should be extended to organisations other than factories as well. Further, the amendments, which have been made, should be implemented properly and if necessary the responsibilities of the non-technical provisions can be transferred to the Labour Inspectorate so that the Factory Inspectorate can concentrate on aspects of health and safety.

11.116 We may also mention that at this stage, we are not going into the specifics of the Factories Act, 1948 in detail as we are dealing with the policy on safety and occupational health in general. However, we would like to record that we did organise a workshop to review the provisions of

the Factories Act, 1948 under the changing scenario, in collaboration with the Directorate General, Factory Advice Service & Labour Institutes on the 21 September 2001 at Mumbai. Among other things, the workshop recommended that while enforcing safety, the public should be enabled to realize that compliance with safety measures is in their own interest and for their own safety. The process may be long, but the effects are likely to be long lasting.

AGRICULTURE

11.117 Till recently, both at the national and the international level, safety in the agricultural sector was not receiving the attention it deserved. The scenario is compounded by the fact that children comprise a large section of the agricultural workforce that is exposed to the injurious effects of chemicals, insecticides, etc. and even the adults working in this sector are mostly illiterate.

11.118 Machinery, such as tractors and harvesters, has the highest frequency of fatality rates. Exposure to pesticides and other agrochemicals constitutes one of the major occupational risks causing poisoning

and death and certain cases of work related cancer. Other hazards arise from multiple contact with animals or insects, plants, poisonous animals and biological agents which may give rise to allergies, respiratory disorders and lung diseases and parasitic diseases. Noise-induced hearing loss, muscular and skeletal disorders (repetitive motion, disorders, back disorders), stress and psychological disorders are also frequent.

11.119 The geographical location and other climatic factors including floods, droughts, famines etc. are other hazards which agricultural workers have to face.

11.120 Workers engaged in the agricultural sector have to be educated about potential hazards. They should possess:

- a) Sound knowledge of the work and procedures in the processes of production;
- b) Means to identify, assess and monitor work-related risk factors;
- c) Information on measures of first aid;
- d) Methodologies for planning and implementing risk prevention

and safety and health promotion programmes.

11.121 During deliberations on matters relating to Occupational Safety and Health, we had the benefit of receiving advice from various experts from reputed organisations like the Directorate General: Mines Safety, Loss Prevention Association, National Safety Council, Controller of Explosives, Chief Inspectors of Factories of different States and, particularly, of NCT of Delhi, Directorate General of Factory Advice Service & Labour Institutes, various industry representatives and, in some cases, representatives of workers.

11.122 We also had occasion to discuss the subject with the Head, Corporate Safety, Environment & Energy in the Hindustan Lever Limited, which is the Indian arm of one of the major global multinational corporations. The most important aspect of the Safety & Health Policy of Hindustan Lever Limited, we were told, is perhaps the accountability of management at all levels starting from the Chief Executive level, for occupational safety and the health performance of the company. Another key feature of the policy of Hindustan Lever Limited is the

recognition of the close links between technology, people and facilities, and also the management's commitment to safety management. During the course of discussions, the representative of Hindustan Lever Limited also referred to a study undertaken by Frank E Bird Jr., the then Director of Engineering Services of the Insurance Company of North America. He studied 17,53,498 accidents and conceptualised a pyramid-like structure of accident ratio which indicates that behind one major injury there are normally ten minor injuries. That is to say that for every accident leading to a major injury, there are at least ten accidents, which resulted in minor injuries. Similarly, for every ten minor injuries there are at least thirty accidents that resulted in some damage to property but did not cause any injury. Likewise, for every thirty property damage accidents there were six hundred accidents or incidents which did not result in any injury or in any damage and could be categorised as 'misses'. The numbers may vary but the conclusion is that every accident which causes major or minor injury or causes damage to property, gives adequate indications of its imminent arrival, and if these

incidents can be noted and corrective action taken, then the occurrence of accidents which cause loss of life or property can be minimised. The other important lesson is that no accident should be taken lightly.

11.123 The costs of accidents can be divided into two categories – one, visible costs and the other, the invisible costs. According to an estimate, for every Rs. 50/- which would be the visible cost on account of medical costs and insurance costs there would be a further cost ranging between Rs. 250/- to Rs. 2,500/- in terms of damage to building, damage to tools and equipments, repairs and replacement of parts etc. These have been described as ledger cost of property damage. Similarly, there would be a further expenditure ranging from Rs. 50/- to Rs. 150/- on account of investigation time, wages paid for time lost, cost of hiring and training replacements, clerical time, loss of business etc. While these are not absolute figures, they do tell us that visible costs are far less than the total cost inflicted by an accident.

11.124 The safety vision of Hindustan Lever Limited envisages an injury free organisation. Safety is

further defined not merely in terms of safety management, but of management effectiveness. Planning in respect of safety is done with a three to five year perspective, and the safety policy is reviewed comprehensively thereafter. The responsibilities and expectations of each individual and each department/section are clearly defined, and are accepted. Management personnel are personally involved in the implementation of the safety policies and finally matters relating to safety have a sense of urgency, and are not related to the cost of production. Another feature of Hindustan Lever's safety policy is that it is not confined only to the four walls of the factory, but goes beyond. It is not confined only to the company's employees but to employees of contractors and visitors as well.

INTERNATIONAL EXPERIENCES

11.125 The Health & Safety at Work etc. Act, 1974 of the UK is a comprehensive legislation dealing with health, safety and welfare in connection with work, and the control of dangerous substances and emissions into the atmosphere. In the first part, this Act lays down the

general duties of employers to their employees, and to persons other than their employees. It also refers to the general duties of the persons in control of certain premises in relation to harmful emissions into the atmosphere. The general duties of employees are also stated in this part. In the next part, the Act has provisions for the establishment of the Health & Safety Commission and the Health & Safety Executive. The nature of the duties of the Commission is laid down in section 11 of the Act. The next part deals with the health and safety regulations and approved codes of practice.

11.126 The Occupational, Safety & Health Act of 1970 in the U.S.A was formulated to assure safe and healthy working conditions for working men and women by authorising the enforcement of standards laid down under the Act and by assisting and encouraging States in their efforts to assure safe and healthy working conditions; by providing for research, information, education & training in the field of occupational safety & health. The Act repeatedly talks of the concept of information sharing on matters of safety between the employer and the employees. Other

salient features of the Act are the constitution of the National Safety Advisory Committee on Occupational Safety & Health to advise, consult with and make recommendations on matters relating to the administration of the Act, an Advisory Committee to assist the Secretary in the standard setting functions entrusted to him under the Act. It also has a provision for setting up an Occupational Safety & Health Review Commission. Provisions relating to inspections, investigations and record keeping stipulate that the information should be obtained with minimum burden on employers, specially those operating small businesses and that unnecessary duplication of efforts in obtaining information should be reduced to the maximum extent feasible. The Act lays emphasis on research and related activities, training and employee education and the constitution of a national institute of occupational safety & health. The Act gives due importance to the collection of statistics on occupational safety and health, and has provisions which specify staffing for the implementation of the Act.

ACTION PLAN

11.127 The global scenario, and its impact on industry and processes poses several serious problems, which require our immediate attention. Some of these are outsourcing of work; migration of labour; unemployment; exposure to the hazards of new technology; lack of acquaintance with new technology; lack of openness and transparency on the part of employments who are reluctant to share full information on technology, etc. Notwithstanding its comprehensiveness, the existing statute, i.e. the Factories Act is applicable only to one sector of the economy. For example, if work activities move from big industries to small, and small to home sectors, some areas are left out in the chain, resulting in loopholes and lopsided administration of safety statutes. Problems relating to migration, contractualisation and casualisation of labour, render it difficult to implement some of the provisions relating to safety and health. Therefore, we need to reflect and evolve a system, that permits flexibility in employment patterns and at the same time assures rigorous standards for the protection of safety and health requirements. A clean, safe

and healthy work place is essential for maintaining standards of production and productivity. Regardless of whether the production takes place, in the main enterprise or in the establishment of the contractor, strict standards of safety should be maintained.

NEED FOR NATIONAL POLICY

11.128 The need for a national policy on Occupational Safety & Health (OSH) cannot be over emphasised. The national policy on OSH management systems should establish general principles and procedures to promote the implementation and integration of OSH management systems. It should facilitate and improve voluntary arrangements for the systematic identification, planning, implementation and improvement of OSH activities at national and organisation levels. It should promote the participation of workers and their representatives at all levels especially at the organisation level. The national policy should strive for continuous improvement while avoiding unnecessary bureaucratic controls, administration and costs. The policy should promote collaborative and

supportive arrangements for OSH management systems at the organisation level by inspectorates, and occupational safety and health services, and channel their activities into a consistent framework for OSH management. The effectiveness of the policy and framework should be reviewed at appropriate intervals. One key area of the policy should be to ensure that the same level of safety and health requirements applies to contractors and their workers as to the workers, including temporary workers, employed directly by the organisation.

11.129 A competent institution or institutions should be nominated as appropriate to formulate, implement and periodically review a coherent national policy for the establishment and promotion of OSH management systems in organisations. We find that laws relating to safety and occupational health are being implemented by a number of sections/ inspectorates in the Labour Ministry at the Central and State levels. These laws are also being implemented by some other ministries/departments, e.g. Environment, Agriculture, Power, Industry, etc. An apex body, perhaps on the lines of an OSH Review

Commission will be best equipped to coordinate these activities. The OSH Act of the USA has other features that are worth emulating viz. its stress on research, training of employees, collection of statistics etc. The implementation should be done in consultation with the most representative organisations of employers and workers and with other concerned bodies. Wide consultation is bound to lead to greater acceptability.

11.130 The institution charged with the responsibility of formulating and implementing the national policy on safety and occupational health should establish a national framework to identify and establish the respective functions and responsibilities of the various institutions called upon to aid and implement the national policy and make appropriate arrangements to ensure necessary coordination. The institution should publish and periodically review national guidelines on the voluntary application and systematic implementation of OSH management systems in organisations. It should establish appropriate criteria and identify the respective duties of the institutions responsible for the preparation and

promotion of guidelines on OSH management systems; and ensure that technically sound guidance is available to employers, workers and their representatives, and to inspectorates, and other public or private services.

THE OCCUPATIONAL SAFETY & HEALTH MANAGEMENT SYSTEM IN ORGANISATIONS

11.131 Occupational safety and health, including compliance with the OSH requirements laid down by national laws and regulations have to be the responsibility and duty of the employer. The employer should show strong leadership and commitment to OSH activities in the organisation and make appropriate arrangements for the establishment of an OSH management system. The system should contain the main elements of policy, organizing, planning implementation, evaluation and means of improvement. These elements have to be audited at regular intervals. The process of auditing would have to be followed by continuous improvement. This is a cyclical and a continuous process.

11.132 The employer, in consultation with workers and their representatives, should set out in writing an OSH policy, which should be specific to the organisation and appropriate to its size and the nature of its activities. It should be concise, clearly written, dated and made effective by the signature of endorsement of the employer or the most senior accountable person in the organisation. The policy must be communicated and readily accessible to all persons at their places of work. As in the case of the National Policy, the policy at the organisation level should also be reviewed for effectiveness and adequacy.

11.133 The employer should ensure, the establishment and efficient functioning of a safety and health committee that includes the representatives of workers and works for assuring safety and freedom from health hazards.

11.134 The employer and senior management should allocate responsibility, accountability and authority for the development, implementation and performance of the OSH management system and the

achievement of the relevant OSH objectives. Structures and processes should be established which should ensure that OSH is a line-management responsibility which is known and accepted at all levels. It should define and communicate to the members of the organisation the responsibility, accountability and authority of persons who identify, evaluate or control OSH hazards and risks. The process should provide effective supervision, to ensure the protection of workers' safety and health, and finally, it should promote cooperation and communication among members of the organisation, including workers and their representatives, to ensure effective functioning of the organisation's OSH management system.

COMPETENCE AND TRAINING

11.135 The necessary OSH competence requirements should be defined by the employer, and arrangements established and maintained to ensure that all persons are competent to carry out the safety and health aspects of their duties and responsibilities.

11.136 The employer should have, or

should have access to, sufficient OSH competence to identify and eliminate or control work-related hazards and risks, and to implement the OSH management system.

OCCUPATIONAL SAFETY & HEALTH MANAGEMENT SYSTEM DOCUMENTATION

11.137 OSH documentation system should be established and maintained according to the size and nature of the activities of the organisation.

11.138 The organisation's existing OSH management system and relevant arrangements should be evaluated by an initial review, as appropriate. In cases where no OSH management system exists, or where the organisation is newly established, the initial review should serve as a basis for establishing an OSH management system.

11.139 The purpose of planning should be to create an OSH management system that supports:

- a) At the minimum, compliance with national laws and regulations; and

- b) Continuous improvement in OSH performance.

11.140 Arrangements should be made for adequate and appropriate OSH planning, based on the results of the initial review, subsequent reviews or other available data. These planning arrangements should contribute to the protection of safety and health at work.

OCCUPATIONAL SAFETY AND HEALTH OBJECTIVES

11.141 Consistent with the OSH policy and based on the initial or subsequent reviews, measurable OSH objectives should be established. These should be specific to the organisation, and appropriate to and according to its size and nature of activities. The objectives should be consistent with the relevant and applicable national laws and regulations, and the technical and business obligations of the organisation with regard to OSH. They should be focused towards continually improving workers' OSH protection to achieve the best OSH performance.

HAZARD PREVENTION

11.142 Hazards and risks to workers' safety and health should be identified and assessed on a continuing basis. Preventive and protective measures should be implemented in the following order of priority:

- (a) Elimination of hazards/risks;
- (b) Controlling the hazard/risk at source, through the use of engineering controls or organisational measures;
- (c) Minimising the hazard/risk by the design of safe work systems, which include administrative control measures; and
- (d) Where residual hazards/risks cannot be controlled by collective measures, the employer should provide for appropriate personal protective equipment, including clothing, at no cost to the workers, and should ensure its use and maintenance.

EMERGENCY PREVENTION, PREPAREDNESS AND RESPONSE

11.143 Emergency prevention, preparedness and response arrange-

ments should be established and maintained. These arrangements should identify the potential for accidents and emergency situations, and address the prevention of OSH risks associated with them. The arrangements should be made according to the size and nature of the activity of the organisation. They should ensure that the necessary information, internal communication and coordination are provided to protect all people in the event of an emergency at the worksite. The arrangement should provide information to, and communication with, the relevant competent authorities, and the neighbourhood and emergency response services. These arrangements should also address first aid and medical assistance, fire fighting and ways to evacuate all people at the worksite. They should also provide relevant information and training to all members of the organisation, at all levels, conduct regular exercises and rehearsals for action that each has to take in the event of an emergency.

11.144 A disaster management plan must be formulated at every unit and industrial estate, and at the city, district, state and national level. Not

only should the plan be formulated, it should be given wide publicity both to persons connected with it and to persons who are not directly connected with it. In some industrial estates in Mumbai, the concept of the Mutual Aid Response Group (**MARG**) has been in practice. Workers working in a factory are given information about the hazardous nature of operations in other factories in their vicinity. They are also briefed about the hazardous substances being handled in the neighbouring factories. The idea behind this scheme is to ensure that even if the workers working in the factory that is hit by an accident were rendered unable to contain the ill effects of the accidents, workers working in the neighbouring factories would be in a position to render assistance. Drawing lessons from the Bhopal incident, it would be important and useful to keep doctors working in major hospitals in nearby areas fully informed of the hazards involved in the factories in their area.

EVALUATION PERFORMANCE MONITORING AND MEASURE-

MENT

11.145 Procedures to monitor measures and record OSH performance on a regular basis should be developed, established and periodically reviewed. Responsibility, accountability and authority for monitoring at different levels should be defined for different levels in the management structure.

11.146 The selection of performance indicators should confirm to the size and nature of the activity of the organisation and the OSH objectives.

11.147 Both qualitative and quantitative measures appropriate to the needs of the organisation should be considered.

INVESTIGATION OF WORK-RELATED INJURIES, ILL HEALTH, DISEASES AND INCIDENTS, AND THEIR IMPACT ON SAFETY AND HEALTH PERFORMANCE

11.148 The investigation of the origin and underlying causes of work-related injuries, ill health, diseases and incidents should identify failures and shortcomings in the OSH management

system, and these should be documented.

11.149 Competent persons, with the appropriate participation of workers and their representatives, should carry out such investigation.

11.150 The results of such investigations should be communicated to the safety and health committee, wherever it exists, and the committee should make appropriate recommendations.

11.151 The results of investigation, in addition to any recommendations from the safety and health committee, should be communicated to appropriate persons for corrective action, included in the management review and considered for continual improvement.

11.152 The corrective action resulting from such investigation should be implemented in order to avoid recurrence of work-related injuries, diseases and incidents.

11.153 Reports produced by external investigative agencies, such as inspectorates and social insurance institutions, should be acted upon in

the same manner as internal investigations, taking into account the needs of confidentiality.

AUDIT

11.154 Arrangements to conduct periodic safety or OSH audits are to be established in order to determine whether the OSH management system and its elements are in place, adequate, and effective in protecting the safety and health of workers and preventing incidents.

11.155 A safety audit policy and programme should be developed, which lays down the qualifications of auditors or auditing firms and agencies, designation of auditor competency, the frequency of audits, audit methodology and reporting.

11.156 The National Accreditation Agency should also approve the auditors after conducting examinations.

MANAGEMENT REVIEW

11.157 Management reviews should evaluate the overall strategy of the OSH management system to determine whether it meets planned

performance objectives. The review should evaluate the OSH management system's ability to meet the overall needs of the organisation and its stakeholders, including its workers, visitors and the regulatory authorities. It should evaluate the need for changes to the OSH management system, including OSH policy and objectives, and identify what action is necessary to remedy deficiencies in a timely manner. Management reviews should provide the feedback direction, including the determination of priorities for meaningful planning and continual improvement, and evaluate progress towards the organisation's OSH objectives and activities and at correction. Finally, the management review should evaluate the effectiveness of follow-up actions from earlier management reviews.

11.158 The frequency and scope of periodic reviews of the OSH management system by the employer or the most senior accountable person should be defined according to the organisation's needs and conditions.

ACTION FOR IMPROVEMENT PREVENTIVE AND CORRECTIVE

ACTION

11.159 Arrangements should be made and maintained for preventive and corrective action resulting from OSH management system performance monitoring and measurement, OSH audits and management reviews.

WORKING GROUP ON OSH SET UP BY THE PLANNING COMMISSION

11.160 The Working Group on OSH set up by the Planning Commission (for the Tenth Five year Plan) has also recommended the following: -

- (a) Evolution of a National Policy on OSH of workers employed in all sectors.
- (b) Umbrella legislation on OSH.
- (c) Apex Body on OSH.
- (d) National Accreditation Agency for establishment of national standards on OSH and development of an audit mechanism for assessing effectiveness of OSH.
- (e) Competence enhancement of enforcement officials.

(f) Training for industry.

11.161 This is in tune with what we have discussed in the previous pages and we endorse the views of the Working Group.

11.162 The need for safety awareness and observance of safety, be it at home, be it at the workplace, be it on the road or be it elsewhere is becoming increasingly critical. Modern lifestyle and consumerism are fraught with hazards necessitating constant safety awareness and observance of safety standards in all sectors and activities. This objective can be achieved by ensuring that increased safety related information reaches the young even as a part of the academic curriculum. This will help in preparing future citizens with the awareness that is necessary. Starting from the primary school level, where simple aspects of road safety and home safety could be inculcated, safety related information inputs could be upgraded progressively at the secondary and senior secondary stages as the academic programme progresses from primary level to advanced level. In fact, this is one of the long-standing recommendations of the International Labour Organisation as well. The time has come to

reiterate this need and to convert it into a national commitment.

DIRECTORATE GENERAL OF MINES SAFETY

11.163 Extraction of minerals from the bowels of the earth is a process that has been prevalent in India from the ancient times. Exploration and mining of lead and zinc in Zawar, copper in *Khetri*, gold in Karnataka are a few illustrations in this context. However, metal mining remained primitive although there was no dearth of knowledge of this science. Minerals are important ingredients for the healthy economic growth of a nation, and India has been eminently endowed with this by nature. There is a close symbiosis between development and mining. The country's economic planning therefore accorded great importance to mining in industrial as well as overall development. Mining statistics of the country classify minerals into fuel minerals, metallic minerals, non-metallic minerals and minor minerals. It does not include atomic minerals. The group of fuel minerals includes petroleum and natural gas and coal and lignite. Metallic minerals include such principal minerals as iron ore, chromite, copper ore, lead and zinc ore, manganese ore, gypsum, steatite,

limestone, etc. Brick earth, granite, building stone, marble, quartzite and sandstone, ordinary sand, road metal, boulder, '*murrum*' and '*kankar*' etc. are classified in the categories of minor minerals.

THE GENESIS

11.164 The history of mining, particularly commercial coal mining of the country dates back to nearly 227 years. It was initiated in the year 1774 by the East India Company through M/s Sumner and Heatley who were granted permission for mining coal in Ranigunj coalfields along the western bank of the river Damodar. Nearly a century later, M/s John Taylor & Sons Ltd. started gold mining in *Kolar* Gold fields in the year 1880, and the first oil well was drilled in Digboi in the year 1866 seven years after the first-ever oil well was drilled anywhere in the world viz. in the Pennsylvania State in USA in 1859. For about a century, however, the growth of Indian mining industry remained sluggish and nearly dormant for want of demand, but the introduction of steam locomotives in 1853 provided an impetus. Within a short span India started producing 1 million tonnes as an annual average. India could produce 6.12 million

tonnes coal per year by 1900, and 18 million tonnes per year by 1920. The production was accelerated in the First World War, but again slumped in the early thirties. The production reached a level of 29 million tonnes by 1942 and 30 million tonnes by 1946. With the advent of independence the country embarked upon a sustained developmental process through the Five Year Plans. In order to achieve goals set by the Plans, the National Coal Development Corporation (NCDC) was established as a Government of India undertaking in 1956 with the collieries owned by the railways as its nucleus. On the other hand Singareni Collieries Company limited (SCCL), which was in operation since 1945, became a Government company under the control of the Government of Andhra Pradesh in 1956. India thus had two Government coal companies in the fifties. The SCCL is now a joint venture undertaking of the Government of Andhra Pradesh and Government of India sharing its equity in 51: 49 ratio. Mining and the policy on management of mineral resources were part of India's industrial policy and the initial stages of the Five Year plan process.

THE STATUTE

11.165 The Constitution of India has bestowed the onus of exploitation and management, (which inter alia includes safety, welfare and health of workers employed in Mines), of mineral resources with the Central Government and the State governments in terms of Article 246-Entry 55 of the Union List and Entry 23 of the State List in the Seventh Schedule of the Constitution. The Industrial Policy Resolution, 1956 and the Mines and Minerals (Regulation and Development) Act, 1957 broadly lay down the framework for the regulation and development of all minerals other than petroleum and natural gas. The Mining Concession Rules, 1960, regulates the grant of prospecting licences and mining leases of all minerals other than atomic and minor minerals. Rules concerning minor minerals are framed by the State Government. The Central Government has framed the Mineral Conservation and Development Rules, 1988 which attracts all minerals. Under Schedule A of the Industrial policy Resolutions, 13 minerals besides coal and lignite were reserved exclusively for the public sector. The Mines Act, 1952 and the Rules and Regulations made thereunder regulate the objectives. These are administered by the Directorate General of Mines

Safety (DGMS) under the Union Ministry of Labour. Apart from administering the Mines Act and its subordinate legislations, the DGMS also administers other allied laws as indicated below, in respect of mines: -

(a) Mines Act, 1952

- Coal Mines Regulations, 1957
- Metalliferous Mines Regulations, 1961
- Oil Mines Regulations, 1984
- Mines-Rules, 1955
- Mines Vocational Training Rules, 1956
- Mines Rescue Rules, 1985
- Mines Crèche Rules, 1966
- Coal Mines Pit Head Bath Rules 1959
- Indian Electricity Rules, 1966

(b) Allied Legislation

- Factories Act, 1948. Chapters III & IV
- Manufacture, Storage & Import of Hazardous Chemicals Rules 1989 under Environmental Protection Act, 1986
- Land Acquisition (Mines) Act, 1985
- The Coal Mines (Conservation & Development) Act, 1974.

THE SOCIAL FACTOR

11.166 Unscientific mining practices adopted by some of the private mine owners and the poor and inhuman working conditions of labour in some of the private coal mines became a matter of serious concern, and armed with the recommendations of various Commissions and Committees, the Central Government took a decision to nationalise private coal mines. This was undertaken in two phases, the first with the coking coal mines in 1971-72, and then with the non-coking coal mines in 1973. In October 1971, the Coking Coal Mines (Emergency Provisions) Act, 1971 provided for taking over in public interest the management of coking coal mines and coke oven plants pending nationalisation. This was followed by the Coking Coal Mines (Nationalisation) Act, 1972 under which the coking coal mines and the coke oven plants other than those with the Tata Iron & Steel Company Limited and Indian Iron & Steel Company Limited, were nationalised on 1.5.72 and brought under the Bharat Coking Coal Limited (BCCL), a new Central Government Undertaking. Another enactment, namely the Coal Mines (Taking Over of Management) Act, 1973, extended the right of the

Government of India to take over the management of the coking and non-coking coalmines in seven States including the coking coalmines taken over in 1971. This was followed by the nationalisation of all these mines on May 1, 1973.

11.167 One of the primary objectives of nationalisation was to bring about improvement in the safety and health scenario.

THE HAZARDS

11.168 The fast changing geo-mining conditions induce a considerable degree of hazard in mining operations. This is accepted all over the world since such geological changes are unleashed by nature suddenly without any warning. And when such a calamity occurs it has a colossal impact, which is so harsh and massive that, the achievements of science take a backseat – for sometime at least. The coalfields, for instance, are being subjected to

exploitation for over a century, and the effects pose challenges to mines safety at regular intervals, and at times at frequent intervals.

11.169 The Manual Board and Pillar system of mining has been traditionally practised in underground coalmines, and accounts for nearly 90% of underground coal production. A large workforce is engaged in these mines. A graphic detail on the engagement of mine workers during the period from fifties to early nineties is placed below:

Average daily employment in Mines (in ,000)											
Year	Coal Ore	Oil Ore	Copper Stone	Gold Ore	Iron	Lime	Mang.	Mica	Stone	Others	Total Metals
1951	351.9	N.A.	3.7	21.9	20.2	16.0	55.5	25.2	5.1	49.5	197.1
1961	411.2	N.A.	4.2	16.3	54.5	54.6	46.9	29.6	8.5	45.1	259.7
1971	382.3	13.6	7.6	12.4	52.8	53.2	30.4	12.2	8.8	57.5	234.9
1981	513.4	14.5	13.4	12.3	44.9	49.8	26.5	6.7	7.7	60.6	221.9
1986	543.3	24.9	13.2	11.9	46.6	50.2	17.7	3.3	10.2	68.1	221.2

1987	549.7	25.9	12.6	11.6
48.8	51.2	17.6	3.3	10.8
69.6	225.5			
1988	537.8	26.6	12.3	10.9
46.0	43.0	17.4	2.8	14.2
60.5	207.1			
1989	548.1	25.2	10.8	10.5
44.5	44.6	16.1	2.9	12.9
62.0	204.3			
1990	549.0	26.9	12.3	9.7
38.1	41.5	17.3	2.3	10.1
58.0	189.3			
1991	554.1	35.5	12.8	9.3
40.1	53.5	17.9	2.2	11.2
63.2	200.2			
1992	552.0	35.7	12.7	9.4
42.0	43.0	18.4	1.6	8.9
67.2	203.2			
1993	546.3	33.5	12.2	7.9
39.8	41.6	18.5	1.5	9.2
68.9	199.6			

11.170 Problems of large amount of blocked coal in the pillars of developed workings, numerous old and waterlogged workings, multiple seam workings, seams on fire, gassy seams, surface features, subsidence, populated areas and towns lying above the coal deposits etc. pose unique problems in the safe running of coal mines. Moreover, with the exhaustion of easily available reserves, mining activities are

gradually extending to greater depths, and to adverse geo-mining locales, thereby, further adding to the complexities of health and safety problems in mines. Unique in the context of other mines, coal mining is a dynamic process which is constantly undergoing change from one area to another, with the possibility of different types of hazards surfacing at different times and places. Moreover, coalmines are inherently hazardous in nature, and prone to dangers from inundation, explosion, fire, roof fall etc. and, therefore, require constant monitoring and regular verification of safety norms.

THE REMEDIAL MEASURES

11.170 The National Labour Policy formulated during the Sixth Plan stated that "working conditions include not only wage structure, fixing of minimum wage and protection of income, but also fixing of working hours, periods of rest, paid holidays, provision of canteen facilities and provision of crèches for children. Today, safety includes not only protection of workers against accidents at work but also against occupational diseases. Indeed, with the growth and diversification of industry and agriculture,

considerations of the safety and health of workers have expanded. It has been equally important to improve the environment since safe and healthy working conditions are the best protection for the worker and the best guarantee for increased production..." The Mines Act, therefore, is an instrument to safeguard the interests of workers in relation to their health, safety and welfare. It is a global practice to entrust the responsibility for

safety to an independent regulatory agency. In the Indian context, this role of independent regulatory agency has been entrusted to the Directorate General Mines Safety (DGMS) which is expected to oversee safety measures, undertake periodic inspections of Mines, conduct enquiries into fatal and serious accidents, enquire into complaints,

delve mandatory safety standards, regulate safety in workplaces through controlling the grant of permissions and approvals, ascertain the competence of supervisors

and managers by conducting competency examinations, and other means. The DGMS also undertakes various promotional developmental initiatives for enhancing safety in mines and prides itself on its expertise in diverse mining activities including and coal, metalliferous and oil mining. The Public Sector coal companies have also undertaken various measures to bring down the fatality rate and serious injuries in accidents. The following table shows the rate of fatalities and serious accidents per million tonnes of coal raised.

The rate of fatalities and serious accidents per million tonne

	1975	1995	1996	1997	1998
Fatalities	233	115*	110	112	99
Fatality rate per million		1515			
2.62		612			
0.50*		505			
0.44		519			
0.43		407			
0.38		Serious injury rate per			
tonne of coal production		19.49			
Serious injury		2.65			

2.02
1.99
0.95
million tonne of coal produced

* Excluding 77 fatalities at the Gaslitand Disaster.

NOTE: Figs. for 1997 & 1998 are subject to reconciliation with DGMS. However, serious injury figures for 1997 have been revised in January 1999, after consultation with the subsidiaries of CIL.

11.172 There is a continuous effort to improve and upgrade safety measures. The thrust is on disaster prevention, and the following activities are undertaken with this objective:

- (a) Repeated safety audit of mines and implementation of emerging recommendations; and monitoring.
- (b) Priority inspections of highly gassy mines and fiery mines by Internal Safety Organisation (ISO) officials and follow up of corrective action for removal of deficiencies.
- (c) Environmental Monitoring of degree III gassy and fiery mines to take corrective action before a dangerous situation is built up, by constant vigil and monitoring the parameters which are indicative of accumulation of inflammable gas or increase in heat with the risk of a possible

outbreak of fire.

- (d) Measures against possible danger of inundation by building embankments, barriers, diversion of *jores* etc.
- (e) Monthly review of safety performance of the companies in CMDs meets with critical analysis of each and every accident and formulation of strategies for prevention.
- (f) Increased thrust on use of latest scientific methods of the roof support system through Rock Mass Rating based Support Plans for mines and roof Bolting System of support especially in the new exposes in the roof area. Work relating to Quick Setting Cement Capsules in collaboration with the Central Mining Research Institute.
- (g) Safety clearance of production districts before commencement of operations.
- (h) A major thrust on inspections of the mines by the officials of Internal Safety Organisations (ISO) of the mine management as well as inspections by the trade union representative, members of the Safety Board,

Standing Committee on Safety in Mines, workmen's inspectors and mine level safety committees

- (i) Training and retraining of the workers, supervisors and officials of the mines, providing incentives for attracting suitable persons to serve in the Rescue Services and strengthening field volunteer systems. New technology like infrared imagers, paging systems etc. have also been introduced along with the development of cordless radio communication system for use by the rescue teams for recovery work underground.
- (j) Procurement of large diameter drill machine for evacuation of miners trapped underground, and initiating steps for indigenous production of its accessories. Procurement of high-powered submersible pumps and horizontal pumps which are to be kept in readiness for emergent dewatering of mines.

ORGANISATIONAL SET UP OF DIRECTORATE GENERAL OF MINES SAFETY (DGMS)

11.173 The Directorate General of Mines Safety is a multi-disciplinary organisation with inspecting officers from Mining, Mechanical and Electrical Engineering and Occupational Health disciplines. The officers are selected through the Union Public Service Commission and possess degrees in engineering in various disciplines. They also have experience, varying from seven to ten years of working in responsible capacities in mines and allied industries. Besides, officers of mining cadre possess first class Mine Manager's Certificates of Competency. The Occupational Health cadre is staffed by qualified and experienced medical practitioners. The Directorate General of Mines Safety (DGMS) is a subordinate office under the Ministry of Labour with its headquarters in *Dhanbad (Jharkhand)*, and is headed by the Director General Mines Safety. At the headquarters, the DG is assisted by specialist staff officers for Mining, Electrical and Mechanical Engineering, Occupational Health, Law, Survey, Statistics, Administration and Accounts disciplines. The headquarters office also has a technical library and S&T laboratory as a back-up support to the organisation. The field organisation

has a two-tier network. The country is divided into six zones, each in the charge of a Deputy Director General. There are three to four Regional Offices under each zonal office. Each region is under the charge of a Director of Mines Safety. There are in all 21 such regional offices. In some areas of vigorous mining activities which are away from the Regional offices, four Sub-Regional offices have also been set up. Each of these offices is under the charge of a Deputy Director. Besides the inspecting officers of Mining Cadre in each zone, there are officers of electrical and mechanical engineering and occupational health disciplines.

ROLE AND FUNCTIONS

11.174 Deriving its powers from the laws for setting and ensuring standards, the DGMS exercises preventive as well as educational influence over the mining industry. It oversees compliance as intensively as its resources allow, and conducts a variety of promotional initiatives and awareness programmes.

11.175 Apart from inspecting coal, metalliferous and oil mines, DGMS also undertakes investigations into fatal accidents, certain serious accidents and dangerous occurrences,

and makes recommendations for remedial measures to prevent recurrence of similar mishaps. The organisation also promotes the concept of 'self regulation' as well as involvement of workers in safety management. With the fast changing global scenario and crumbling of established systems, it also attempts to superimpose its traditional role of seeking compliance by legal sanctions and other safety promotional initiatives, wherein safety gets due priority.

TESTING SERVICE

11.176 The current functions of the DGMS can be broadly categorised as under:

- (a) Inspection and investigation into
 - accidents
 - dangerous occurrences – emergency services
 - complaints and other matters
- (b) Work related to the grant of statutory permission, exemptions and relaxations in the form of preview of project reports and mining plans and approval of mine safety equipments, material and appliances:-
 - Interaction for development of safety equipments, material and

- safe work practices.
- Development of safety legislations and standards.
 - Safety information dissemination.
- (c) Safety promotional initiatives including:-
- Organisation of conferences on "Safety in Mines"
 - National Safety Awards
 - Safety Weeks and Campaigns
 - Promoting safety education and awareness programmes and workers participation in safety management through –
 - Workmen's inspectors
 - Safety Committees
 - Tripartite reviews
- (d) Conduct of examination for grant of competency certificates.

MANPOWER

11.177 Recently, the Parliaments' Standing Committee on Labour & Welfare (13th Lok Sabha) observed (Para 2.64 of its report) that during the last 15 years, the size of the mining industry has increased four fold whereas the staff component of the DGMS has remained static, and this is grossly inadequate to meet safety operations in mines. The

Committee further observed that out of 598 coalmines, the Department has been able to make complete inspections in only 159 coalmines during the year 2000-01. The Department has pleaded that due to inadequate staff, it could carry out inspection of all mines only once in four years. The shocking state of inadequacy of staff can be seen from the fact that at present, the Department has only 130 inspecting officers against the sanctioned strength of 167. The Committee, strongly felt that there should be no compromise in so far as the safety of mine workers is concerned, and therefore recommended that the ban on filling up posts and recruitment should not be applied to the DGMS.

11.178 The responsibility entrusted to the DGMS is one on which the lives of thousands of mine workers depend. A marginal delinquency or slipshod adherence to the norms of safety may lead to a catastrophe including the loss of precious lives and untold suffering to many families. The importance of the frequency of inspections was dwelt upon for the first time at the First Conference on Safety in Mines (1958) which made the following recommendations:

- (a) There should be two general inspections of all mines every

year.

- (b) Special inspections should be made for particular objectives i.e. general supervision, ventilation, coal dust, support in depillaring areas etc.
- (c) Mines where conditions appear to be generally unsatisfactory or the standard of management is inferior should be placed under frequent inspections until the mine is brought up to the requisite standard.
- (d) A number of surprise inspections should be made in the afternoon and night shifts.

11.179 A number of committees, thereafter appointed by the Government of India have considered the main issues. The Court of Inquiry appointed to look into the disaster of Jitpur Colliery (1972) recommended that there should be quarterly

inspection of equipment and machinery installed in the mechanised mines, particularly the underground gassy mines. The Third Conference, while endorsing the recommendations of the First Conference on inspection by officers of the mining cadre recommended, in addition, that the electrical and mechanical wings of the DGMS should be adequately strengthened to ensure at least quarterly inspections of each mechanised mine. The Fifth conference on Safety in Mines 1980 recommended two general inspections of all mines every year and follow-up inspections wherever necessary. In 1982, the Review Committee on Role and Functions of the DGMS set up by the Government of India under the chairmanship of Mr. J. G. Kumaramangalam, reiterated the need for annual general inspection of

all mines and the provision of a second general inspection depending upon the situation, in particular, the results of the first general inspection. It also stressed the need for follow-up inspections of mines as a discretionary issue resting with the DGMS depending upon the type of mining activity, degree of gassiness, extent of mechanisation, accident proneness, special problems etc. The results of general inspection and the attitude of the management towards compliance of statutory provisions, degree of 'Self Regulation' practiced and the effectiveness of internal safety organisation were required to be kept in view.									

11.180 In spite of all these decisions and recommendations, there are a large

number of mines which remain altogether un-inspected. The following table gives a statement of the personnel position in the DGMS for the last 3 decades.

strength (S)

Year	Total Discipline wise details sanctioned	In position (P)	Mining Electrical Mechanical O.H.								
			S			P			S		
1971	118	105	100	91	11	8	6	4	3	2	
1981	134	116	105	94	16	14	9	6	7	2	
1991	171	138	127	105	23	19	12	12	9	2	
2001	167	131	123	94	23	21	12	11	9	5	
S – Sanctioned			P – In Position								

11.181 While the DGMS could not cope up with the accelerated rate of growth in the mining industry, oil-mining activities also came into the fold of DGMS from 1957. The work then was limited to small pockets of oil exploration (production was about 0.5 million tonnes per annum) in the upper Assam region only and yet full justice could not be rendered to this sector due to shortage of personnel. A summarised statement of the requirements of manpower in the DGMS according to the Kumaramanglam Committee recommendation is given below:

Requirement of Officers at the base level of Deputy Directors												
Designation	Mining			Electrical			Mechanical			Occupational Health		
	R	S	P	R	S	P	R	S	P	R	S	P
Deputy Director	450	82	67	115	18	13	114	10	8	33	-	-

Requirement of officers for supervision

Designation	Mining		Electrical			Mechanical			Occupational Health			
	R	S	P	R	S	P	R	S	P			
Director	150	29	21	25	4	3	23	2	2	11	-	-
Deputy Director General	37	7	6	7	1	1	7	-	-	3	-	-
	R		S		P							
Sub-Total	975		153		121							

Requirement of Officers for special investigations for in-house support

					7			2	1
	Mining	Electrical							
Mechanical	Occupational Statistics				Director		10	-	
					1		2	2	
	Health								
Deputy Director	43	6							

Deputy

Growth of Mining Activities

Director-General					
Sub-Total	56	6	8	4	3
	R	S	P		
Grand Total	1052	153	121		

11.182 The shortfall was noticeable, and accordingly, the matter was examined in detail by the International Programme in the improvement of working condition and Environment (PIACT) Mission of the ILO (1982). It also recommended that an effective petroleum safety inspectorate should be set up, and properly staffed.

11.183 The table below shows the trend of growth of mining activities in India (1951

to 1999).

Year	Production in Million Tonnes						Bauxite
	Coal	Copper Ore	Lead & Zinc Ore	Iron Ore	Limestone		
1951	34.98	0.37	0.01	3.71	2.96	0.06	
1961	55.71	0.42	0.15	12.26	15.73	0.48	
1971	75.64	0.68	0.30	32.97	25.26	1.45	
1981	127.32	2.01	0.96	42.78	32.56	1.75	
1991	237.76	5.05	1.82	60.03	75.02	3.86	
1993	260.60	5.15	2.10	63.26	87.72	4.81	

Growth of Mining Activities in India

Year	No. of reporting mines	Value of minerals (in Million Rupees)	Aggregate H.P. (in 000s)	Explosives used (in 000 tonnes)
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Year	Coal		Metal		Oil		1951		893		1810		-		505	
	Coal	Metal	Coal	Metal	Coal	Metal	235	N.A.	188	83	N.A.					
1961	848	2323	-	1141	487	N.A.	438	159	N.A.	4.5	3.8					
1971	781	1995	13	2543	1080	756	732	282	25	12.3	9.4					
1981	496	1768	8	18114	3620	2748	1841	925	35	46.3	15.3					
1991	561	1787	24	79794	19076	18533	4292	1519	507	124.2	40.3					
1992	567	1810	27	96377	21700	23104	4653	1644	583	140.0	44.1					
1993	570	1845	27	107467	23392	31777	3942	1853	541	155.6	44.1					
1994	576	1869	29	122216	24648	34302	4690	1891	548	156.9	43.3					
1995	579	1930	32	133314	33611	37065	5218	1735	579	189.6	46.2					
1996	576	1872	32	157474	36521	37388	5300	1877	523	207.8	47.2					
1997	580	1834	34	193877	43758	32608	5314	2016	570	232.7	43.4					
1998	594	1864	37	205307	45286	42851	5399	2020	602	247.0	47.1					
1999	590	1873	41	203808	45505	32065	5236	1908	645	238.3	45.4					

Note: 1999 data are provisional.

11.184 Compared to this growth, the number of inspections and Inquiries conducted by the DGMS for the period from 1987 to 2000 is given below:

Number of Inspections and Inquiries

Year	No. of Inspections					No. of Inquiries					Grand Total
	Coal	Metal	Oil	Total	Coal	Metal	Oil	Total			

1987	4688	3569	118	8375	1992	5598	4063	313
1118	507	51	1676	10051	9974	1233	533	59
1988	5052	3151	85	8588	1825	11799		
1159	413	17	1589	10177	1993	5766	3953	262
1989	5829	3313	145	9287	9981	1227	463	57
1193	399	26	1618	10905	1747	11728		
1990	6069	3424	160	9653	1994	5625	3345	213
1107	480	61	1648	11301	9183	1346	539	25
1991	5838	3846	258	9942	1910	11093		
1063	521	102	1686	11628	1995	5461	3206	181
					8848	1192	396	21

1519	10367								
1996	5525	2491	226	8242	1105	330	50	1485	9727
1997	4563	2404	189	7156	1157	406	34	1597	8753
1998	4752	2539	166	7457	1127	398	29	1554	9011
1999	6106	3061	198	9365	1319	483	26	1828	11193
2000*	4008	2408	176	6592	859	232	15	1106	7698

*Figures for 2000 are provisional upto September 2000 only.

11.185 Fortunately, although there was a striking mismatch between the ratio of growth and the strength of inspecting officers of the DGMS and the resultant downtrend in inspections, the trend of casualties and minor/major mishaps did not show an escalating trend. The annual report of the Ministry of Labour (2000-2001) shows that the trend of fatal accidents and serious accidents in both coal and non-coal mines is on a downtrend as can be seen from the following table:

Trends of Accidents in Mines

Year	Number of Accidents in Coal				
Mines	Number of Accidents in Non-Coal				
Mines				335	
	Fatal	Serious	1997	143	677
Total	Fatal	Serious	820	70	265
Total			335		
1995	137	757	1998	128	523
894	66	368	651	56	254
334			310		
1996	131	677	1999	127	524
808	72	263			

651	62	217	279				
2000	120	432	552	39	151	190	
Note: Figures of 1992 & 2000 are provisional.							
PRESENT STRENGTH OF INSPECTING OFFICERS							
11.186 The inspection norms for different levels of inspecting officers are:							
(a) Deputy Director of Mines Safety – 120							
(b) Director of Mines safety posted at Headquarters - 60							
(c) Directorate of Mines Safety –80							
(d) Director of Mines safety posted at Headquarters – 30							
11.187 These norms are based on the workload of the concerned officers. The table below gives the discipline wise strength of inspecting officers of DGMS as on							

1.1.2001				Deputy Director	7	3	1	
	Discipline			1				
	Designation	Mining			8	4		
	Electrical	Mechanical	O.H					
	Total			General				
		S	P	S	Director	29	27	4
P		S	P	S	4	2	2	-
P		S	P		-	35	33	
				Deputy Director	82	60	18	
Director General	1	1		16	10	9	1	
				1	111	86		
	1	1		Assistant Director	4	3	-	

-	-	-	GR.I-3
2	7	4	
			GR.II-5
2	5	2	
Total	123	94	23
21	12	11	9
5	167	130	

11.188 It can be observed that the actual number of inspecting officers is about 22% lower than the sanctioned strength. We were informed that this was because of procedural delays in filling up vacancies arising from retirement etc. In fact, a shortage of 20-30% inspecting officers against the sanctioned strength normally exists in this organisation. In addition to this, there has hardly been any increase in the strength of inspecting officers since 1971 though the mining industry has increased several times during this period.

INFRASTRUCTURAL LACUNAE

11.189 The DGMS is an organisation that handles emergency distress situations at close call. The officers of

The DGMS are required to respond instantly in case of emergencies like disasters/ accidents/ dangerous occurrences etc. in mines. In such cases, the officers of the DGMS have to rush immediately to the site and set up emergency response activities. The mines work round the clock, and so the officers of the DGMS have to be ready for emergencies at all times. In this scenario, it must be pointed out that the DGMS has no office and residential complexes of its own at Hyderabad, Ranchi and Nagpur where Zonal and Regional offices are located. Bhubaneswar, Bilaspur, Goa, Jabalpur, Udaipur and Digboi region/sub-regions are not provided with office and residential complexes. The DGMS has acquired land at several places, and is making efforts to acquire land at more places where offices are presently being operated from rented accommodation. However, due to paucity of funds no expansion programme is being undertaken, and there is every likelihood of encroachment on such

acquired land. Secondly, because staff members reside in far-flung areas, the response time during emergencies becomes longer. Communication is a critical success factor in increasing the efficiency of an organisation which deals with emergency situations. We were amazed to learn that most of the offices did not have even an STD facility. While the nation enjoys an active TV network, with almost instant coverage of accidents by media channels, even Director level officers of the DGMS, heading regional offices have not been provided with STD facilities on their telephones. We cannot understand how they can be expected to respond to emergency situations and save lives when they have no access to telephone facilities.

MAIN CAUSES OF ACCIDENTS

11.190 The cause-wise distribution of fatal accidents in coal and non-coal mines indicates that the fall of roof has been the biggest contributor for coalmines. The major factor for casualties in non-coal mines has been accidents from dumpers and trucks. The details are given on the next page.

Trend of Accidents in Coal Mines- Cause wise

Causes	Number of Fatal Accidents						Number of Serious Accidents					
	1995	1996	1997	1998	1999	2000	1995	1996	1997	1998	1999	2000
Fall of Roof	42	34	38	35	32	32	78	55	53	48	52	36
Fall of Sides	12	9	12	15	12	11	38	40	37	29	21	27
Other	1	0	1	0	4	1	1	1	0	0	2	1

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Ground Movements												
Winding in Shafts	1	0	3	3	3	0	1	0	6	1	3	1
Rope Haulage	11	14	21	18	13	9	162	121	124	109	109	72
Dumpers, Trucks, etc	14	27	24	20	19	25	29	35	28	30	47	37
Other Transportation Machinery	9	10	5	3	6	5	17	16	9	13	13	13
Non-Transportation Machinery	16	11	7	11	6	9	42	38	38	36	27	24
Explosives	6	1	4	4	5	1	10	16	16	6	7	4
Electricity	3	4	7	5	7	7	8	8	2	7	6	4
Gas, Dust, Fire, etc.	4	4	4	2	2	4	0	0	2	1	0	0
Fall of persons	6	10	12	7	11	8	177	139	166	142	120	100
Fall of Objects	5	4	3	2	2	1	143	120	116	59	54	64
Other Causes	7	3	2	3	5	7	51	88	80	42	63	64
Total	137	131	143	128	127	120	757	677	677	523	524	432
Trend of Accidents in Metalliferous Mines- Cause wise												
Causes	Number of Fatal Accidents						Number of Serious Accidents					
	1995	1996	1997	1998	1999	2000	1995	1996	1997	1998	1999	2000
Fall of Roof	3	2	3	2	2	1	2	4	3	2	2	1
Fall of Sides	6	10	8	7	9	8	2	2	5	0	3	1
Other	1	4	4	1	0	0	0	0	0	0	0	0
Ground Movements												
Winding in Shafts	1	0	1	1	0	0	0	0	0	2	2	1
Rope Haulage	0	0	1	0	1	0	1	4	2	3	5	1

Dumpers,	16	19	22	13
15	11	15	13	15
21	11	12		
Trucks, etc				
Other Tran-	2	3	0	3
1	1	12	7	10
9	12	1		
sportation				
Machinery				
Non-Tran-	5	6	3	5
4	3	51	29	16
23	21	17		
sportation				
Machinery				
Explosives	2	2	6	3
8	3	3	6	1
1	4	0		
Electricity	3	3	4	3
5	3	0	2	0
2	1	1		
Gas, Dust,	0	1	0	1
0	1	0	0	1
0	0	0		
Fire, etc.				
Fall of	11	6	8	7
10	4	51	42	43
41	30	30		
persons				
Fall of	6	2	6	3
2	0	60	60	88
64	57	34		
Objects				
Other	2	5	2	1
3	4	55	66	62
66	51	53		
Causes				
Total	58	63	68	50
60	39	250	235	246
234	199	151		

Note: Data for the year 1999 & 2000 are provisional. Figures for 2000 are projections based on Jan-Oct. data

11.191 Mining is hazardous everywhere, all over the globe. But in India, much is left to chance which makes mining dangerous. Although the progress of science and technology has brought about innovative changes in the methods and machinery used for mining in European countries, old methods and instruments continue to be used in most other places. Mine accidents are regular occurrences in China. Most of these are due to lax security measures. Intermittent power shortages result in turning off ventilators inside the shafts and lead to accumulation of gas. Although actual figures are not published, it is well known that many people are killed in China's mining industry each year. According to conservative estimates worked out by independent experts the toll goes beyond 10,000 per year.

Compared to this, the figures in India are appreciably low. There has also been a notable trend in some developed countries that are progressively reducing

mining activities and shifting to other less hazardous industries. Countries like Japan, France, United Kingdom, Belgium, Czechoslovakia and other countries are reducing mining activities. On the other hand Australia, China, and USA are increasing their mining activities. Australia and USA have undertaken large-scale mechanisation and automation which have resulted in reducing the human factor. Their mining has become capital intensive. In our country, the underground fire in the Jharia Coal Fields has been burning since the last seven decades. It has destroyed a large quantity of the precious natural resource. Yet, it has not been put out, because the work of extinguishing the fire is estimated to cost hundreds of crores.

11.192 The trend of fatal accidents and fatality rates per 1000 persons, employed on a 10 yearly average basis from the year 1951 to 2000 are shown in the following table: -

				1951-60	222	0.61	295
				0.82	64	0.27	81
				0.34			
				1961-70	202	0.48	260
				0.62	72	0.28	85
				0.33			
				1971-80	187	0.46	264
	Avg.	Acc.	Avg.	0.55	66	0.27	73
Death	Avg.	Acc.	Avg.	0.31			
Death				1981-90	164	0.30	185
	ACC	Rate	Killed	0.34	65	0.27	73
Rate	ACC	Rate	Killed	0.31			
Rate				1991-2000*	140	0.27	170
				0.33	64	0.29	76

0.35

*Data are provisional and upto September 2000 only.

The figures speak for themselves.

11.193 According to the provisions of the law, all fatal and serious accidents and dangerous occurrences and occupational diseases are required to be notified to the DGMS. The dangerous occurrences to be notified include: -

- (a) explosion, ignition, spontaneous heating, outbreak of fire, eruption or inrush of water or other liquid matter,
- (b) influx of inflammable or noxious gases,
- (c) breakage of rope, chain, or other gear by which persons or materials are lowered or raised in a shaft or an incline,
- (d) over-winding of cages or other means of conveyance in any shaft while persons or materials are being lowered or raised;
- (e) premature collapse of any part of the workings

FOLLOW UP ACTION ON

ACCIDENTS

11.194 It is important to note that all fatal accidents are required to be enquired into by the DGMS within 2 months. The International Programme for the Improvement of Working Conditions and Environment (PIACT) Mission of ILO recommended that all reportable accidents should be expeditiously investigated by the officers of the DGMS because inspectors can make comprehensive recommendations to prevent accidents only if they investigate all that are reported to them and follow them up to see that their recommendations are put into effect. Detailed enquiries are carried out in respect of fatal accidents. This is a statutory requirement, and the level of officers conducting investigation depends upon the severity of the accident. Similarly, a Court of Enquiry is normally set up by the Central Government under Section 24 of the Mines Act whenever a disaster i.e. an accident involving death of 10 or more persons takes place.

11.195 Important and dangerous occurrences are also enquired into by the DGMS. Sometimes, Officers of

the DGMS themselves lead rescue and recovery operations. They are required to be associated till the control measures are completed. The inadequacy of staff is telling upon the work of enquiry into even serious and reportable accidents. We were sorry to learn that hardly 1% of serious accidents, depending upon the cause of accidents, are being investigated. We consider this situation as unacceptable and dangerous and recommend that immediate steps be taken to put an adequate number of officers in place.

ILLEGAL MINING

11.196 Running parallel to the lawful mining activities and in line with the spurt in the growth of the industry, illegal mining is also thriving as a "cottage industry" particularly in the Ranigunj, and Jharia coalfields as also in the Ramgarh and Bermo areas. The problem has assumed huge dimensions in the States of West Bengal and Jharkhand, and is substantially present in the States of Meghalaya and Bihar. Coal mining activities started as far back as the year 1800, and gathered considerable momentum thereafter, particularly during the World War II. Private

parties exploited a number of small bodies and many pits and mines were closed unscientifically in the process, without taking normal and prescribed precautions. After the takeover of the coalmines by the public sector, Coal India Limited, there were a number of running as well as closed mines in Ranigunj - Jharia - Hazaribagh coalfields. The socio-economic conditions of the people residing in nearby villages and the collieries induced them to pilfer coal by mining rat holes in the closed pits, collieries and inclines. Large-scale unemployment, lack of agricultural facilities and the thriving culture of miners prevalent in the area tempted people to take to risky mining ventures in order to find a source of sustenance. The activity has become so rampant, and areas covered are so large and far away from the public gaze that it has become a hard task for the state administration to control or eliminate illegal mining. The absence of the political will to do so adds to the complexity of the problem. There is no doubt that these large scale operations cannot be undertaken without organized and well-planned support from local musclemen and mafia. The Chairman and another official of the Commission

visited the recent accident site at Lalbandh area near Khoirabad colliery of M/S Eastern Coalfields Limited, where an incident of subsidence occurred on October 10, 2001 due to illegal underground mining by unidentified persons. While the officials of the State Government were tight-lipped about the number of deaths, and the officers of DGMS were yet ascertaining the toll, the magnitude of the area covered by the subsidence provided an index of the number of casualties, which might have occurred. The representatives of the State could have addressed the Central Mining Research Institute, Dhanbad for an expert opinion on blasting the subsided area and speeding up the rescue operation. The political leaders and the local people of the area strongly demanded an impartial inquiry and cited various other areas around the place where such mining has been going on for many years.

11.197 The public sector companies understand the problem, the Director General of Mines Safety is aware of it, the State law enforcing machinery is aware of the situation, yet illegal mining thrives, and the production runs parallel to the legal production

and transits to areas beyond the borders of the State. The Coal India Limited has recently taken a very serious view of the matter and initiated a process of consultation with the State Governments to find a long-term solution. The Chief Ministers of West Bengal and Jharkhand have reached an agreement to fight the menace in consultation with the public sector coal management. It has been decided that a task force would be constituted by the State Government to maintain constant vigil on such activities. Senior level officers, particularly of the rank of IG\DG are expected to head this force. In addition, village/ panchayat level committees are also expected to be constituted to keep vigil, and bring incidents to the notice of the concerned authorities. The Coal management has been advised to activate its security network and intensify patrolling and identifying areas which are prone to illegal mining in addition to sealing off mines which have been closed.

11.198 However, it is well known that operations that include the induction and deployment of the heavy equipment necessary for mining, including dumpers, trucks for

transportation etc., cannot be assembled and cannot operate without the knowledge of people living around the areas where illegal mining takes place. There is no reason to believe that the local police have no sensors through which they can come to know of such over-ground activities, like transport of machinery and illegally mined coal that are related to underground activities. The activities of illegal mines not only defraud the state of income, but also pose a severe threat to the lives of those who are induced to work in these illegal mining theatres as well as to people who reside above and around such excavations.

11.199 One view that has been presented to us is that it will be less risky if legal organisations, like co-operatives undertook operations in this area under the supervision of the coal companies. It is said that this may prevent accidents, do good to the exchequer and a large number of workers. The huge and growing clan of retired coal personnel, including engineers, from the public sector would be suitable and competent for overseeing the work of such cooperatives and the State can enforce the provisions of training on

the risk factors of such work. We have not been able to discuss this suggestion with the State Governments or the Public Sector Coal Companies. So, we are not in a position to give an opinion on the suggestion.

11.200 Illegal mining, as already stated, has been going on for a long time, but the Committee on Illegal Coal Mining formulated a serious policy to tackle it only in 1978-79.

11.201 The Committee was constituted on 4 June 1978 by the Ministry of Labour, with the Director General of Mines Safety as Chairman, and Director, Department Of Coal, Ministry of Energy, the Regional Controller of Mines, Nagpur and Technical Adviser to the Ministry of Labour as Members. Subsequently, since the primary responsibility to stop illegal mining lies with the State Governments and such mining activities were prevalent in West Bengal, undivided Bihar and Meghalaya, Director level officers of all the three States were made Members of the Committee. The Committee held its final meeting at Shillong on 9.3.1979 after studying the methods adopted by illegal coal miners in Meghalaya. It made the following primary recommendations: -

(a) **MEGHALAYA**

- Mines being worked in the State of Meghalaya by small family gangs, may, for the time being, be exempted from the provisions of the Mines Act by a notification under Section 83 of the Mines Act, 1952.
- Even if an exemption under the Mines Act were given, these mines in Meghalaya would still be considered illegal in terms of the Coal Mines (Nationalisation) Amendment Act, 1976.
- The Government of Meghalaya may set up a company to run these mines and give sub-lease to the persons operating these mines after obtaining the necessary approval of the Central Government.

(b) **BIHAR AND WEST BENGAL**

- (c) According to the Coal Mines (Nationalisation) Amendment Act, 1978 and the order of the Supreme Court dated May 5, 1978, illegal mining was classified

into two categories:

- Mining by persons without any mining lease.
- Mining by persons whose leases had been terminated under the Coal Mines (Nationalisation) Amendment Act, 1978 and whose writ petitions had been dismissed.

11.202 The Committee observed that such mines do not generally notify opening/reopening/appointment of Managers etc. and surreptitiously worked from time to time, at odd hours, and in total disregard of the statutory safety provisions in the laws.

11.203 The Committee recommended prompt action under Section 379 of the IPC by the police. For the other categories, it recommended that:

(a) **Opening /Re-opening of any Coalmine**

On receipt of notice of opening /re-opening of any coalmine in the State of West Bengal and Bihar, from any private party, the DGMS may send a copy of the notice to the District Mining

officer/Director of Mines of the State Government/Coal Controller under the Government of India to enable them to verify if those engaging in mining held a legal right to operate the coal mine and to enable them to take suitable steps if they did not have such a right.

(b) **Illegal Mining in Leasehold Area**

- The primary responsibility to detect illegal mining within the leasehold area should rest with the lessee. The lessee should keep a close watch to detect mining activities in areas where illegal mining is possible, and should immediately file a complaint on any such activity to the District Mining Officer/Director of Mines of the State Government/ Police/DGMS. The Committee expected that proper and effective action would be taken by the State Government officials and that the lessee would take steps to safeguard its own property.

(c) **Illegal Mining in Non-Leasehold Areas**

- The responsibility to detect and stop illegal coal mining in free areas (not leased out) should rest with the Mining officers of the State Government. If necessary, checkpoints may be provided at suitable points to stop transportation of coal raised illegally. However, the Committee expected that information about illegal mining activity, if any, detected in the free areas near about the leaseholds would be sent to the District Mining Officer/Director of Mines of the State Government/ Police/DGMS by the lessee.

11.204 We could not verify whether these recommendations have been given effect to.

IMPROVEMENTS

11.205 The Report of the Sub-Committee of Parliament, Ministry of Labour on " The Status of Safety in Mines " of April, 1996 made the following recommendations on improvements that the organisation of the DGMS needed:

- (a) adequate and requisite

manpower as per the recommendations of the Kumaramangalam Committee;

- (b) necessary back up support in the form of infrastructure, ministerial manpower and facilities;
- (c) adequate training of all officers both in-house and outside to upgrade their skills to meet the challenges posed by induction of newer machines/newer technology.

11.206 There are other innovative

recommendations that various other committees and commissions of inquiry have made. It may be useful to categorize these.

INSPECTIONS

11.207 It has been observed that the present strength of inspecting officers cannot take the existing load of mines to be inspected. The problem is chronic, and yet the recommendations of earlier committees have not been acted upon. The possible reason may be the shortage of budgetary support for

<p>creation of posts. To ease this situation, the DGMS may be allowed to levy service charges at an appropriate ratio of project cost from the user organisations. Holding companies applying for permission to operate mines can also be asked to pay such levies at the initial stage and thereafter on an annual basis for availing the services of DGMS. The funds generated may be substantial, and the DGMS may be able to meet its operation costs at least partially. In addition, the DGMS may be permitted to hire the services of retired engineers, engineering firms, surveyors, unemployed engineers like those of the Insurance sector, etc. to get the mines inspected statutorily every year and pay them contractual amounts to comply with such an assignment. The reports submitted by these authorities may be put into the Local Area Network after proper certification by the authorities themselves and with an undertaking that lacunae in their reports will entail substantive penalties, which may extend to the filing of criminal cases for negligence. The nation has a substantial number of engineers who are unemployed who may be able to undertake such activities for limited periods every year. The number of inspection and inquiries carried out by the DGMS for the period from 1987 to 2000 is given below:</p>

Number of Inspections and Inquiries

No. of Inquiries		No. Of Inspections			1107	480	61	1648	
		Coal	Oil	Total	11301				
Year	Coal	Coal Metal	Oil	Oil Total	Total Grand	1991	5838	3846	258
						9942	1063	521	102
						1686	11628		
						1992	5598	4063	313
						9974	1233	533	59
1987	4688	3569	118	8375	1825	11799			
1118	507	51	1676	10051					
1988	5052	3451	85	8588	1993	5766	3953	262	
1159	413	17	1589	10177	9981	1227	463	57	
					1747	11728			
1989	5829	3313	145	9287	1994	5625	3345	213	
1193	399	26	1618	10905	9183	1346	539	25	
1990	6069	3424	160	9653					

1910	11093								
1995	5461	3206	181	8848	1102	396	21	1519	10367
1996	5525	2491	226	8242	1105	330	50	1485	9727
1997	4563	2404	189	7156	1157	406	34	1597	8753
1998	4752	2539	166	7457	1127	398	29	1554	9011
1999	6106	3061	198	9365	1319	483	26	1828	11193
2000*	4008	2408	176	6592	859	232	15	1106	7698

* Figures for 2000 are provisional up to September 2000 only

PURSUING INSPECTION AND REMEDIAL MEASURES

11.208 We have already pointed out the DGMS is unable to accomplish total inspection of mines as is required under the rules and the recommendations of various committees. The report of the sub-committee of the consultative committee of the Ministry of Labour, which had gone into these issues in 1996, suggested various measures to improve the present system. A statement of the number of cases filed and disposed till date, for the 25 year period from 1970, is give below:

Total Number of Prosecution Cases			
Year	Instituted during the year	Disposed till date	Pending as on 31.01.96
1970	243	235	08
1971	209	196	13
1972	275	245	30
1973	227	173	54
1974	141	122	19
1975	328	277	51

	1976	183
162	21	
	1977	81
67	14	
	1978	107
83	24	
	1979	97
77	20	
	1980	108
83	25	
	1981	78
62	16	
	1982	127
75	52	
	1983	106
63	43	
	1984	125
65	60	
	1985	187
91	96	
	1986	106
70	36	
	1987	55
23	32	
	1988	45
16	29	
	1989	43
26	17	
	1990	50
13	37	
	1991	55
-	55	
	1992	81
12	69	
	1993	113
07	106	
	1994	84
05	79	
	1995	56
01	55	
	Total	3310
2249	1061	

cited in the earlier paragraph says that a total of 3310 criminal cases were filed during the 26 years for serious contravention of laws relating to safety, health and welfare of persons employed in mines. Till 1995, a total of 2249 cases had been disposed of, and 1061 were still pending before the court. The entire DGMS organization has a total strength of one senior Law Officer, and two officers each of Grade I and Grade II in addition to six Law Assistants. It can be safely presumed that the total strength does not permit the organisation to pursue cases filed before the courts of law.

11.210 The DGMS is, therefore, availing of the services of Central Government Standing Counsel (CGSC). Even so, it is found that cases take nearly 8-15 years to obtain a decision in the Lower Court, and appeals in the High Court take another 8-10 years. Even after such long legal processes we find that the fines or penalties awarded are not significant or deterrent. We feel that the provisions under the Mines Act 1952 must be amended to provide for deterrent punishments including imprisonment and special courts or

11.209 The report that we have

designated courts must be set up to expedite trial. It has also been noted that where Government contests cases before various High Courts, the standard of CGSCs is not sufficient and they are at most times unable to influence the court to do justice to the government's submission. The quantum of remuneration paid to them is so low that many times, the counsels themselves ask their juniors to appear before courts. The needs of safety require that this state of affairs is corrected without delay.

DIRECTORATE GENERAL FACTORY ADVICE SERVICE & LABOUR INSTITUTES

11.211 The Directorate General, Factory Advice Service and Labour Institutes is functioning from its headquarters at Mumbai since 1966. Its beginnings can be traced to the office of the Chief Advisor of Factories, which was set up in Delhi in the year 1945. Subsequently, its functions were enlarged and it moved to Mumbai in 1966.

11.212 The main objective of the organisation is to advise the Central/ State Governments, trade unions, employers and others concerned on

matters relating to improvement in safety, health, productivity and working conditions in factories and ports.

11.213 The Central Labour Institute was set up in 1959. It is supported by three Regional Labour Institutes located at Kolkata, Kanpur and Chennai. Another Regional Labour Institute has now been set up in Faridabad, but it is yet to become fully operational.

11.214 The organisation has four functional divisions –

- (a) Factories Advice Division
- (b) Dock Safety Division
- (c) Construction Safety Division and
- (d) The Awards Division

11.215 The Institute deals with issues relating to:

- a) Industrial Safety
- b) Industrial ergonomics
- c) Industrial hygiene
- d) Industrial medicine
- e) Industrial physiology
- f) Industrial psychology

- g) Staff training and productivity
- h) Major accident hazards control
- i) Management information service
- j) Small scale industries, and
- k) Communication and environment engineering

11.216 Each of these areas is looked after by a division in the organisation. The various divisions conduct studies and surveys, undertake training programmes, organise seminars and workshops and render services such as technical advice, testing of personnel protective equipment etc.

11.217 The DG: FASLI has a very large canvas of activity. It includes:

- a) Coordinating with the Ministry of Labour,
- b) Tendering technical service on research activities related to the administration of the Factories Act,
- c) Coordinating technical and legal activities to facilitate uniform standards of enforcement,
- d) Conducting research and consultancy studies, surveys and training programmes.
- e) Administering the Dock Workers

(Safety, Health and Welfare) Act, 1986 and regulations framed thereunder,

- f) Enforcing these regulations in the major ports of the country and advising the State Governments on matters relating to the minor ports under their control.

- g) Carrying out promotional activities by operating schemes for identifying good suggestions in the area of safety and related issues under the Vishwakarma Rashtriya Puraskar scheme.

- h) Recognising and rewarding safety performance under the National Safety Awards on behalf of the Union Government.

- i) Assisting the Union Ministry of Labour in formulating national policies and standards in the area of safety, health and related subjects in cooperation with international agencies, and the ratification of ILO instruments in these areas.

11.218 Another key area of responsibility for the DG: FASLI is coordination in the enforcement of the provision of the Factories Act,

1948. The responsibility for the enforcement of the Act lies with the State and Union Territory Governments. The objective is to bring out a certain degree of standardisation and uniformity in the application of the provisions of the Act. The DG: FASLI prepares and circulates model rules which are incorporated by the State Governments in their respective Factory Rules after making amendments as deemed appropriate. It also holds annual conferences with the Chief Inspectors of Factories of different states where aspects of administration and amendments/changes to Factories Acts and Rules are discussed, and viable alternatives hammered out. DG: FASLI has also been associated with framing of rules under the Environment (Protection) Act, 1986 and the Building and other Construction Workers (Regulation of Employment, Conditions of Service) Act, 1996.

11.219 In view of the role and functions that have been assigned to the Directorate, and the likely increase in responsibilities in the future, the Commission feels that the Central Labour Institute and other Regional Labour Institutes should be accorded greater functional autonomy. They

should also be conferred with more financial authority and powers to retain their earnings. There is also the urgent need for these bodies to conduct wider investigations in subjects related to occupational diseases which may arise from:

- a) Physical factors like noise, vibration etc.,
- b) Exposure to chemical substances including toxic, corrosive, allergenic and carcinogenic matter;
- c) Air-borne particulate matter like dust and fibres etc. and
- d) Biological agents which may cause infections and parasitic diseases.

11.220 These investigations need to be coordinated with those of other organisations like the National Institute of Occupational Health, Indian Institute of Miners' Health etc. functioning under the aegis of other Ministries.

11.221 The Commission also feels that the Directorate has to play a proactive role with the help of State Governments in administering the Factories Act and rules framed under it. This has necessarily to involve

intensive and mandatory training of Factory Inspectors on effective practices, standard procedures etc. and the preparation of manuals for use in the factories and ports. Simultaneously, efforts have to be made to simplify the existing information systems and forms and procedures. Since the Factory Act and Rules are administered by the State Government functionaries, such intensive training would involve sizeable expenditure. Given the acute resources crunch that most State Governments are facing, it will perhaps be reasonable to presume that left on their own, they would not have much resources left for this purpose. Similarly, it will also not be wise to presume that with the existing manpower the Directorate will be able to do justice to its responsibility of periodic inspection of industrial establishments and counselling. In order to obtain maximum benefit and productivity from the available resources, it will perhaps be worthwhile to examine the earmarking of a certain part of the State Inspectorate budget as well as that of the Directorate General and its associate organisations for the purpose of training personnel. The

representatives of the various State Government Inspectorates of Factories told us about the inadequacies in the infrastructure that is affecting the efficiency of these organisations. Since the Directorate discharges its responsibility in some crucial areas like improvement of administration of the Factories Act and related legislations through the machinery of the state government, it is, therefore, necessary to remove the infrastructural gaps and shortcomings in the State organisations. The limited financial allocations in the State Budgets may be one of the reasons for the weakness of the infrastructure. But the risks involved are so serious that the state governments as well as the Central Government should find ways of jointly addressing these shortcomings.

11.222 The Commission also had the benefit of going through recommendations in the Report of the Working Group on Occupational Safety and Health for the Tenth Five-Year Plan. The recommendations relate to amendments to different Acts. Some of the important recommendations include the mandatory appointment of Safety Officers in factories employing 500 and more workers; independent

safety audits of the facilities in factories involving hazardous processes as defined under the Factories Act; compulsory insurance of workers employed in hazardous processes; and bringing the Inland Container Depots under the purview of the Dock Workers (Safety, Health & Welfare) Act.

11.223 In so far as the executive role of DG: FASLI is concerned, its manpower and equipment base has to be strengthened to enable it to discharge its responsibilities effectively. With the liberalization and globalisation of the economy, an increasing number of private ports have come into existence. The volume of traffic to be handled by the public sector and private sector ports is bound to increase enormously in the years to come. Not only will there be an increase in the volume of the cargo handled, but also in the variety of the cargo. It will, therefore, be necessary to take these factors into account not only in determining the strength, competence and specialization of the staff, but also in improving methods.

11.224 In the preceding paragraph, we have recommended the formation

of a National Board to bring about necessary coordination among various organisations functioning under different Ministries that deal with the area of safety and occupational health. The objectives which can be set before the National Board may include:

- (a) Laying down criteria and discharging functions of accreditation of safety professionals for manning positions that relate to occupational health and safety.
- (b) Advising the Government on general legislation on occupational safety and health applicable to all work places.
- (c) Undertaking coordination of the activities of various organisations responsible for the control of occupational diseases,
- (d) Coordinating exchange of information amongst the various agencies under it,
- (e) Developing and authorizing a Code of Practices on Occupational, Safety and Health for use in various industries, and

assisting in its dissemination,

- (f) Providing guidelines for approval of training Centres/Institutes which can be followed by the Chief Inspectorates of Factories under the provisions of the Factories Act, and,
- (g) Laying down policies on curricula, training courses etc. for key categories of workers like those employed in hazardous processes and dangerous operations.

11.225 Till the Board becomes fully functional, these activities can be undertaken by the DGFASLI.

11.226 The Commission also feels that in view of the increasing pace of industrialization, particularly in the area of hazardous chemical processes, there is an urgent need to strengthen measures for occupational safety and health in industries. In the immediate future, the Directorate General may also be asked to devote special attention to assessing safety and health risks in hazardous chemical industries, imparting training in the field or at the workplace, monitoring

occupational health etc. in such industries and preparing necessary documentation in this regard. Besides, it may also be asked to undertake the work of upgrading the existing industrial hygiene and industrial medical laboratories as National Reference Laboratories of the Centre Labour Institute and Regional Labour Institutes.

11.227 The issue requires urgent attention as notwithstanding the various statutory provisions as regards the Environment Protection Act and Factories Act etc there has been a perceptible trend in shifting of the hazardous processes and industries from the developed to the developing nations and also in using the developing countries as sites for disposal of industrial waste notwithstanding international protocols like the Basel Convention to arrest such practices. The infrastructure and manpower available with the Directorate has to be geared up to match the efficiency required to keep watch and counter the effect of such trends.

THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002

(DRAFT)

11.228 Since problems relating to safety at work places are extremely important to the worker, the entrepreneur, the establishment where accidents or occupational hazards can occur, and to the community that lives or works in the establishment or in its proximity, since work related hazards arise from industrial as well as agricultural activities; since the use of chemicals, compounds, metals, and materials with moderate to intense radioactivity (including chips) has become widespread, and since such activity takes place and materials and processes are used even in home-based work, it has become necessary, in the interests of public and occupational safety, to set up an appropriate machinery to deal with tasks and exigencies in this area. Such a machinery has to specify, identify and promote, to oversee and co-ordinate standards, precautions and administrative steps necessary to ensure safety. It must co-ordinate standard setting, acquisition and deployment of equipment and plant level implementation. The requirements of safety are likely to increase with the use of new technology. We therefore, endorse the

proposal that a Commission on Occupational Safety and Health should be set up by the Central and State Governments. The responsibility that is at present dispersed, and in some cases, un-coordinated though vested concurrently in more than one authority, must be given to a coordinating apex authority which will become accountable and responsible. This Authority will frame rules for different employments that use different processes, chemicals, and radioactive materials etc. We append a draft Bill for the establishment of such a Commission in Appendix III.

MODEL SAFETY & HEALTH POLICY

11.229 In previous paragraphs, we have referred to the need for a national policy on Occupational Safety and Health. We have also discussed the Occupational Safety and Health Management Systems in organisations. Based on the discussions in these paragraphs, we have drawn up a Model Safety and Health Policy for organisations, which is Appendix IV to this Chapter. This model could be adopted by individual organisations. However, it would be important that organisations

constantly review and revise the Model based on their individual experiences.

V.V. GIRI NATIONAL LABOUR INSTITUTE

11.230 V.V. Giri National Labour Institute was established in 1974. The role and functions that were visualized for the Institute laid down that it would:

- (a) Undertake and assist in organizing training and education programs, seminars and workshops,
- (b) Undertake, aid, promote and coordinate research on its own or in collaboration with other agencies, both national and international,
- (c) Establish wings for:
 - Ø education, training and orientation;
 - Ø research, including action research;
 - Ø consultancy; and
 - Ø publication and other such activities as may be necessary for achieving the objectives of the society.

- (d) Analyse specific problems encountered in the planning and implementation of labour and allied programs and suggest remedial measures,
- (e) Establish and maintain library and information services, and
- (f) Collaborate with other institutions and agencies in India and abroad which have similar objectives.

11.231 In the last 27 years for which the Institute has been operational, it has been able to build up the infrastructural framework that such an institute requires. Its headquarters are located very near the national capital, in Gautam Buddha Nagar, Noida. It has a campus which houses a large library, rooms for conducting courses of study, seminars and conferences; it has a hostel which can accommodate trainees and has residential quarters for faculty and staff. The Institute can be proud of its library and the facilities, it offers to students, trainees, activists and academicians who want to have access to books, magazines, journals, documents and audio-video aids, relating to the field of labour studies.

11.232 The Institute's activities have mainly included conducting action-oriented research and provides training to grass-root level workers in the trade union movement, both in the urban and rural areas and also to officers dealing with industrial relations, personnel management, labour welfare etc.

11.233 Besides providing training and conducting seminars and workshops etc, it has undertaken many projects of research, some as visualized and planned by the Institute itself, and some in collaboration with the scheme of international organizations like the ILO, UNDP etc. It also publishes an Annual Report which contains the details of the research projects and publications.



Director

A.A.O. Account Officer P.O.
ALIO

Faculty

Administrative Officer

Adm. Coord. Fin. I

Manager Publication

Fin.II Prog. Library

**ORGANISATION CHART OF THE
V.V. GIRI**

NATIONAL LABOUR INSTITUTE

Sr. Fellow Fellow Associate Fellow

11.234 As can be seen from the chart above that we have included, the Institute is headed by the Director. The Director of the Institute is the Principal Executive and is responsible for the management and administration of its affairs. The Director is aided in the day-to-day functioning by a faculty comprising of 15 professionals representing a wide range of disciplines and by some support and administrative staff.

11.235 Since the Institute has been visualized as an institution which functions at the highest level of efficiency and comprehensiveness, it is necessary to review and update its canvass, structure and staffing, and program of training, research and publication. The Commission is of the opinion that it is necessary now to undertake a comprehensive review of the work of the Institute. It therefore, recommends that the Government appoint a committee to review working of the Institute and

suggest the improvement and upgrading that are necessary. Such a committee should include representatives from industry, trade unions, other management institutes, academicians, and activists in the non-governmental organizations, in the unorganised sector, labour economists and representatives of the State Governments and of the Ministry of Labour.

11.236 There are three main areas, which the review should cover: -

- (a) The Institute has obviously to be one which works at a sufficiently high level. It has to be scientific in its approach and it has to make use of modern methods of enquiry, surveys, analysis, research, comparative study etc. It should, therefore, have on its staff and at the helm of the affairs, people who have academic and scientific training as well as the vision of context and the sociological canvass. Interchange between the numbers of the Faculty and practicing professionals in the field of labour is likely to produce results which would be of practical use both to the

Institute and its users. Since, the main objective is study, research, training and publication, the staff and the top officers including the Director must be people who have specialized in the matter and the subjects that are relevant. A question that has to be considered, therefore, is whether a person from the administrative services should be considered necessary to head the institute. Past experience has shown that sometimes, when people from the administrative services are appointed, they share the responsibility for the institute with their other administrative responsibility. The Institute, if it is to live up to its objectives and standards of excellence, must have a full time Director.

- (b) The Institute could also consider introducing courses on Personnel Management and related subjects like Labour Laws, Social Security, Trade Union, etc. This would go a long way in further professionalising the work of V.V.Giri National Labour Insitute.
- (c) The second question is whether,

in view of the nature of the activities of the Institute, and the expectation from it, the Institute should be administered department-mentally or should have full autonomy. The Commission is of the opinion that the Institute can fulfil the expectation from it only if it is clothed with full autonomy and given the status of a high level academic and training institution.

11.237 We have been informed that the Institute has formulated an elaborate program of research. We do not feel that we should make any restrictive comments or observations on the projection, program or research. We would support the view that such projects should be formulated by a competent Research Committee set up by the Institute. One need not say that such a committee should have representatives of the Government as well as other research sector.

11.238 The third question is whether it will be advantageous if the National Labour Institute and Labour Bureau, Shimla be merged. There are many functions where there can be duplication and where co-ordination will be beneficial. We have not been able

to weigh the pros and cons of such merger although the utility of the idea has occurred to us. We will therefore, recommend that the Government give thought to the benefits that may accrue from such a merger.

THE CENTRAL BOARD OF WORKERS' EDUCATION

11.239 The Central Board of Workers' Education was established in 1958, initially to create in workers the awareness of their rights and responsibilities as citizens. The Board is tripartite with members chosen from workers, employers and educational institutions. Its headquarters are in Nagpur. The Board has a Director who is also the Member Secretary and Principal Executive Officer of the Board. Training programmes are conducted by Education Officers.

11.240 The objectives of CBWE are :

1. To strengthen among workers the sense of patriotism, unity, communal harmony and secularism, and to equip them for intelligent participation in the socio-economic development of

the country.

2. To develop better understanding of problems of the socio-economic environment and their responsibilities towards families, their rights and duties as citizens and workers, and as members or office bearers of their trade unions.
3. To develop leadership among them and to develop strong and responsible trade unions through enlightened and better trained workers.
4. To strengthen democratic processes and tradition in trade union movement and to enable trade unions themselves to conduct workers' education programmes.

11.241 The objectives of the CBWE seem to have become somewhat inadequate in the light of developments since its establishment. While the original objectives have perhaps stood the scrutiny of time, it is necessary to give a new direction to these objectives in the light of recent developments. Workers'

Education was the subject matter of deliberations in the 36 Session of the Indian Labour Conference held at New Delhi on 14-15 April, 2000. At that meeting, the Prime Minister underscored the need for upgradation of the CBWE into an institution of excellence. The need of the hour, therefore, is that the CBWE should be a co-passenger of the workers in their journey through these challenging times. Naturally, the objectives and vision of the CBWE have to undergo some redefinition and amplification. The Study Group on Skill Development, Training and Workers' Education, appointed by us, has referred briefly to the role that CBWE can play in the present uncertain and challenging times.

11.242 CBWE can play an important role in promoting awareness of the special skills required for the development of industry and the availability of such training facilities. The Board may coordinate such training programmes by bringing together workers, managements and training institutions.

11.243 The Board can play the role of a Nodal Agency to carry out training programmes through the trainers and also monitor them to achieve larger

coverage of the target groups. CBWE, through its wide network, can organise special training courses for retrenched workers and for workers who have taken VRS to develop new skills including managerial skills so as to help them in proper investment of money which will ensure alternative employment and regular incomes to these workers. It can also impart new skills to such workers. CBWE should focus more and organise, specialised and need-based programmes for various target groups in the unorganised and rural sectors. These programmes can also help workers identify opportunities and areas for self-employment. It can also play a meaningful role in training workers in the cooperative sector as well as in training functionaries of Panchayat Raj Institutions for enhancing the reach of its training activities.

11.244 Keeping in mind the limited manpower available with the CBWE it would perhaps be more appropriate if the CBWE gives more stress on being a catalyst in organising programmes

with the assistance of NGOs, trade unions, managements and other groups instead of attempting to organise all these programmes on its own. We also envisage greater coordination between the CBWE and institutions like V.V.Giri National Labour Institute and the State Labour Institutes.

11.245 During hearings before us, it was pointed out that adequate attention needs to be paid to the pay scales and infrastructure provided to the officials of the CBWE so that they may be commensurate with the enhanced role envisaged for the organisation. We hope that the CBWE and the Ministry of Labour would examine these matters in depth.

11.246 We, thus, envisage a more pro-active role for the CBWE, specially in times when workers and industry are facing grave challenges.

APPENDIX - I

LIST OF INTERNATIONAL LABOUR ORGANISATION CONVENTIONS RATIFIED BY INDIA

S.NO.	NO. & TITLE OF CONVENTION	DATE OF RATIFICATION
01.	No. 1 Hours of Work (Industry) Convention, 1919	14.07.1921
02. *	No. 2 Unemployment Convention, 1919	14.07.1921
03.	No. 4 Night Work (Women) Convention, 1919	14.07.1921
04.	No. 5 Minimum Wage (Industry) Convention, 1919	09.09.1955
05.	No. 6 Night Work of Young Persons (Industry) Convention, 1919	14.07.1921
06.	No. 11 Right of Association (Agriculture) Convention, 1921	11.05.1923
07.	No. 14 Weekly Rest (Industry) Convention, 1921	11.05.1923
08.	No. 15 Minimum Age (Trimmers and Stokers) Convention, 1921	20.11.1922
09.	No. 16 Medical Examination of Young Persons (Sea) Convention, 1921	20.11.1922
10.	No. 18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.1927
11.	No. 19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.1927
12.	No. 21 Inspection of Emigrants Convention, 1926	14.01.1928
13.	NO. 22 Seamen's Articles of Agreement Convention, 1926	31.10.1932
14.	No. 26 Minimum Wage – Fixing Machinery	10.01.1955
15.	No. 27 Marking of Weight (Package, Transported by Vessels) Convention, 1930	07.09.1931
16.	No. 29 Forced Labour Convention, 1930	30.11.1954
17.	No. 32 Protection Against Accidents	10.02.1947
18.@	No. 41 Night Work (Women) Convention (Revised), 1934	22.11.1935
19.	No. 42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.1964
20.	No. 45 Underground Work (Women) Convention, 1935	25.03.1938
21.	No. 80 Final Articles Revision Convention, 1946	17.11.1947
22. **	No. 81 Labour Inspection Convention, 1947 100	07.04.1949
23.	No. 88 Employment Services Convention, 1948	27.02.1950
24.	No. 89 Night Work (Women) Convention (Revised), 1948	27.02.1950
25.	No. 90 Night Work of Young Persons	27.02.1950
26.	NO. 100 Equal Remuneration Convention, 1951	25.09.1958
27.	No. 107 Indigenous and Tribal Population Convention	29.09.1958

@@ Minimum Age initially specified was 16 years but was raised to 18 years in 1989.
Article 8 of Part-II.

APPENDIX – II

INTERNATIONAL LABOUR STANDARDS CONCERNING LABOUR ADMINISTRATION

LABOUR ADMINISTRATION CONVENTION, 1978

Article 1

For the purpose of Convention –

- (a) the term “labour administration” means public administration activities in the field of national labour policy’
- (b) the term “system of labour administration” covers all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.

Article 2

A Member which ratifies this Convention may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisations, particularly employers’ and workers’ organisations, or –where appropriate – to employers’ and workers’ representatives.

Article 3

A Member which ratifies this Convention may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers’ and workers’ organisations.

Article 4

Each Member which ratifies this Convention shall, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

Article 5

1. Each Member which ratifies this Convention shall make arrangements appropriate to national conditions to secure, within the system of labour administration, consultation, cooperation and negotiation between the public authorities and the most representative organisations of employers and workers, or - where appropriate – employers' and workers' representatives.
2. To the extent compatible with national laws and regulations, and national practice, such arrangements shall be made at the national, regional and local levels as well as at the level of the different sectors of economic activity.

Article 6

1. The competent bodies within the system of labour administration shall, as appropriate, be responsible for or contribute to the preparation, administration, coordination, checking and review of national labour policy, and be the instrument within the ambit of public administration for the preparation and implementation of laws and regulations giving effect thereto.
2. In particular, these bodies, taking into account relevant international labour standards, shall -
 - (a) participate in the preparation, administration, coordination, checking and review of national employment policy, in accordance with national laws and regulations, and national practice;
 - (b) study and keep under review the situation of employed, unemployed and under-employed persons, taking into account national laws and regulations and national practice concerning conditions of work and working life and terms of employment, draw attention to defects and abuses in such conditions and terms and submit proposals on means to overcome them;

- (c) make their services available to employers and workers, and their respective organisations, as may be appropriate under national laws or regulations, or national practice, with a view to the promotion-at the national, regional and local levels as well as at the level of the different sectors of economic activity – of effective consultation and cooperation between public authorities and bodies and employers' and workers' organisations, as well as between such organisations.
- (d) make technical advice available to employers and workers and their respective organisations on their request.

Article 7

When national conditions so require, with a view to meeting the needs of the largest possible number of workers, and in so far as such activities are not already covered, each Member which ratifies this Convention shall promote the extension, by gradual stages if necessary, of the functions of the system of labour administration to include activities, to be carried out in cooperation with other competent bodies, relating to the conditions of work and working life of appropriate categories of workers who are not, in law, employed persons, such as -

- (a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;
- (b) self-employed workers who do not engage outside help, occupied in the informal sector as understood in national practice;
- (c) members of cooperatives and worker-managed undertakings;
- (d) persons working under systems established by communal customs or traditions.

Article 8

To the extent compatible with national laws and regulations and national practice, the competent bodies within the system of labour administration shall contribute to the preparation of national policy concerning international labour affairs, participate in

the representation of the State with respect to such affairs and contribute to the preparation of measures to be taken at the national level with respect thereto.

Article 9

With a view to the proper coordination of the functions and responsibilities of the system of labour administration, in a manner determined by national laws or regulations, or national practice, a ministry of labour or another comparable body shall have the means to ascertain whether any parastatal agencies which may be responsible for particular labour administration activities, and any regional or local agencies to which particular labour administration activities may have been delegated, are operating in accordance with national laws and regulations and are adhering to the objectives assigned to them.

Article 10

1. The staff of the labour administration system shall be composed of persons who are suitably qualified for the activities to which they are assigned, who have access to training necessary for such activities and who are independent of improper external influences.
2. Such staff shall have the status, the material means and the financial resources necessary for the effective performance of their duties.

Article 11

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 12

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director General.
2. It shall come into force twelve months after the date on which the ratification of two Members have been registered with the Director General.
3. Thereafter, this Conventions hall come into force for any Member twelve

months after the date on which its ratification has been registered.

Article 13

1. A member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 14

1. The Director General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 15

The Director General of the International Labour Office shall communicate to the

Secretary General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 16

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 17

1. Should the Conference adopt a new Convention revising this Convention in whole, or in part, then, unless the new Convention otherwise provides -
 - (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 18

The English and French versions of the text of this Convention are equally authoritative.

LABOUR ADMINISTRATION RECOMMENDATION, 1978

I. GENERAL PROVISIONS

1. For the purpose of this Recommendation -
 - (a) the term "labour administration" means public administration activities in the field of national labour policy;
 - (b) the term "system of labour administration" covers all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies, including parastatal and regional or local agencies or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies and for consultation with and participation by employers and workers and their organisations.
2. A Member may, in accordance with national laws or regulations, or national practice, delegate or entrust certain activities of labour administration to non-governmental organisation, particularly employers' and workers' organisations, or- where appropriate – to employers' and workers' representatives.
3. A member may regard particular activities in the field of its national labour policy as being matters which, in accordance with national laws or regulations, or national practice, are regulated by having recourse to direct negotiations between employers' and workers' organisations.
4. Each Member should, in a manner appropriate to national conditions, ensure the organisation and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated.

II. FUNCTIONS OF THE NATIONAL SYSTEM OF LABOUR ADMINISTRATION

Labour Standards

5. (1) The competent bodies within the system of labour administration should—in consultation with organisation of employers and workers and in a manner and under conditions determined by national laws or regulations, or national practice—take an active part in the preparation, development, adoption, application and review of labour standards, including relevant laws and regulations.
 - (2) They should make their services available to employers' and workers' organisations, as may be appropriate under national laws or regulations, or national practice, with a view to promoting the regulation of terms and conditions of employment by means of collective bargaining.
6. The system of labour administration should include a system of labour inspection.

Labour Relations

7. The competent bodies within the system of labour administration should participate in the determination and application of such measures as may be necessary to ensure the free exercise of employers' and workers' right of association.
8. (1) There should be labour administration programmes aimed at the promotion, establishment and pursuit of labour relations which encourage progressively better conditions of work and working life and which respect the right to organise and bargain collectively.
 - (2) The competent bodies within the system of labour administration should assist in the improvement of labour relations by providing or strengthening advisory services to undertakings, employers' organisations

and workers' organisations requesting such services, in accordance with programmes established on the basis of consultation with such organisations.

9. The competent bodies within the system of labour administration should promote the full development and utilisation of machinery for voluntary negotiation.
10. The competent bodies within the system of labour administration should be in a position to provide, in agreement with the employers' and workers' organisations concerned, conciliation and mediation facilities, appropriate to national conditions, in case of collective disputes.

EMPLOYMENT

- 11 (1) The competent bodies within the system of labour administration should be responsible for, or should participate in the preparation, administration, coordination, checking and review of national employment policy.
 - (2) A central body of the system of labour administration, to be determined in accordance with national laws or regulations, or national practice, should be closely associated with, or responsible for taking, appropriate institutional measures to coordinate the activities of the various authorities and bodies which are concerned with particular aspects of employment policy.
12. The competent bodies within the system of labour administration should coordinate, or participate in the coordination of, employment services, employment promotion and creation programmes, vocational guidance and vocational training programmes and unemployment benefit schemes, and they should coordinate, or participate in the coordination of, these various services, programmes and schemes with the implementation of general employment policy measures.

13. The competent bodies within the system of labour administration should be responsible for establishing, or promoting the establishment of, methods and procedures for ensuring consultation of employers' and workers' organisations, or-where appropriate-employers' and workers' representatives, on employment policies, and promotion of their cooperation in the implementation of such policies.
14. (1) The competent bodies within the system of labour administration should be responsible for manpower planning or where this is not possible should participate in the functioning of manpower planning bodies through both institutional representation and the provision of technical information and advice.
 - (2) They should participate in the coordination and integration of manpower plans with economic plans.
 - (3) They should promote joint action of employers and workers, with the assistance, as appropriate, of public authorities and bodies, regarding both short and long-term employment policies.
15. The system of labour administration should include a free public employment service and operate such a service effectively.
16. The competent bodies within the system of labour administration should, wherever national laws and regulations, or national practice, so permit, have or share responsibility for the management of public funds made available for such purposes as countering underemployment and unemployment, regulating the regional distribution of employment, or promoting and assisting the employment of particular categories of workers, including sheltered employment schemes.
17. The competent bodies within the system of labour administration should, in a manner and under conditions determined by national laws or regulations, or national practice, participate in the development of comprehensive and concerted policies and programmes of human resources development including

vocational guidance and vocational training.

RESEARCH IN LABOUR MATTERS

18. For the fulfilment of its social objectives, the system of labour administration should carry out research as one of its important functions and encourage research by others.

III. ORGANISATION OF THE NATIONAL SYSTEM OF LABOUR ADMINISTRATION

COORDINATION

19. The Ministry of Labour, or another comparable body determined by national laws or regulations, or national practice, should take or initiate measures ensuring appropriate representation of the system of labour administration in the administrative and consultative bodies in which information is collected, opinions are considered, decisions are prepared and taken and measures of implementation are devised with respect to social and economic policies.
20. (1) Each of the principal labour administration services, competent with respect to the matters referred to in Paragraphs 5 to 18 above should provide periodic information or reports on its activities to the Ministry of Labour or the other comparable body referred to in Paragraph 19, as well as to employers' and workers' organisations.

(2) Such information or reports should be of a technical nature, should include appropriate statistics, and should indicate the problems encountered and, if possible, the results achieved in such a manner as to permit an evaluation of present trends and foreseeable future developments in areas of a major concern to the system of labour administration.

- (3) The system of labour administration should evaluate, publish and disseminate such information of general interest on labour matters, as it is able to derive from its operation.
 - (4) Members, in consultation with the International Labour Office, should seek to promote the establishment of suitable models for the publication of such information, with a view to improving its international comparability.
21. The structures of the national system of labour administration should be kept constantly under review, in consultation with the most representative organisations of employers and workers.

RESOURCES AND STAFF

22. (1) Appropriate arrangements should be made to provide the system of labour administration with the necessary financial resources and an adequate number of suitably qualified staff to promote its effectiveness.
- (2) In this connection, due account should be kept of-
 - (a) the importance of the duties to be performed;
 - (b) the material means placed at the disposal of the staff;
 - (c) the practical conditions under which the various functions must be carried out in order to be effective.
23. (1) The staff of the labour administration system should receive initial and further training at levels suitable for their work; there should be permanent arrangements to ensure that such training is available to them throughout their careers.
- (2) Staff, in particular services, should have the special qualifications required for such services, ascertained in a manner determined by the appropriate body.
24. Consideration should be given to supplementing national programmes and facilities for the training envisaged in Paragraph 23 above by international cooperation in the form of exchanges of experience and information and of

common initial and further training programmes and facilities, particularly at the regional level.

INTERNAL ORGANISATION

25. (1) The system of labour administration should normally comprise specialised units to deal with each of the major programmes of labour administration the management of which is entrusted to it by national laws or regulations.
- (2) For example, there might be units for such matters as the formulation of standards relating to working conditions and terms of employment; labour inspection; labour relations; employment, manpower planning and human resources development; international labour affairs; and, as appropriate, social security, minimum wage legislation and questions relating to specific categories of workers.

FIELD SERVICES

26. (1) There should be appropriate arrangements for the effective organisation and operation of the field services of the system of labour administration.
- (2) In particular, these arrangements should-
- (a) ensure that the placing of field services corresponds to the needs of the various areas, the representative organisation of employers and workers concerned being consulted thereon;
 - (b) provide field services with adequate staff, equipment and transport facilities for the effective performance of their duties;
 - (c) ensure that field services have sufficient and clear instructions to preclude the possibility of laws and regulations being differently interpreted in different areas.

APPENDIX III

THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002

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THE OCCUPATIONAL HEALTH AND SAFETY BILL, 2002 (DRAFT)

An Act to assure safe and healthy working conditions for employees and other persons by authorising enforcement of standards/codes developed under the Act; by assisting and encouraging State Governments in their efforts to assure safe and healthy working conditions; by providing for research, information, education, training and statistics in the field of safety and health and for certain connected matters.

It is hereby enacted as follows: -

1. Short title, extent, commencement and application

- (a) This Act may be called the Occupational Health and Safety Act, 2002.
- (b) It extends to the whole of India, including offshore activities.
- (c) It shall come into force on a date as notified by the Central Government, in the official gazette.

2. Definitions

"State" includes Union Territory.

"Standards" include Rules, Regulations or Codes notified under section 15 of this Act.

(* More definitions to be added)

3. General Purposes

The objective of this Act is to provide safe and healthy working conditions to employees working in industry and to regulate the working of industry so as to protect persons who may be adversely affected by unsafe working practices of the industry, specifically:

- (a) By encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new programmes and perfect existing programmes for providing safe and healthful working conditions.

- (b) By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions.
- (c) By building upon advances already made through employer and employee initiative for providing safe and healthy working conditions.
- (d) By providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems.
- (e) By exploring ways to discover latent diseases, establishing casual connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.
- (f) By providing medical criteria, which will assure in so far as practicable that no employee will suffer diminished health, or functional capacity, or diminished life expectancy as a result of his work experience.
- (h) By providing for training programmes to increase the number and competence of personnel engaged in the field of occupational safety and health.
- (i) By providing for the development and promulgation of occupational safety and health standards.
- (j) By providing an effective enforcement programme which shall include a prohibition against giving advance notice of any inspection and sanctions to any individual violating this prohibition.
- (k) By encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws, by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act,

to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith.

- (l) By providing for appropriate reporting procedures with respect to occupational safety and health, such procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem.
- (m) By encouraging joint efforts of labour and management to reduce injuries and disease arising out of employment.
- (n) By encouraging interaction between the management and community, in general and other industries located in the vicinity in particular, in order to take appropriate remedial actions in case of an accident.
- (o) By reviewing the provisions of law relating to workmen's compensation to determine whether the provisions are adequate and prompt.

4. **Applicability of the Act**

The provisions of this Act shall apply to: -

- (a) Factories as defined in the Factories Act, 1948.
- (b) Mines as defined in the Mines Act, 1952.
- (c) Plantations as defined in the Plantation Labour Act, 1951.
- (d) Dock Workers as defined in the Dock Workers (Safety, Health and Welfare) Act, 1986.
- (e) Establishments as defined in the Delhi Shops and Establishment Act, 1954, but also including all hospitals and educational institutions. (and Shops and Establishment Act of various States.)
- (f) Building Constructions Workers as defined in the Building and Other Construction Workers (Regulation of Employment, Conditions of Services) Act, 1996.
- (g) Beedi workers as defined in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
- (h) Employees engaged in transport of goods and passengers.

- (i) Employees engaged in agriculture, fisheries, sericulture, forests (etc.)
- (j) Worker as defined in the Industrial Disputes Act, 1947. It would also include persons employed in supervisory, managerial or administrative capacity.
- (k) All employees except those engaged in domestic work (excluding those in home-based industrial activity).

5. **Supercession of the existing laws**

The existing Acts relating to occupational health and safety shall be superceded and be replaced by the Occupational Health and Safety Standards as and when notified by the Central Government.

6. General duties of employers to employees:

Every employer shall ensure to his employees, employment that is free from recognized hazards that cause or is likely to cause injury or occupational disease, and shall comply with the OHS standards prescribed under this Act.

7. General duties of Employers to persons other than their employees but who are on the premises of the employer:

Every employer shall ensure and be responsible for the safety of persons who are on the premises of the employer, with his consent.

8. General duties of employers and self-employed persons to persons other than their employees and who may not be on the premises of the employer:

Every employer will conduct his undertaking in such a way as to ensure that persons in the vicinity of the industry are not exposed to any hazard to their safety or health due to acts of omission or commission of the industry.

9. General duties of manufacturers etc. as regards articles and substances for use at work:

Every person who manufactures, imports or supplies any article for use in any workplace shall ensure, so far as practicable, that the article so designed

and manufactured is safe and without hazards to the health of the users when properly used. Such persons will also ensure supply of adequate instructions regarding the use of these articles.

10. **General duties of employees –**

Every employee at work shall –

- (a) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) shall comply with the safety and health requirements prescribed under this Act and standards laid down under this Act.

11. **Duty not to interfere with or misuse things –**

No person shall interfere with or misuse any device or instrument provided for safety and health.

12. **Duty not to charge employees for providing safe and healthy work environment –**

No employer shall levy or permit to be levied on any employee, any charge in respect of anything done or provided for maintenance of safe and healthy working environment.

13. **Rights of employee –**

(a) Every employee shall have the right to:

- obtain from the employer information relating to health and safety at work; and
- represent to the employer directly or through a member of the Unit Safety Committee regarding inadequate provision for protection of his safety or health in connection with the work activity in the workplace, and if not satisfied, to the Safety Committee.

(b) (i) where the employees in any work place have reasonable apprehension that there is a likelihood of imminent serious personal injury or death or imminent danger to health, they may bring the same to the notice of their employer directly or through a member of the Safety Committee and simultaneously bring the same to the notice of the Inspector.

- (ii) The employer shall take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the Inspector.
- (c) If the employer is not satisfied about the existence of any imminent danger as apprehended by his employees, he shall, nevertheless, refer the matter forthwith to the Inspector whose decision on the question of the existence of such imminent danger shall be final.
- (d) No person shall make frivolous and repetitive complaints.

14. **Occupational Health and Safety Commission**

- (a) The Central Government shall appoint an Occupational Health and Safety Commission. The functions of the Commission shall be to formulate and recommend to the Government legislative measures, implement and periodically review a coherent national policy for the establishment and promotion of Occupational Health and Safety Management Systems.
- (b) The Central Government shall appoint a Chairman, and three members and a Secretary of the Occupational Health and Safety Commission. One of the three members shall be an occupational health and safety expert and the Commission and its members shall be full time functionaries with a tenure of three years. They would be assisted by such officials as considered necessary. Such officers will also be declared as Inspectors and shall exercise powers under this Act and the powers of Inspectors under standards as established in section 15 of the Act.
- (c) The National Policy on Occupational Health and Safety shall establish general principles and procedures to: -
 - Formulate comprehensive standards on occupational health and safety.
 - Facilitate and improve voluntary arrangements for systematic

identification, planning, implementation and improvement of occupational health and safety activities at national and organisational level.

- Promote participation of workers and their representatives in various aspects of occupational health and safety at all levels.
- Promote participation of members of the public in general and people working or living near the industry, in the occupational health and safety programmes of the industry.
- Promote participation of members of the medical profession working near the industry in the occupational health and safety programmes of such industry.
- Recommend steps for continuous improvement in occupational health and safety programmes, while avoiding unnecessary administration and costs.
- Provide for research, information, education in the field of occupational health and safety.
- Promote awareness about occupational health and safety to students at school and college level and also in engineering, medical, agriculture and veterinary institutes and colleges.
- Collect, compile and analyse occupational health and safety statistics in order to set up improved standards.
- Provide a model occupational health and safety policy for organisations.
- Develop and authorise an audit mechanism for assessing effectiveness of occupational health and safety in industry.

(d) The Occupational Health and Safety Commission shall have the power to conduct or direct the conducting of inquiries in matters of occupational health and safety.

15. **Occupational Health and Safety Committee**

- (a) The Central Government shall set up an Occupational Health and Safety Committee to advise and assist the Occupational Health and Safety Commission in its functions.

- (b) The Occupational Health and Safety Committee shall comprise the following members: -
- DG FASLI
 - DG MS
 - Director, National Institute of Occupational Health
 - Controller of Explosives
 - Chairman, Central Pollution Control Board
 - Chief Labour Commissioner (Central)
 - Labour Commissioners of 3 States
 - DG ESI
 - DG Health Services
 - 3 representatives of employers
 - 3 representatives of employees
 - 3 eminent persons connected with the field of Occupational Health and Safety
 - Chairman of the OH&S Commission
 - Members of the OH & S Commission
 - Secretary of the OH&S Commission
- (c) The terms of the following members shall be three years or co-terminus with their office whichever is earlier: -
- Labour Commissioner of a State
 - Representatives of employers
 - Representatives of employees
- Provided that all the above persons shall be eligible for reappointment to the Committee, the membership of the Labour Commissioner of a State shall rotate amongst Labour Commissioners of various States.
- (d) Chairman of the Occupational Health and Safety Commission shall be the Chairman of this Committee.
- (e) The Committee shall meet at least twice a year, but may meet as often as considered necessary.
- (f) The Committee may constitute a sub-committee which will visit

various industries to gain first hand knowledge of the conditions relating to occupational health and safety prevailing in such industries.

- (g) The members of the Committee will work on an honorary basis but will be entitled to daily allowance and travelling allowance at the prescribed rates.

16. Occupational Health and Safety Standards

- (a) The Central Government shall as soon as practicable during the period beginning with the effective date of this Act and ending three years after such date, promulgate specific or general standards of occupational health and safety for industries, processes and occupations.
- (b) Every rule made under the Act shall be published in the official gazette and unless otherwise specified, shall take effect immediately on publication.
- (c) The standards so framed shall be laid before both Houses of the Parliament within 6 months.
- (d) These standards will be reviewed and, if necessary, revised on the basis of the recommendations of the Occupational Health and Safety Commission.
- (e) The State Government may add to or amend the standards prescribed, without diluting the standards by the Occupational Health Safety Commission.
- (f) The Central Government, in promulgating standards dealing with toxic materials or harmful physical agents, shall set the standard which assures, to the extent feasible, on the basis of the best available evidence or functional capacity, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to hazard dealt with by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations, experiments and such other information as may be appropriate.

- (g) Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that the employees and users are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.
- (h) Standards for medical examination and compensation shall also prescribe norms for medical examination and compensation to be extended to the workmen even after he ceases to be in employment, if he is suffering from an occupational disease which arises out of and was in course of employment.
- (i) Any employer may apply to the appropriate Government for a temporary order granting a variance from a standard. Such application shall contain: -
- A specification of the standard or portion thereof from which the employer seeks a variance.
 - A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore.
 - A statement of the steps he has taken and will take (with

specific dates) to protect employees against the hazard covered by the standard.

- A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard.
- A certification that he has informed his employees of the application by giving a copy thereof to their authorised representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition to the appropriate government for a hearing.

- (j) The appropriate government may, by an order, exempt the employer from complying with the mandatory standards for a specified period, on conditions which it feels appropriate, if it is satisfied that (i) the employer is unable to comply with a standard by the effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or alteration or facilities cannot be completed by the effective date, (ii) the employer is taking all necessary steps to safeguard his employees against the hazards covered by the standard and, (iii) the employer has an effective programme for compliance with the standard at an early date.

Provided that no such exemption shall be for more than one year. Provided further that such exemption may be renewed for a further period of one year subject to the employer furnishing details to the appropriate government that he has taken adequate steps to achieve

the target of complying with the standards. Application for renewals must be received at least 90 days prior to the expiration of the order or the exemption.

17. Research and related activities

- (a) The National Institute of Occupational Diseases in consultation with the Occupational Health and Safety Review Commission shall conduct or shall cause to be conducted research, experiments and demonstrations relating to occupational health and safety.
- (b) The Central Government, on the basis of such research, demonstrations and experiments and any other information available to it, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment including, but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work.

18. Training and employee education

- (a) The Occupational Health and Safety Commission shall in association with the DG FASLI, DG MS, Controller of Explosives Central Pollution Control Board, Chief Labour Commissioner (Central), DG ESI, DG Health Services, National Institute of Occupational Health organisation of Employers & Employees and other organisations concerned with occupational health and safety, carry out programmes to provide training in the field of occupational health and safety to persons in the industry.
- (b) Such training programmes shall provide for the education of employers and employees for the recognition, avoidance and prevention of unsafe or unhealthy working conditions in employments covered by this Act.

19. **Statistics**

- (a) In order to further the purposes of this Act, the Central Government and the State Government shall develop and maintain an effective programme of collection, compilation and analysis of occupational health and safety statistics.
- (b) To carry out the above functions, the appropriate government may promote, encourage or directly engage in programme of studies, information and communication concerning occupational health and safety statistics.

20. **Power of the Central Government or the State Government to direct inquiry in certain cases**

- (a). The appropriate Government may, in the event of the occurrence of an accident which has caused or had the potentiality to cause serious danger to employees and other persons within, and in the vicinity of the workplace, whether immediate or delayed, appoint one or more persons possessing legal or special knowledge to inquire into the causes of the accident, fix responsibilities and suggest a plan of action for the future to prevent such accidents.
- (b-i) The appropriate Government may direct a Chief Inspector or any other official under the control of the Government concerned or appoint a committee to undertake a survey on the situation relating to safety or health at work at any workplace or class of workplaces or into the effect of work activity on the health of the employees and other persons within and in the vicinity of the workplace.
- (ii) The officer or the committee of persons mentioned in subsection:
 - May, at any time during the normal working hours of the workplace, or at any other time as found by him or the

committee to be necessary, after giving notice in writing to the employer, undertake such survey and the employer shall make available all records and afford all facilities for such survey including facilities for the examination and testing of plant and collection of samples and other data relevant to the survey.

- For the purpose of facilitating a survey under this subsection, every employee shall, if so required by the person or the committee conducting the survey present himself for such medical examination and furnish such information in his possession and relevant to the survey as may be considered necessary by the person conducting the survey.

- (c) The person appointed to hold an inquiry under this section, shall have the powers of a Civil Court under the code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects, and may also so far as may be necessary for the purposes of the inquiry, exercise such powers of an Inspector under this Act as may be necessary; and every person required to furnish any information shall be deemed to be legally bound so to do within the meaning of section 176 of the Indian Penal Code (XLV of 1960).
- (d) The person or persons, or persons holding an inquiry under this section shall make a report to the Government concerned.
- (e) The Government concerned may, if it thinks fit, cause to be published any report made under this section or any extracts therefrom.
- (f) The Central Government may make rules for regulating the procedure at inquiries etc. under this section.

21. **Restriction on disclosure of information**

- (a) No person shall disclose otherwise than in connection with

enforcement or for the purposes of any of the relevant statutory provisions, any information relating to any manufacturing or commercial business or any working process which may come to his knowledge in the course of his official duties under any of the relevant statutory provisions or which has been disclosed to him in connection with, or for the purposes of any of the relevant statutory provisions.

- (b) Nothing in subsection (1) shall apply to any disclosure of information made within the previous consent in writing of the owner of such business or process or for the purposes of any legal proceeding (including adjudication or arbitration), pursuant to any of the relevant statutory provisions or of any criminal proceeding or proceeding before a tribunal under this Act which may be taken, whether pursuant to any of the relevant statutory provisions or otherwise, or for the purposes of any report of such proceedings as aforesaid.

22. Protection to persons acting under the relevant statutory provisions

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith or intended to be done under any of the relevant statutory provisions.

23. Penalties

Any person who wilfully violates the provisions of section 6 to 13, shall be punishable with fines which may extend to one lakh rupees. Regulations made under this Act as provided in Section 16, may prescribe higher penalties as warranted by the gravity of the offence.

24. Cognisance of offences

- (a) No Court shall take cognisance of any offence punishable under this Act, except on a complaint made by or with the previous sanction in writing of an officer specified by the appropriate Government in this regard.

- (b) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act.

25. **Limitation of prosecutions**

No Court shall take cognisance of an offence punishable under this Act, unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the officer specified by the appropriate government.

APPENDIX IV

A MODEL SAFETY AND HEALTH POLICY

The Management recognizes people as its most important asset and is committed to provide a safe and healthy work environment for those working on and visiting our operations. Management at all levels will be responsible and will be held accountable for the occupational safety and health performance of the Company. At the same time, it is the duty of every employee to work in a safe manner so as not to endanger himself and his colleagues at the work place and during travel.

Accordingly, the aim of the Management is to prevent injuries and occupational ill health through the following actions:

- (a) Develop and design processes and plants which, as far as is reasonably practicable, and encompassing all available knowledge and information, are safe and without risk to health.
- (b) Operate and maintain plants within the designated safety criteria throughout their working life.
- (c) Develop, introduce and maintain safety and health management systems across the Company to meet the Company standards as well as statutory requirements for safety and health and verify compliance with these standards through regular auditing.
- (d) Set annual improvement objectives and targets and review these to ensure that these are being met at the individual unit and corporate levels.
- (e) Involve all employees in the implementation of this policy and provide appropriate training.
- (f) Provide for appropriate dissemination of information of safety and health at work through suitable communication networks both within

the company and with external bodies.

THE VISION

The Management's vision is to be an injury and disease free organization. We will achieve this through an Integrated Safety Management approach, which focuses on People, Technology and Facilities, supported by Management Commitment as the prime driver for ensuring a safe and healthy work environment.

RESPONSIBILITIES

Corporate

The Board of Directors of the company is committed to occupational safety and health performance of the Company. The Management will:

- (a) Set mandatory standards and establish occupational safety and health improvement objectives and targets for the Company as a whole and for individual units, and ensure these are included in the annual operating plans.
- (b) Formally review occupational safety and health performance of the Company once every quarter.
- (c) Review safety and health at work when visiting units and recognize exemplary performance.
- (d) Nominate:
 - A senior line manager for occupational safety and health at the individual sites.
 - Corporate safety and health coordinator(s).

The Management, through the nominated safety and health manager will:

- (a) Ensure implementation of the policy and compliance with the standards stipulated under national/local legislation.
- (b) Establish strategies for safety and health at work and key implementation steps.
- (c) Establish appropriate management systems for safety and health at work and ensure auditing to verify compliance.
- (d) Arrange for all employees, appropriate training in implementation of safety and health management systems at work and during travel.
- (e) Ensure that all employees are made aware of individual and collective responsibilities towards safety and health at work and during travel.
- (f) Establish appropriate systems to impart adequate induction training to all personnel on the company sites particularly at initial employment and change of jobs.
- (g) Encourage development of inherently safer and cleaner manufacturing processes to further raise the standards of occupational safety and health.
- (h) Arrange for expert advice on all aspects of occupational safety and health.
- (i) Prepare an annual performance report on occupational safety and health.
- (j) Maintain close liaison with appropriate industry and Government bodies.

INDIVIDUAL UNITS

The overall responsibility for safety and health at each unit will rest with the Unit Head, who will ensure implementation of the Management policy on safety and health at unit level. Concerned line managers/heads of department shall be

responsible for safety and health at department levels.

In order to fulfil the requirements of the safety and health policy at each site, the Unit Head will:

- (a) Designate safety and health coordinator(s) who will be responsible for coordinating safety and health activities at unit, providing/ arranging for expert advice and collating safety and health statistics.
- (b) Specify safety and health improvement objectives and targets for the unit and ensure that these are incorporated in the annual objectives of the concerned managers and officers.
- (c) Ensure that the unit complies with the Company's mandatory standards and statutory regulations with respect to safety and health.
- (d) Ensure strict adherence to the mandatory standards on road safety for all work related travel.
- (e) Arrange appropriate awareness training for all employees on safety and health management systems and standards.
- (f) Regularly review safety and health performance of the unit against set objectives and targets.
- (g) Ensure periodic audits to verify compliance to safety and health management systems and personally carry out sample safety and health audits to check efficacy of safety systems.
- (h) Report safety and health statistics to Corporate Safety & Health Manager on a monthly basis.
- (i) Ensure that safety committees are constituted with adequate representation from employees.
- (j) Ensure formal task and process reviews to identify associated hazards and take appropriate steps to control risks at acceptable levels.
- (k) Ensure that all new operations are subjected to a systematic and formal hazard identification and risk assessment exercise. Findings of such exercises should be implemented prior to commencement of the activity.
- (l) Manage change in People, Technology and Facilities through planned