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AN EMPIRICAL INVESTIGATION

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Pranod Verma

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Dr. Pramod Verma

The problem of delay in labour judiciary has acquired added significance in the wake of current emphasis on maintenance of peaceful industrial relations and effective implementation of labour laws. While the legislation itself has provided many substantive benefits to industrial workers, the delays in labour judiciary have reduced the effectiveness of these benefits. The National Commission on Labour had alluded to this issue and stated that the delays were not only frustrating to the individual workers and unions concerned but they also affected the achievement of harmonious industrial relations. In this paper, an attempt will be made to identify the causes of delay in labour adjudication and to offer a few suggestions based on current deliberations in the State of Gujarat. The data for this analysis are drawn from the Gujarat situation. Although the problem of delay is not peculiar to Gujarat alone, it came into a sharp focus in a recent investigation undertaken by a committee set up by the Gujarat Government to review the implementation of labour laws.

System of Labour Adjudication in Gujarat

The structure of labour adjudication is based on the authorities created under various enactments. At present, there are four judges of the labour courts under the Bombay Industrial Relations Act. The Industrial Court, also constituted under the same Act, consists of two members and a President. In the State of Gujarat, no special posts are created either of labour courts or Industrial Tribunals under the Industrial Disputes Act. However, Judges, Labour Court and Members and President, Industrial Court, under the BIR Act are appointed as presiding officers, labour courts and Industrial Tribunals, respectively, under the I.D. Act in accordance with their satisfying the eligibility qualifications under the I.D. Act.

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While the function of these authorities are clearly spelled out in the two Acts mentioned above, the President, Industrial Court, has in practice the power to regulate the industrial adjudication machinery. The B.I.R. Act specifies, according to section 78, the powers of the labour courts. The reference to labour courts may be made for the following.

- (1) Disputes relating to standing orders
- (2) Disputes relating to adequacy and quality of materials, assignment of work and transfer, health, safety and welfare, trade union organization, interpretation of agreement, employment and compensation for closures
- (3) Industrial disputes referred to it by the government
- (4) Whether a strike, lock-out, closure, stoppage or any change is illegal under the B.I.R. Act.

The duties of industrial court are likewise enumerated in section 87. Collective disputes between employers and unions, disputes about registration of unions and agreements, revision of agreements and awards are some of the major subjects for industrial court's consideration.

Since B.I.R. Act applies to major industries only, such as textiles, silk, electricity and sugar, other industries are covered by the I.D. Act. However, the I.D. Act, broadly defines the duties of labour courts, tribunals and national tribunals as the adjudication of disputes referred to them by the appropriate governments. Section 7 indicates that the labour courts would adjudicate industrial disputes specified in the second schedule:

1. The propriety or legality of an order passed by an employer under the standing orders
2. The application and interpretation of standing orders
3. Discharge or dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed
4. Withdrawal of any customary concession or privilege
5. Illegality or otherwise of a strike or lock-out
6. All matters other than those specified in the third schedule.

Section 7A of the I.D. Act stipulates that the Industrial Tribunals may be constituted for the adjudication of industrial disputes relating to any matter, whether specified in the second schedule or the third schedule. The third schedule comprises of the following matters:

1. Wages, including the period and mode of payment
2. Compensatory and other allowances
3. Hours of work and rest intervals
4. Leave with wages and holidays
5. Bonus, profit sharing, provident fund and gratuity
6. Shift working otherwise than in accordance with standing orders.
7. Classification by grades
8. Rules of discipline
9. Retrenchment of workmen and closure of establishment
10. Any other matter that may be prescribed.

The courts have also been concerned with the settlement of disputes arising out of the provisions of several other acts such as payment of wages Act, Workmen's Compensation Act, Minimum Wages Act, E.S.I. Act, Beedi and Cigar Workers (Conditions of Employment) Act.

Reasons for Delay

Some quantitative indicators of the workload of the courts are illustrated in the data contained in Tables 1 and 2. Both the tables show the extent to which the courts have been able to cope with the heavy demand on their time. Apart from the number of cases which are pending from the previous years, new cases are also submitted during the year. Thus the clearance of backlog has always been a problem. Consequently, some cases take more time for disposal due to the fact, apart from others, that the courts may not have sufficient time at their disposal to process a particular application. The other reasons for delay could be seen as resultants of the system of judiciary itself which includes various stages in the settlement of disputes and adjournments asked by the parties themselves.

In order to appreciate reasons for delay, it is necessary to examine a particular case, involving company X, Y, Z and its workmen. The case was admitted in April 1971 and was finally disposed of by the end of March 1973. The sequence of events is shown in Table 3 for illustrative purposes. This case highlights the fact that time is taken at various stages namely, pleading, evidence, argument and judgement. But at each of these stages, one finds that both the parties as well as the court are responsible for adjournments.

Following the leads drawn from the above case, an attempt was made to analyse the delay problem for 100 cases drawn at random from the case files of the Industrial Court and Labour Courts. These cases pertain to the years 1968 to 1972. The results of this analysis are presented in Tables 4 to 8.

Table 4 indicates that on the average a case took more than fifteen months to be disposed of by the courts. It may be noted that while the industrial court took about twenty two months, the labour courts took only nine months. Nevertheless, there has been a declining trend in time taken by the courts. In both the courts, a substantial portion of time was taken at the evidence stage (8.54 months), followed by pleading (3.38 months), judgment (2.04 months) and arguments (1.41 months).

A detailed analysis of the data is presented through frequency distribution of cases in accordance with time taken at each stage (Table 5). The analysis shows that in the industrial court, approximately two thirds of the cases took between 3 to 12 months at the pleading stage. At the stage of evidence, more than two thirds of the cases took 6 months to a year. The situation in labour courts was somewhat different. It was at the evidence stage that most cases were held up; relatively much less time was spent at other stages.

One of the major reasons for delay lay in adjournments at several stages in a case. The data (Table 6) suggests that on an average more than nineteen adjournments took place. These adjournments were granted mostly at the evidence stage. In the industrial court, for instance, about two-fifths of the cases had more than ten adjournments at the evidence stage (Table 7). There was, on an average, slightly fewer adjournments at this stage in labour courts. On the whole, the total number of adjournments in the labour courts was lesser than those in the Industrial court.

It is interesting to note that both the parties as well as the courts were responsible for the adjournments sought in the cases. Table 6 indicates that while the managements and unions were responsible for nearly eighteen and ten per cent of adjournments respectively, the two parties jointly had asked for another twenty-five per cent adjournments. The rest of the adjournments were given by the courts themselves due to paucity of time in dealing with cases.

The above data are not surprising. They indicate the unpreparedness of both the parties in providing information to the courts; lack of union expertise and, above all, managements' interest in delaying the cases. To a large extent, the courts themselves found it necessary to grant adjournments.

In general, the following reasons may be enumerated for delay in disposal of cases:

1. There are three benches of the Industrial Court and three Labour Courts and a number of Assistant Commissioners of Labour before whom the representatives of the parties are required to appear. The unions have a limited number of representatives and even the representatives of the employers are also limited in number. Generally the union representatives are social and political workers and have varied activities. This is also true of some of the employers—particularly when the employer is a local authority. Because of these circumstances many a time the cases are required to be adjourned to enable the parties to have their representatives before the Courts.
2. Even when the cases come before the Court bearing in mind the scheme of the Bombay Industrial Relations Act and the Industrial Disputes Act negotiations for amicable settlements are not discouraged. The negotiations between the parties take considerable time and for that purpose cases are required to be adjourned. They are adjourned as desired by the parties for this purpose.
3. The questions involved in some cases are some times linked with the questions arising in other cases and if negotiations for settlement are going on in either sets of such cases the other set of cases are required to be adjourned. Even in such cases, the adjournments are given as desired by or at the instance of the parties concerned.
4. It is ordinarily not possible to give ex-parte awards in Industrial matters, particularly in disputes regarding wages, bonus and a number of such other matters. It, therefore, becomes necessary to adjourn the matter from time to time to get the defaulting party before the Court. This is equally true also when the parties remain present but do not produce the relevant materials required for proper adjudication.

5. Cases regarding dismissal and discharge of the workers are given priority and disposed of early. But even in such types of cases when the parties desire that some amicable settlement should be arrived at, efforts are made for the purpose and such cases naturally require cooling period and are for that purpose delayed. In such cases the delay is generally in the interest of the workers and not the employer.

6. In many of the cases the representatives of the parties are not conversant with the Court-procedure and the requirements regarding the production of the necessary and relevant materials. In such types of cases the Courts are required to discuss the relevant points with the parties and explain to them the materials required to be produced. Even when the evidence is brought before the Court the Court has to see that the evidence is put in proper form and proper statements are prepared so as to help the proper adjudication. Such methods are more helpful to labour than to the employer especially when most of the available evidence is in the possession of the employers. All these naturally take considerable time.

7. In any case if either of the parties to the proceedings desire early disposal, top priority is given to such cases and they are disposed of as urgently as possible.

Conclusions

As it has already been indicated, delay in labour adjudication is caused by adjournments sought by both parties to a case. These are asked particularly at the evidence stage, since managements are usually unwilling to produce relevant material and the unions are unable to obtain appropriate information. Nevertheless, the adjournments are inherent in the procedures followed by the courts themselves. It has been pointed out by the Labour Laws Review Committee:

"Largely in this State, Judges of the Labour Court and Industrial court/tribunal have been drawn from the civil judiciary, with the result that they carried with them their deep seated firm belief in adversary system followed in civil courts... The duty to bring evidence resting upon the parties which is an inseparable characteristic of civil justice administered through adversary systems its inalienable concomitant, namely burden of proof and consequences of failure to adduce evidence by the party on whom burden of proving relevant facts rests all came in its wake. Gradually over course of time, the methodology, the tardiness, the slow drift, the hyper-technical approach evident in Civil Courts raised their ugly head in these Tribunals too. Now, this may be a

correct approach for the civil courts but it is certainly not a correct approach where parties are wholly unevenly balanced. The Committee suggested that the adversary system should be replaced by inquisitorial system, wherein the presiding Judge should himself be made responsible for collecting necessary material to dispense justice to both parties."

Another procedural problem relates to the appearance of legal practitioners before the courts. This system has in the past bred a legalistic approach in labour judiciary and has also been responsible for delays. Section 36(4) of I.O. Act provides that a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the court concerned. The Committee suggested certain amendments to this provision. It argued that the appearance of legal practitioners should be severely restricted:

"the presiding officer (should) determine whether the case involves such complex issues of law which would necessitate assistance of legal practitioners, and if he is of that view, it would be necessary for the parties to apply and the Presiding Officer should make a speaking order permitting appearance of legal practitioners setting out reasons in support of his decision".

In the final analysis, it is necessary to refer back to the total quantum of cases being handed by labour judiciary. With the possibility of the existing system of labour administration continuing for some time to come, one may confidently predict that the workload on courts may only increase in future. Consequently, there is also a case for increasing the number of courts in the State in step with the anticipated case load.

The observations offered in this paper refer particularly to the situation in Gujarat. Nevertheless, the question relating to adjournments, procedure and strength of labour judiciary are common to all courts. Any action taken along the lines suggested by Gujarat's Labour Law Review Committee would hopefully result in a more efficient dispensation of justice in labour matters.

TABLE 1

set off by the INDUSTRIAL COURT, GUJARAT during the last 5 years.

	No. of cases pending			Total
	Less than 6 months old.	Between 6 months and one year old.	Between one and two years old. More than 2. year old.	
	170	138	170	821
	157	135	126	701
447	202	75	136	658
587	269	80	138	717
572	251	117	157	671
<u>INDUSTRIAL RELATIONS ACT</u>				
	170	138	170	821
	157	135	126	701
447	202	75	136	658
587	269	80	138	717
572	251	117	157	671
<u>UNDER INDUSTRIAL DISPUTES ACT</u>				
658	997	195	153	638
453	531	175	-198	560
734	549	157	119	745
514	606	157	196	644
645	580	127	157	709

TABLE 2

and disposed off by the Labour Courts, during the last five years.

Cases	No. pending			Total
	Less than 6 months old	Between 6 months and one year old	Between one year and two years old	
	51	900	230	1600
	85	802	309	1492
	52	727	107	1192
	15	1361	153	1893
	509	1221	515	3334

TABLE 3

Case History of Company X,Y,Z Vs. its Workmen
in the Industrial Court.

14.4.1971	Case received and admitted Notification issued
21.4.1971	Notices issued to file statement of claims and written statement
29.4.1971	Received letter dated 27.4.1971 for extension to file a statement of claims
10.5.1971	Statement of claims filed by the Union
15.5.1971	Received letter dated 3.5. 1971 for extension to file a written statement
21.6.1971	Written statement filed by the Company Fixed for hearing on 26.6.1971
26.7.1971	Union Representative and Company Lawyer present Union applied for time Adjourned to 7.9.1971
12.8.1971	Union Representative wants to file rejoinder Case adjourned to 28.9.1971
28.9.1971	Union filed rejoinder Representative of Union not present Company Lawyer present Adjourned to 11.11.1971
28.10.1971	Company filed reply to the rejoinder
5.11.1971	Union Representation wants time Adjourned to 22.11.1971
5.11.1971	Union Representative's letter praying for adjournment Adjourned to 7.12.1971
7.12.1971	Union Representative present Company Lawyer busy in High Court Adjourned to 5.1.1972

5.1.1972 Union Representative & Company Lawyer present
Company Lawyer wants to collect information
Adjourned to 11.2.1972

11.2.1972 Union Representative present
Company Lawyer present
Matters argued by the parties
Adjourned at parties' request
to 1.3.1972 for further arguments

1.3.1972 Both parties present
Union asked for adjournment to 4.4.1972

4.4.1972 Both parties present
Further adjournment to 2.5.1972

21.4.1972 Company's Lawyer asked for adjournment;
Adjourned to 29.5.1972

21.6.1972 Application from Company Lawyer
Adjourned to 30.6.1972

28.5.1972 Further adjournment to 25.7.1972

24.7.1972 Tribunal on leave for 2 days
Adjournment to 22.8.1972

22.8.1972 Union Representative and Lawyer for the
Company present
Union files rejoinder;
Witnesses cross-examined
Further cross-examination adjourned to 19.9.1972

19.9.1972 Company pray for time as Lawyer is busy
with High Court
Adjourned to 11.10. 1972

10.10.1972 Union Representative busy at Supreme Court
Adjourned to 29.11.1972

29.11.1972 Company Lawyer and Union Representative present
Cross-examination of Witnesses completed
Adjourned to 2.1.1973 at the request of both
parties

2.1.1973	Arguments carried on
3.1.1973	Arguments continue
4.1.1973	Arguments continue Adjourned to 30.1.1973 as Court time is over
31.1.1973	Union Representative unable to attend Adjourned to 18.2.1973
13.2.1973	Adjourned to 12.3.1973 at the request of Union Representative
12.3.1973	Union Representative busy elsewhere Adjourned to 25.3.1973
23.3.1973	Both parties submit that the argument is completed Case reserved for award
26.4 1973	Award given by the Court

TABLE 4

Average time taken at various stages (Months)

Year	Pleading	Evidence	Arguments	Judgement	At all stages
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Industrial Court

1968	6.23	10.35	2.50	3.55	22.63
1969	8.28	15.14	4.36	4.50	32.28
1970	4.95	11.28	1.46	.58	18.30
1971	3.81	11.30	1.27	1.00	17.38
1972	4.18	7.66	.11	6.36	18.35

Labour Court

1968	1.40	6.90	0.78	1.30	10.38
1969	1.06	5.32	1.54	.42	8.34
1970	1.23	7.75	.74	1.20	10.92
1971	1.08	4.08	.86	.71	6.73
1972	1.60	6.09	.49	.78	8.96

Average time taken at various stages 1968-1972 (Months)

Industrial Court	5.49	11.45	1.94	3.20	21.78
Labour Court	1.27	6.03	.88	.86	9.07
Both Courts	3.38	8.54	1.41	2.04	15.43

TABLE 6

Average Number of adjournments at various stages

Year	Pleading	Evidence	Arguments	Total Adjournments
<u>Industrial Court</u>				
1968	6.4	14.6	2.6	23.6
1969	6.6	16.7	8.1	31.4
1970	6.2	12.7	3.3	22.1
1971	6.7	11.0	1.6	19.3
1972	4.7	10.9	0.3	15.9
<u>Labour Court</u>				
1968	1.4	13.8	2.0	17.2
1969	1.2	8.9	2.6	12.7
1970	1.4	12.6	1.3	13.2
1971	1.3	9.4	1.8	12.5
1972	1.3	10.5	1.7	13.5
<u>Annual Average, 1968-1972</u>				
Industrial Court	6.3	13.3	3.2	22.8
Labour Court	1.5	11.1	2.9	13.8
Both Courts	3.92	12.17	3.02	19.1

TABLE 7
Frequency Distribution of Cases in accordance with Adjourments at each stages

	<u>Pleading</u>					<u>Evidence</u>					<u>Arguments</u>					<u>At all stages</u>				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
1968	9	1	-	-	10	5	1	3	1	10	9	1	-	-	10	2	4	1	3	10
1969	10	-	-	-	10	5	2	2	1	10	7	3	-	-	10	3	2	-	5	10
1970	10	-	-	-	10	6	1	3	-	10	9	-	1	-	10	1	3	4	2	10
1971	9	1	-	-	10	5	3	2	-	10	10	-	-	-	10	2	4	2	2	10
1972	9	1	-	-	10	7	2	1	-	10	10	-	-	-	10	2	7	-	1	10
<u>Total</u>	47	3	-	-	50	28	9	11	2	50	45	1	4	-	50	10	20	7	13	50
	<u>Labour Courts</u>																			
1968	10	-	-	-	10	4	4	2	-	10	9	1	-	-	10	4	2	2	2	10
1969	10	-	-	-	10	6	2	2	-	10	9	1	-	-	10	6	1	3	-	10
1970	10	-	-	-	10	4	5	-	1	10	10	-	-	-	10	2	4	3	1	10
1971	10	-	-	-	10	7	2	-	1	10	9	1	-	-	10	5	3	1	1	10
1972	10	-	-	-	10	6	2	2	-	10	7	3	-	-	10	3	5	2	-	10
<u>Total</u>	50	-	-	-	50	27	15	6	2	50	44	6	-	-	50	20	15	11	4	50

TABLE 8

Average number of adjournments asked by parties

Year	Workmen	Management	Both the parties	Court
<u>Industrial Court</u>				
1968	0.9	2.6	5.4	14.7
1969	3.6	5.8	8.5	13.5
1970	2.1	3.5	5.9	10.6
1971	2.3	2.8	4.1	10.1
1972	0.2	0.6	6.3	8.8
<u>Labour Courts</u>				
1968	1.3	4.2	6.0	5.7
1969	1.6	4.8	2.4	4.9
1970	1.8	2.3	2.8	8.3
1971	1.0	3.5	2.0	6.0
1972	1.0	2.2	3.5	6.8
<u>Annual Average, 1968-1972</u>				
Industrial Court	1.6	3.1	6.0	11.6
Labour Courts	1.3	3.4	3.3	6.3
Both Courts	1.58	3.23	4.69	8.95