

COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

TWELFTH REPORT



[Presented to Lok Sabha on.....1989]

25 JUL 1989

LOK SABHA SECRETARIAT

NEW DELHI

July, 1989/Asadha, 1911 (Saka)

Price: Rs. 23.00

3712

Corrigenda to the Twelfth Report
of the Committee on Petitions
(Eighth Lok Sabha)

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COMPOSITION OF THE COMMITTEE ON PETITIONS

(1988-89)

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Shri O. P. Chopra—*Under Secretary*

**TWELFTH REPORT OF THE COMMITTEE ON PETITIONS
(EIGHTH LOK SABHA)**

INTRODUCTION

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I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Twelfth Report of the Committee to the House on the following matters : ••

- (i) Petition regarding Uniformity in Wages, Payment of provident fund Arrears and Provision of House Sites etc. to Beedi Workers and representation regarding Problems of Eatable Tobacco (Jarda) Workers.
- (ii) Representation regarding Grievances and Demands of Construction Workers.

2. The Committee considered the above matters at their sittings held on 28 December, 1988 and 9 February, 1989.

3. The Committee considered the draft Report at their sitting held on 31 May, 1989 and adopted it.

4. In connection with the Petition regarding Uniformity in Wages, Payment of Provident Fund Arrears and Provision of House Sites etc. to Beedi Workers and representation regarding Problems of Eatable Tobacco (Jarda) Workers, the Committee undertook an on-the-spot study visit to Ahmednagar and Pune during September, 1988. During tour, the Committee held informal discussions with the petitioners, the representatives of the State Government of Maharashtra and the representatives of the Central Government.

5. The Committee would like to express their thanks to the officials of the Ministries of Labour and Urban Development for furnishing information to the Committee.

NEW DELHI;

31 May, 1989

10 Jyaishta, 1911 (Saka)

BALASAHEB VIKHE PATIL,

Chairman.

Committee on Petitions.

A. PETITION NO. 11 REGARDING UNIFORMITY IN WAGES, PAYMENT OF PROVIDENT FUND ARREARS AND PROVISION OF HOUSE SITES ETC. TO BEEDI WORKERS

1.1 **Shri Indrajit Gupta**, M.P. presented to Lok Sabha on 7 December, 1987, a petition signed by **Shri R. K. Ratnakar**, General Secretary, All India Beedi, Cigar and Tobacco Workers Federation and others regarding demands of beedi workers.

1.2 The main demands/grievances of the petitioners are as follows:—

- (1) There is no uniformity in wages in Beedi Industry. The Minimum wage ranges from Rs. 8/- to Rs. 20/- per one thousand of beedies and it differs from State to State.
- (2) The Beedi and Cigar Workers (Conditions of Employment) Act 1966, provides for (a) weekly rests (b) annual leave with wages (c) maternity benefits (d) bonus and many other rights to beedi workers. But these provisions are not being observed and the beedi workers are suffering.
- (3) The Contract System, Home Work System and Sale-Purchase System are introduced by Beedi employers to exploit the Beedi workers. The employers refuse to accept the Beedi workers as their employees.
- (4) The provisions of Provident Fund Act were made applicable to Beedi Industry since 1977. The employers had filed Writ Petitions against the application of provisions of P.F. Act to Beedi Industry. The Writ Petitions of the employers have not paid P.F. arrears to workers since 1977.
- (5) The Beedi workers are without shelters. They reside in Zopad-pattis.

1.3 The petitioners have prayed that:

- (a) A National Minimum Wage with provisions for payment of Dearness Allowance should be fixed for Beedi Industry and this should be strictly implemented.
- (b) The provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 should be strictly implemented,

- (c) All beedi workers should be issued Identity Cards with photos by the employers under a time-bound programme.
- (d) The employers of Beedi workers should be asked to deposit, the amount of P.F. arrears including the workers' contribution with P.F. Commissioner. The arrears should be distributed to the Beedi workers when they become eligible.
- (e) The workers should be provided with house-sites free of cost and they should be given adequate help to build their own houses from the Beedi Welfare Fund.

1.4. While furnishing comments on the various points raised in the petition, the Ministry of Labour have stated:—

"There is no proposal under consideration of the Government for a national minimum wage for Beedi Workers.

The implementation of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 is the responsibility of the State Governments. As there are a large number of women workers in the beedi industry, the State Governments have recently been requested to consider the possibility of appointing more Lady Inspectors for the enforcement of the Beedi and Cigar Workers (Conditions of Employment) Act. For removing practical difficulties encountered in the implementation of the Act, an amendment Bill has been introduced in the Rajya Sabha on 3-12-1987. The Bill seeks to extend the coverage of the Act to employees working in godowns and warehouses, makes provisions for calculation of overtime wages for piece-rate workers in unambiguous terms; makes penal provisions more stringent and incorporates a provision whereby Labour Inspectors shall treat the source of information on a complaint as confidential.

As regards issue of identity cards, there are 32.75 lakh beedi workers in the country out of whom 20.15 lakh have since been issued identity cards. The Welfare Commissioners have been instructed to expedite the issue of identity cards. The Labour Welfare Fund Laws (Amendment) Act, 1987 makes non-issue of the identity cards to the workers by the employers a punishable offence and fine upto Rs. 2000/- can be imposed on them. This stringent measure will have effect at the employers and the issue of identity cards will be expedited.

As regards the demand for abolition of contract system, this is not feasible because such a law will be impracticable to enforce.

Regarding recovery of Provident Fund dues from the beedi manufacturers, the matter was considered at a tripartite meeting held on 2nd September, 1987 under the Chairmanship of Labour Secretary and it was decided, *inter alia*, to enforce the recovery of the dues from the beedi manufacturers from 1977 onwards. The Employees' Provident Fund authorities have accordingly been instructed to assess the dues and to take steps to realise the same.

As regards shelter to Beedi workers, financial aid is provided under the Housing Scheme *i.e.*, 'Build Your Own House Scheme' and 'Housing Scheme for Economically Weaker Sections of the Society' for the benefit of the beedi workers. A worker who has a plot of land is entitled to a subsidy of Rs. 1000 and an interest free loan of Rs. 6000 which is recoverable in 9 years. Under the 'Housing Scheme for Economically Weaker Sections' the State Governments are given subsidy @Rs. 5000 per tenement. In addition, development charges are also provided. The State Governments have already started construction of houses for the beedi workers under this Scheme. The Cooperatives of Beedi Workers are entitled to a subsidy of 75 per cent of the cost of construction or Rs. 75,000 whichever is less, for the construction of work sheds and godowns."

1.5 The Committee undertook an on-the-spot study visit to Ahmednagar and Pune on 23 and 24 September, 1988, with a view to studying the problems of the petitioners. The Committee held discussions with the petitioners and the representatives of the State Government of Maharashtra and the Central Government. The Committee also examined the representatives of the Ministry of Labour on 27 December, 1988, in connection with the petition.

No. of workers engaged in Beedi Industry

1.6 While on tour to Ahmednagar in September, 1988, the Committee were informed that beedi industry was a rural-based industry employing about 52 lakh workers all over the country. The Central Government had, however, not taken a census of the exact number of beedi workers in the country. The Minister of Labour while replying to Unstarred Question

No. 4997 on 5 September, 1988, informed Lok Sabha that the number of beedi workers in the country, State-wise, is as under:

Name of the State	No. of Beedi Workers (in lakhs)
1. Karnataka	3.55
2. Kerala	1.11
3. Uttar Pradesh	4.50
4. Rajasthan	1.16
5. Gujarat	0.75
6. Orissa	1.60
7. West Bengal, Assam, Tripura and Meghalaya	4.50
8. Andhra Pradesh	2.00
9. Tamil Nadu	2.25
10. Madhya Pradesh	5.78
11. Maharashtra	2.05
12. Bihar	3.50
TOTAL	32.75

1.7 The petitioner had also pointed out to the Committee during informal discussion that no study had been made so far about the average size of the families engaged in the manufacture of beedis, the minimum requirements of a family, paying capacity of the beedi industry and the regional conditions—urban and rural. They wanted that such a study be undertaken by the Government so that ways and means could be devised to end their exploitation by beedi magnets. The petitioners also demanded that there should be workers' participation in the management so that they could know whether the establishment was running on profit or loss and also they could be partners in decision making matters affecting them.

1.8 The Minister of Labour while introducing the Beedi and Cigar Workers (Conditions of Employment) Amendment Bill, 1987, in Rajya Sabha on 14.3.1989, stated as under:

“The Beedi and Cigar industry is essentially an agro-based industry. It provides employment to about 32.75 lakh workers mostly belonging to the poorer sections of the society. The Industry is by and large unorganised as only a small percentage of production is undertaken in regular establishments. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966,

was enacted to provide for the welfare of the workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith. The Act is enforced by the State Governments. In a meeting of the standing tripartite committee, it was felt that the Act needs to be amended to make it more effective. The suggestions have been examined in consultation with the State Governments and others. The Bill introduced in Rajya Sabha on 3rd December, 1987, seeks not only to provide more favourable conditions of work for the workers but also facilitates enforcement of the existing provisions."

Minimum Wage for Beedi Workers

1.9 During informal discussion with the petitioners at Ahmednagar in September, 1988, the Committee were informed that the daily wages earned by the beedi workers in some of the States were as under:

- (i) Kerala—Rs. 19.20
- (ii) Karnataka—Rs. 14.40
- (iii) Tamil Nadu—Rs. 14.25
- (iv) West Bengal—Rs. 26.90
- (v) Maharashtra—Rs. 11.00

1.10 It was pointed out that although guidelines had been issued by the Central Government in this regard, the same were not being implemented by the State Governments. They demanded that Government should consider paying uniform minimum wages to beedi workers all over the country.

1.11 During evidence, the Committee enquired whether the State Government could be instructed or directed to fix uniform minimum wages for beedi workers. The Secretary, Ministry of Labour stated:

"In May, 1987 when the Labour Ministers met in New Delhi, a consensus was arrived at that in respect of minimum wages for agricultural labour Schedule II of the Minimum Wages Act be applied. This was Rs. 11 per day per worker. This notional national minimum wage was the desired level. Recently at the Labour Ministers Conference in November, 1987 a consensus was arrived at that in order to protect this level of minimum wages there would be a concept of variable dearness allowance to cover the rising cost of living."

1.12 The Committee pointed out that on the lines of the decision taken in relation to agricultural labour minimum wages as applicable to the agricultural labourers could also be made applicable to beedi workers. To this the representative of the Ministry replied:—

“What we do is to discuss it in the Labour Ministers Conference and try to arrive at consensus but since it falls within the powers of the State Governments the implementation of it is dependent on the State Governments”.

1.13 When the Committee suggested that Government should frame a uniform wage policy for beedi workers, the Secretary, Ministry of Labour stated that there was no statute by which the Government could fix minimum wages for beedi industry. Even Sugar Wage Board was not statutory and its recommendations were only advisory and recommendatory in nature. He stated that the matter was discussed in the Labour Ministers Conference but the state Labour Ministers had expressed their difficulties in the matter and they had opined that it would not be possible to enforce a uniform wage for beedi workers all over the country.

1.14 In this context the Committee pointed out that in cases where payment of minimum wages was enforced by the State Governments, there was a tendency on the part of the manufacturers to close down their factories in that State or area and shift to some other State or area where the wages were lower. A representative of the Ministry of Labour stated:—

“The Labour Ministers have discussed the migration problem several times. If you have different standards in different States, this problem comes. This was discussed in 1979 also, but no conclusion could be arrived at with regard to minimum wages. There was a Conference of the Labour Ministers in November, 1988. Even within the States, there are pockets where the labour is surplus and in other pockets it is not surplus. Then, there is migration from district to district also. The Ministers came to the conclusion that it was not possible to enforce it uniformly throughout India. The guidelines have been laid down for this only, but uniform enforcement, they felt, would not be a practical step.

For beedi workers, the problem with regard to different wages and different standards of implementation is there. When it was considered in the Regional Labour Ministers' Conference in 1987, they said that the wages have to take into account the

local conditions for agricultural and other workers. So, this is a feature of the economic geography of the country and we can only try to persuade them."

Contract Labour System

1.15 In the petition presented to Lok Sabha it was stated that contract system, home work system and sub-purchase system, had been introduced by beedi employers to exploit the beedi workers and that they refused to accept the beedi workers as their employees:

1.16 The petitioners informed the Committee that the contractors were not paying minimum wages to the workers and the workers were also being deprived of their rights like payment of gratuity, bonus, provident fund maternity leave, weekly holidays, national holidays, etc.

1.17 The Ministry of Labour while furnishing facts on the points raised in the petition stated that the demand for abolition of contract system was not feasible because such a law would be impracticable to enforce.

1.18 A representative of the Ministry of Labour informed the Committee during evidence that when an employer engaged labour and paid him wages then such a contract was covered under Section 2 of the Employers Act and the Beedi and Cigar Workers (Conditions of Employment) Act which was applicable to any such person who supplied tobacco or tendu leaves in home establishments.

1.19 On being asked as to how to find out the principal employer in case of contract labour, the witness explained:

"The Labour Inspector will try to establish as to who the employer is under the Bidi and Cigar Act. The definition of employer covers both the categories. One is the principal employer and the other employer is one who is giving bidi leaves and tobacco to the workers at home. He is also covered as 'employer' in his own right. There the Act is enforced against both the employers."

1.20 Asked whether the contractor was required to register the contract under the rules, the representative of the Labour Ministry replied:

"He has to have some licence. Without that he cannot have this business. The State Government also enforces the conditions of this particular Act against the employer."

The Secretary, Ministry of Labour added:

"About sub-contractors you have mentioned that they are not covered under the Act. Recently a delegation of representatives of sub-contractors had called on the Labour Minister. We have made it quite clear to them that as per the definition under the Bidi and Cigar Workers Act and the Provident Fund Act, we are not concerned with things like contract or sub-contract. If there is an employer-employee relationship established, then under the Provident Fund Act and also under the Bidi and Cigar Workers Act, the employer will be liable to be governed by the provisions of this Act."

Role of Cooperatives

1.21 The Committee desired to know the difficulty in forming co-operative societies of beedi workers for selling their beedis. The State Government representative during informal discussion informed the Committee that cooperative societies were first formed in Vidarbha region on a trial basis but the experiment failed as marketing was the main problem faced by these societies. These societies were also not in a position to give due publicity to their produce and compete with the reputed beedi manufacturers, who were spending lot of money on advertisements even on T.V. and Radio.

1.22 Asked whether the Government of Maharashtra could not give some trade mark for the beedies manufactured by these cooperative societies and also fix the price at which the beedis were to be sold, the representative of the State Government of Maharashtra informed the Committee that the State Government had already appointed a Committee to go into the matter and its report was awaited.

1.23 The Committee pointed out that some Central organisation could be created for marketing products of the cooperative societies of beedi workers. The Secretary, Ministry of Labour stated:

'I would submit, is something which we have not contemplated.'

Beedi Workers Welfare Fund

1.24 The Committee were informed that a Beedi Workers Welfare Fund had been created for financing welfare measures for the beedi workers. For this purpose, a cess at the rate of 30 paise for every thousand beedis was levied on production beyond 300 lakh beedies and money thus

collected was being utilised for providing medical facilities, scholarships, subsidy for housing, etc. The responsibility for implementing the welfare programmes rested with the State Governments.

1.25 During evidence, the representative of the Ministry stated in this regard as under:

"Regarding implementation of the welfare programmes there are nine welfare commissioners located in different regions covering the various States. They are also responsible for supervising the welfare work under four other funds such as iron ore, manganese, chrome ore, mica, limestone and debonite etc. The staff is not very large, and they supervise the collection of cess and ensure that welfare facilities are made available. They are not inspecting the beedi establishments for the enforcement of the provisions of the Beedi and Cigars Workers (Conditions of Employment) Act. The responsibility for implementing the provisions of this Act rests with the State Governments."

He further explained:

"For the purpose of preparation of the field schemes there are State Advisory Committees at State levels. For each fund we have one and the Labour Ministers of the respective State Governments are Chairmen of these Committees, and the workers are involved in it. As far as the Government of India is concerned, we have a Central Advisory Committee which is a tri-partite Committee which meets under the Chairmanship of the Labour Minister to review the functioning of the Welfare Fund."

1.26 The Committee pointed out that the cess collected from the beedi manufacturers should be kept separately and should be utilised for the welfare of beedi workers only. The Secretary, Ministry of Labour, stated:

"It is collected as excise duty. The cess is earmarked for the welfare activity. We have the authority to spend it for this purpose in consultation with the Ministry of Finance. It is shown as a revenue income on one side and expenditure for welfare activity on the other side."

1.27 In reply to a further question, the Secretary, Ministry of Labour informed the Committee that in 1988-89, they were expecting total collection to the tune of Rs. 11 crores and for expenditure they had kept aside

Rs. 8 crores. During the year 1989-90 they would be spending Rs. 12-13 crores.

1.28 Asked about the other methods by which the resources for welfare activities could be mobilised, he stated:

"There is no other source except the cess."

Further asked if there could be any other source, he replied:

"It is difficult to say offhand. It will have to be done by Government mechanism. One thing is that the exemption limit should be reduced in respect of this cess."

Medical facilities for Beedi Workers

1.29 During informal discussions with the Committee the petitioners pointed out that most of the beedi workers were suffering from T.B. or cancer. They wanted that certain number of beds should be reserved for them in Government hospitals, as they were not covered under the Employees State Insurance Scheme. They also demanded that like other industrial workers, the beedi workers should be covered under the Employees Insurance Scheme and mobile hospitals should be started to provide better medical facilities to them.

1.30 Questioned on this subject, the representative of the Ministry of Labour stated in evidence:

"As far as ESIC is concerned, this can be extended only to such workers who are working on regular basis. The workers who are home workers or work on part-time basis or who are working for one-time only or so are not eligible for this facility. Under the ESIC only some workers are covered and some other workers are covered for the medical facilities etc. under the welfare schemes. It is just not possible for the ESIC to cover them for any cash benefits."

Education of Beedi Workers and their children.

1.31 It was brought to the notice of the Committee that adult education among beedi workers was not possible as the workers were required to work for 12—14 hours a day and they worked even at their homes also. With respect to giving of education allowance to children of beedi workers, it was pointed out that the children getting 45 per cent marks were eligible to get the scholarships. The petitioners demanded that all those children who had secured pass marks should be awarded scholarships automatically.

It was also stated that the amount of scholarship given was very meagre and needed to be increased.

1.32 To a question why all children of beedi workers getting pass marks were not given scholarships, the representative of the Government of Maharashtra during informal discussion informed the Committee that about 33 per cent of the total number of scholarships were being given to the SC/ST and physically handicapped children. In these cases all students obtaining pass marks were eligible to get scholarships but in the case of children belonging to the general category, an aggregate of 45 per cent marks were required for getting scholarships. It was pointed out that in 1987-88, out of 2.5 lakh workers in beedi industry in Maharashtra, children of 5,445 workers were awarded scholarships. It was felt that instead of scholarships it should be free-ships.

1.33 During evidence before the Committee, the representative of the Ministry in this context stated:

“We have taken up this point recently. But the financial position has not improved. The money has to come by way of cess. The point is that we have to know how much money is available for this. We have also made marginal changes in the scholarship scheme last year. We have improved the scheme and we have approved this. But this will depend on how much money will come to us.”

Provident Fund of Beedi Workers

1.34 With regard to the questions of implementing the provident fund scheme for the benefit of beedi workers, the representative of the Ministry of Labour informed the Committee during evidence as follows:

“The decision was made in 1977 that it should be extended to Beedi industry. Some manufacturers as well as some Unions in Andhra Pradesh went to the Court and got a stay saying that this Act should not be made applicable to them. So, the case was contested in the Court and finally, the Supreme Court gave its judgement at the end of 1985 saying that this Act will be applicable to this industry. So, the implementation of the Act was started actually in early 1986. An assessment was made that during this period, probably an amount of Rs. 80 crores towards PF estimation was due from the beedi industry. We have already recovered Rs. 8 crores. We have already covered 9.76 lakh workers.

The workers who are getting their wages in a piecemeal way are not in favour of deducting of PF out of their wages. After the Supreme Court's judgement, a large amount of collection was undertaken. The task of preparing individual slips will be undertaken subsequently."

1.35 It was stated that the principal employer was responsible for deducting provident fund. The Committee enquired whether any remedy was available if the employer were to take the plea that there was no record of such workers. The Secretary, Ministry of Labour replied:

"This type of cases went upto the Supreme Court. There they took the plea that they did not have record. But we have proved that they have the record and we have been able to identify 10 lakh workers in one year. Now we have in the EPF a larger organisation. They visit the areas and do the summary assessment under the Provident Fund Act."

1.36 The petitioners complained to the Committee during informal discussions, that the application forms for withdrawing provident fund were not easily available and they had to go to far off places to collect them. It was suggested that the forms should be made available to all the recognised organisations/associations of the beedi workers of the area. It was also suggested that provident fund offices should be opened at all district and divisional headquarters.

Issue of Identity Cards to Workers

1.37 Under rule 41 of the Beedi and Cigar Workers Welfare Fund Rules, identity cards are issued to the beedi workers by the employers. The Committee were informed during evidence that since manufacturers were not doing it, Government had liberalised the issue of identity cards. The identity cards did not contain the name of the factory or the employer. It contained information relating to the identity of an individual only. The identity cards were being issued for the purpose of giving benefits from the welfare fund, namely, medical care, scholarships and housing subsidy. If more than one person in a family were working in an industry then only one identity card was issued and it contained the names of all the family members working in the industry.

1.38 Explaining the position in this regard, the representative of the Ministry further informed the Committee during evidence as under:—

"Identity card are also issued as per the provisions of the Welfare Act. This card contains information of all the dependents of

the beedi worker and the whole family is entitled for these benefits. For reasons well-known, employers are reluctant to issue identity cards. But the Labour Ministry has under the rules permitted the State Governments and the local authorities to maintain registers for beedi workers. The number of identity cards is about 20.17 lakhs but the number of beneficiaries is much larger because each card takes care of the whole family."

1.39 When asked whether the identity cards entitled the workers to get other benefits like provident fund etc., the representative of the Ministry replied that unless the establishment was identified it was not possible.

1.40 While furnishing facts to the Committee on the points raised in the petition, the Ministry had stated:

"The Labour Welfare Fund (Amendment) Act, 1987, makes non-issue of the identity cards to the workers by the employers a punishable offence and fine upto Rs. 2000 can be imposed on them. This stringent measure will have effect on the employers and the issue of identity cards will be expedited."

1.41 The Beedi and Cigar Workers (Conditions of Employment) Amendment Bill, 1987, was passed by Rajya Sabha on 14th March, 1989, and is pending in Lok Sabha.

Housing Facilities

1.42 The petitioners informed the Committee during informal discussion that most of the bidi workers were not having their own houses to live in and were living in zopad-pattis. The petitioners stated that they were not in a position to purchase houses. It was suggested that land found surplus under the Urban Ceiling Act, should be given to the workers at a nominal price or on lease for ninety-nine years. It was also suggested that amount of housing loan should be at par with the loan given to agricultural and weaker sections of the society. It also needed to be enhanced to match the rising cost of construction as assessed by the Public Works Department from time to time. The petitioners stated that the bidi workers of Ahmednagar Housing Project were facing difficulty in getting finance from the financial institutions. They stressed that giving applications for loan, sanctioning of loan and implementation of the projects etc. was a time consuming process and the result had been that due to rise in price the workers were not able to complete their houses within the sanctioned loan. The petitioners requested that they should be allowed the facility of second mortgage so that with more finance available they could complete construction of houses, which otherwise was not possible.

1.43 The officials of the State Government of Maharashtra informed the Committee during informal discussions held on 24 September, 1988 at Pune that there was a scheme for bidi/mine workers to build their own houses. The scheme envisaged grant of subsidy/loan from the 'Bidi/Mine Workers Welfare Fund' to such of the bidi/mine workers as were residing in neighbouring villages for construction/repair/expansion/modification of houses owned by them. The most attractive feature of the scheme was that the workers would be owners of the houses even after they ceased to be bidi/mine workers.

1.44 In regard to provision of house sites to beedi workers, the representative of the Ministry of Labour stated during evidence :—

"As regards the house-sites, land will have to be made available by the State Government. Now, double mortgage system for obtaining the land is allowed and it has been done in Maharashtra, particularly in Sholapur we have given subsidy. They had also loan from HUDCO. There is no difficulty in this and the State Government are arranging this loan. The scheme is implemented in Jalna and Sholapur. It is the biggest scheme in the country. The entire money they got as subsidy and some of them made their own arrangement."

B. Representation regarding problems of Eatable Tobacco (Jarda) Workers

1.45 The workers of Sangmaner Taluka Tambakhoo Tapkir Kamgar Union, Maharashtra, submitted a representation on 13-1-1988 regarding their grievances and problems.

1.46 The representation was referred to the Ministry of Labour for furnishing their factual comments on the points raised in the representation. The points raised by the petitioners and the replies furnished by the Ministry thereon on 17-6-1988 are given below seriatim :—

Points raised in the representation	Replies furnished by the Ministry of Labour
<i>Contract Labour</i>	
Many industrialists in the State of Maharashtra are using or implementing legally or illegally the contract Labour system in order to deprive the workers of benefit of gratuity, provident fund, maternity benefit etc. Inspite of request to the concerned committee of Maharashtra Govt. for abolition of contract labour system in the Tobacco Industries, no decision has been taken in the matter.	The "appropriate Government" under the Contract Labour (Regulation and Abolition) Act, 1970, in respect of Tobacco Industry is the State Government. The jurisdictions of the Central and State Governments have been laid down by the definition of the 'appropriate Government' under Section 2(a) of the Contract Labour (Regulation and Abolition) Act, 1970.

Points raised in the representation

Replies furnished by the Ministry
Labour

lition) Act, 1970. The Contract Labour (Regulation and Abolition) Act, 1970 seeks to provide for the abolition of of contract labour system wherever possible and to regulate the conditions of contract labour in establishments/ employments where abolition of contract labour system is not considered feasible for the time being.

According to section 10 of the Contract Labour Act, the appropriate Government may, after consultation with the Central Board or as the case may be, the State Advisory Board, prohibit by notification in the Official Gazette, employment of contract labour, in any process, operation or other work in any establishment. Section 3 of the Act is regarding consultation of the Central Advisory Contract Labour Board. Section 5 of the Act provides that the Central Board or the State Board as the case may be, may constitute committees to look into any particular matter regarding abolition of employment of contract labour and give a report to the Board. Thereafter, the report has to be considered by the Board and it can make recommendations to the 'appropriate Government' which can then take a view about the prohibition or otherwise of employment of Contract Labour in any specific job, process or operation in an establishment.

The appropriate Government in respect of the 'Tobacco Industry' under the Contract Labour (Regulation and Abolition) Act, 1970 being the State Government, abolition of contract labour system in perennial jobs in a particular industrial unit will have to be considered by the State Governments concerned in accordance with the procedures laid down in this behalf in the Contract Labour Act and the relevant rules framed thereunder.

It is the duty of an Inspector to ensure the compliance of the provisions of the Contract Labour Act/Rules and launch prosecutions against defaulters. As regards the steps taken to stop employment of contract labour in the prohibited categories of work, it is mentioned that regular inspections are being done by the field officers and prosecutions are launched.

Points raised in the representation

Replies furnished by the Ministry of Labour

against the managements whenever such violations are detected and adequate evidence is available to prove the charges.

In view of the above, Sangamner Taluka, Tambakhoo, Tapkir Kamgar Union, Distt. Ahmed Nagar, Maharashtra may be requested to approach the Labour Department, Government of Maharashtra for appropriate action in the matter.

Provident Fund

In some industries the provident fund contribution is deducted from the wages of workers but no receipt for it is given. After retirement or resignation, the workers are not able to get the benefits of the scheme. The Bombay office of P.F. is not at all functioning and therefore the workers are being harassed continuously.

There is at present no legal requirement under the Employees Provident Fund Act or the Scheme requiring the employer to give receipt to the workers, for the Provident Fund deduction made from their wages. However, the employer is required to deposit the Provident Fund contribution into the account of Employees Provident Fund Organisation and the Employees Provident Fund Organisation has to issue annual statement of accounts for the deduction made. The existing instructions specify a time limit of 20 days for settlement of claims, provided that the claim received is complete in all respects.

The Kamgar Union has not furnished the particulars of establishment or the employees, who have not received the annual statement of accounts or whose claims have not been settled. It is, therefore, not possible to offer any comments on such general observations. In case any specific instance is brought to notice, the Employees Provident Fund Organisation, an autonomous body can be requested to examine the same. However, the complaint of the Union has been brought to the notice of Employees Provident Fund authorities.

Welfare Scheme

The Bidi workers in all over India are getting benefit of the welfare scheme of the Central Government. The bidi Industries are concerned with Tobacco mainly. The same is the case of Tobacco (Jarda) workers. But the same scheme is not applicable to the Tobacco (Jarda) workers. The attention of Labour Minister of Central Government was drawn to this problem so many times but this demand was never considered by the Labour Ministry. The application of welfare scheme to the Tobacco (Jarda) workers will help five thousand (5000) families from the weakest section in the state of Maharashtra.

This Ministry has received a proposal from the Government of Maharashtra and from the Sangamner Taluka Tambakhoo Tapkir Kamgar Union for the extension of welfare facilities to the Tobacco workers of Maharashtra. This proposal is under examination of the Labour Ministry. Since the Central Government cannot provide welfare facilities to Tobacco Workers of Maharashtra alone, information on the number of such workers in various parts of the country is being ascertained. Further, Department of Revenue, Customs and Central Excise are also being consulted in the matter.

1.47 In so far as the problems of 'Jarda Workers' were concerned, the Committee were informed during the informal discussion held with the petitioners at Ahmednagar on 23 September, 1988 that they were far behind the bidi workers. They were also facing all those problems which were generally being faced by the bidi workers. The Jarda Workers demanded that the contract system should be abolished immediately. They also suggested that the provident fund offices which were at present located only in the State capitals should be opened at all district and divisional headquarters..

1.48 The Committee were also informed that cigar workers were also facing more or less the same problems which were being faced by the bidi and jarda workers. The main grievance of the cigar workers was that though they were covered under the Bidi and Cigar Workers (Conditions of Employment) Act, 1966 they were not being given the benefits which had been provided in the Act.

1.49 The representative of the Ministry of Labour informed the Committee during evidence that neither the provisions of Bidi and Cigar Workers (Conditions of Employment) Act, 1966 nor those of the Labour Welfare Fund Act were applicable to the eatable (Jarda) workers.

1.50 Asked how in that case their problems could be solved, the representative of the Ministry stated:—

“.....Unfortunately at present neither of the Acts considers them. We have held some discussions in this regard with the Ministry of Finance. They say that if we are to bring about 7½ lakh workers under these Acts, then a cess will have to be levied for indigenous production. For that the initial reaction of the Ministry of Finance has not been favourable. They say that under the long term fiscal policy, specific item-wise or product-wise cess is not expected to be a feature of the taxation or the excise policy. So, unless there is an excise levied you cannot have this fund. That is, the Bidi Workers Welfare Fund is financed through excise duty and cess. Now the basic problem is how to finance the activities of welfare of Jarda workers.”

1.51 It was pointed out by the Committee during evidence that the benefits of minimum wages were not applicable to jarda workers. The Secretary, Ministry of Labour stated :—

“The Minimum Wages Act is meant for the labour force where the State Government can implement it simply by issuing a notification. But the Jarda workers are so scattered that

it is difficult to implement this Act.....
 We can certainly consider the extension of Beedi Workers Welfare Fund Act to persons who are engaged in this particular activity. But before that the State Governments will have to notify. We must have a source of revenue which will cover Jarda workers also. It is precisely here that our initial talks with the Ministry of Finance have not yielded any positive result. Unless we are able to cover the expenditure that will be incurred, it is difficult even to think of it."

He further stated :—

"In May 1987 when the Labour Ministers met in New Delhi a consensus was arrived at that in respect of minimum wages for agricultural labour Schedule-2 of the Minimum Wages Act be applied."

1.52 The representative of the Ministry in this context stated:—

"In general terms this point was discussed. Nine States have declared minimum wages for jarda workers. What we do is we discuss it in the Labour Ministers conference and try to arrive at consensus but since it falls within the powers of the State Governments the implementation of it is dependent on the State Governments."

1.53 The Committee pointed out that a consensus at the Labour Ministers' conference would not be adequate unless it was implemented. The Secretary of the Ministry stated—

"We can only reiterate and emphasise. The problems of Jarda workers have not come up in particular before the Labour Ministers' Conference."

1.54 The witness agreed that the matter would be included in the agenda for the next Labour Ministers' Conference.

Observations/Recommendations of the Committee

1.55 The petition from the General-Secretary, All India Beedi and Cigar and Tobacco Workers Federation and others regarding demands of beedi workers was presented to Lok Sabha by Shri Indrajit Gupta, MP, on 7 December, 1987. Another representation regarding problems of Eatable (Jarda) and tobacco workers was received by the Committee from Sangamber Taluka Tambakhoo Tapkir Kamgar Union on 13 January, 1988.

1.56 The Committee note that the beedi and cigar industry is essentially an agro-based industry which provides employment to about 32.75 lakh workers, mostly belonging to the poorer sections of the society. The industry is by and large unorganised as only a small percentage of production is undertaken in regular establishments. Beedi workers have informed the Committee that 90 per cent of the workers being uneducated, were unorganised and women constituted about 75—80 per cent of the total number of beedi workers. Children are also engaged in this industry and largely help their parents. The Committee further note that in the country about 500 crores of beedis are manufactured every day. The plight of beedi workers, who work under unhygienic conditions for 10—14 hours a day is very pitiable and quite a number of them suffer from deadly diseases like TB and Cancer. The workers are subject to large scale exploitation by the manufacturers who are able to evade successfully the implementation of various laws and rules.

1.57 The Committee find that in the absence of any consensus having been taken either by the Central Government or State Governments, the exact number of beedi workers in the country is not known. According to the Central Government there are 32.75 lakh beedi workers, but the petitioners and Government officials, informed the Committee during their visit to Ahmednagar and Pune that the number might be anywhere between 52 and 70 lakhs. The Committee fail to understand why Government have not so far considered it necessary to carry out a comprehensive survey in this regard and how in its absence Government are able to formulate and implement welfare schemes for the beedi workers so as to benefit them all. The Committee would like the Central Government to undertake in a systematic manner the work of registration of all beedi workers in cooperation with the State Governments concerned and this work should be completed within a fixed time frame.

1.58 The Committee also recommend that the proposed survey should inter-alia cover a study about the average size of a family engaged in the manufacture of beedis, its educational and financial status and other essential data which may be helpful in formulating welfare schemes for them.

1.59 A conspicuous feature of the beedi industry is that there is no uniformity in the level of wages earned by beedi workers in different States and even in different parts of the same State. Even the minimum wage fixed under the Minimum Wages Act, differs from State to State. The Committee were dismayed to learn from the Secretary Ministry of Labour that there was no statute under which uniform wages could be fixed for beedi workers throughout the country and further that it may not be possible to enforce uniform wages for the industry as a whole. The Committee feel that if there is a will to bring about this reform, there should be no difficulty in effectively enforcing the policy with the cooperation of the State Governments. This is important because in the absence of a uniform wage policy, the unscrupulous manufacturers are able to exploit the workers by shifting their factories to areas where the wages are comparatively lower and thus avoid payment of higher wages. Needless to say, such migration of industry is not in the interest of the beedi workers, who are left with no source of earning their livelihood. While it may not be practicable to lay down uniform wages throughout the country, it should be possible to minimise the glaring disparities that exist at present so that migration of the industry from one place to another becomes an unprofitable venture and the workers are not put to hardship. The Committee therefore recommend that the matter should be studied in depth and placed before the next Labour Ministers' Conference for consideration/implementation. The Committee also recommend that the wages fixed for beedi workers should always be higher than the minimum wages fixed for the area. The wages so fixed should be linked with the price index so that with the increase in the price index, the wages got increased automatically.

1.60 The petitioners have complained that the beedi workers are required to work under horrible conditions and raw materials like tobacco, leaves, thread, etc. being provided by the contractor/sub-contractor are quite often insufficient with the result that the workers are required to purchase extra material from the market at their own cost. The existence of such a practice was admitted by officials. The Committee are really pained to note that the beedi workers, who are not being paid even the minimum wages are being subjected to such type of exploitation, even while the beedi manufacturers are earning huge profits. The Committee, recommend that immediate steps be taken to review and refix the quantum of raw materials and inputs which are supplied to the beedi workers by the contractors for the manufacture of beedis. Any complaints in this

regard should be taken serious note of and the contractor/sub-contractor concerned awarded deterrent punishments by amending the law, if necessary.

1.61 The Committee observe that the beedi workers are not getting the benefits arising from the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 as the enforcement of various provisions of the Act, is not fully ensured by the State Governments with whom the implementation of the Act rests. The Committee find that with a view to removing administrative and practical difficulties experienced by the implementing agencies and for effective implementation of the provisions of the Act, the Beedi and Cigar Workers (Conditions of Employment) Amendment Bill, 1987 was introduced in Rajya Sabha as far back as in December, 1987. The Bill has yet to be considered and passed by Lok Sabha. The Committee would like Government to expedite the passage of the Amendment Bill and while doing so care may be taken to incorporate all necessary changes so as to make the amended Act a comprehensive piece of legislation for ensuring the welfare of all the beedi workers.

1.62 The beedi workers have demanded that the contract system should be abolished as the contractors are not paying them the minimum wages and they are also deprived of their rights like payment of gratuity, bonus, provident fund, weekly holidays, etc. Government's view is that abolition of contract system is not feasible because such a law will be impracticable to enforce. The Committee consider that in the given situation some other alternatives need to be devised to stop the exploitation of the workers. The Committee recommend that urgent steps need to be taken to organise the beedi industry on the lines of a cottage industry. Workers' cooperatives may be formed as is the case in handloom industry. By organising workers cooperatives, the inputs for the manufacture of beedis could be made available to the individual workers at subsidised rates, as the cooperatives would be able to make bulk purchases. The most important area which needs to be looked after is the marketing the bidis. In this field there is so much of competition that all the big manufacturers are spending huge amounts on advertisements through different media. Therefore, unless the beedi workers are organised into cooperatives and their sales promotion is entrusted to a unified agency, these workers have no chance of standing on their own. The Committee feel that there should be a centralised agency which could market the bidis prepared by individual workers or their cooperatives under one brand name. For this purpose sustained publicity will be needed. The Committee desire that the Central Government should explore the possibility of having such a system in conjunction with the State Governments concerned.

1.63 The Committee note that a Welfare Fund has been created by means of a cess levied on beedi production at the rate of 30 paise for every thousand beedis on all production beyond 20 lakh beedis. The money so collected is utilised for providing medical facilities, scholarships, subsidy for housing etc. to workers. The cess collected goes in to the Consolidated Fund of India. In the year 1988-89, the receipts were Rs. 11 crores while Rs. 8 crores only were spent on the welfare of the beedi workers. The Committee recommend that the total cess collected from the beedi industry should be kept separately like petroleum cess and be utilised only for the welfare of beedi workers. The Committee further recommend that the exemption limit be reduced from 30 to 10 lakhs beedis and beyond this limit cess be levied at the rate of 30 paise for every thousand beedis so that more funds are made available for the welfare of beedi workers and their dependents. Taking into consideration the plight of the beedi workers and the need for providing larger funds for the welfare of the workers, the Committee consider it essential that the recommendation is examined and implemented without delay.

1.64 The beedi workers have demanded that like other industrial workers, they should be covered under Employees State Insurance Scheme. It has been stated that this facility can be extended to such workers only who are working on regular basis. Workers working in their homes or working on part time basis cannot be covered under the above scheme. They can however, be provided medical facilities, etc. under the welfare schemes. The Committee recommend that an insurance scheme on the lines of the Group Insurance Scheme for Rural Landless Workers may be introduced for the benefit of Bidi Workers. They further recommend that mobile dispensaries should be started to provide better medical facilities to them.

1.65 The Committee note that a large number of beedi workers suffer from TB and cancer. They recommend that certain number of beds be reserved for beedi workers in Government hospitals. There should also be arrangements for preventive medical care and cancer diagnostic centres may be established in areas where beedi workers are concentrated.

1.66 During informal discussions with the petitioners at Ahmednagar, the beedi workers complained that maternity leave was not being given to the lady workers and that the sum of Rs. 250 given as maternity benefit was too meagre. The Committee would like the Government to look into these problems and suitable action be taken in the matter. They recommend that there should be provision for grant of maternity leave and the sum of Rs. 250 being given to the workers at present as maternity benefit should be raised to Rs. 1,000 for the first two deliveries.

1.67 During evidence the Committee were informed that only about 30 per cent of the total applicants from among the wards of beedi workers who applied for scholarships were being awarded scholarships. About the remaining 70 per cent it was stated that as and when more funds were available, the matter could be considered. The Committee consider that the demand of the beedi workers for increasing the number of scholarships, taking into account their poverty and illiteracy, is genuine and sincere efforts need to be made in this regard so that much larger number of scholarships are made available to their children. The quantum of scholarship should also be increased.

1.68 The Committee note that most of the beedi workers are not having their own houses and are forced to live in zopad-pattis. The Committee are of the opinion that the poor beedi workers with their meagre resources are not in a position to purchase houses. Therefore, land found surplus under the Urban Ceiling Act should be given to the workers at a nominal price or at a lease for 99 years. The Committee further recommend that housing loans given to the beedi workers should be at par with the loans given to the weaker sections of the society, under the 'Build Your Own House' and 'Housing Scheme for Economically Weaker Sections'. The limit of loan also needs to be increased to match the rising cost of construction as assessed by the Public Works Department of the State concerned from time to time. The Committee have been informed that in Maharashtra double mortgage system for obtaining loan has been allowed. The Committee recommend that such a facility should be extended to all the States so as to encourage workers to have their own houses.

1.69 The Committee note that under Rule 41 of the Beedi and Cigar Workers Welfare Fund Rules identity cards are issued to the beedi workers which enable them to get benefits of the Welfare Fund, namely, medical facilities scholarships to children, housing subsidy etc. The card contains information of all the dependents of a beedi worker and the whole family is entitled to these benefits. During evidence the Committee were informed that since the employers are reluctant to issue identity cards to beedi workers, the Ministry of Labour have permitted the State Governments and the local authorities to maintain registers for beedi workers. About 20.17 lakhs workers have so far been issued identity cards. The Committee strongly feel that it is the duty both of the Central and State Governments to ensure that identity cards are issued to all beedi workers as expeditiously as possible. A time bound programme should therefore be drawn up and implemented. The work relating to issue of identity cards should be monitored by the Labour Secretaries in each State.

1.70 The Committee find that the decision to extend the Provident Fund Act to Beedi industry was taken in 1977 but the matter was taken to the Supreme Court by some manufacturers and Unions of Workers in Andhra Pradesh. In 1985, the Supreme Court held that the Act shall be applicable to this industry also. The long time taken in deciding the case led to large scale arrears in collection of Provident Fund dues both on the part of manufacturers and beedi workers. According to an assessment made by Government Rs. 80 crores were required to be collected from the industry and accounted for by the Provident Fund organisation. About Rs. 8 crores have already been collected and about 9.76 lakhs workers have been covered.

1.71. The Committee recommend that necessary steps be taken to streamline the collection of provident fund from the workers and employers; the workers be given the receipt for the contribution made by them and the employers also made to deposit the entire provident fund collection including their share with the Government so as to avoid chances of misuse. The recovery of provident fund arrears from the employers should be expedited and the defaulters in this regard dealt with strictly under the law. Government should ensure that as and when workers become eligible for the provident fund, it is paid to them at the earliest and in any case within two months. Government should also ensure that sufficient number of application forms are made available not only in Provident Fund Commissioner's office but also in the offices of recognised trade unions so that the workers are not unnecessarily inconvenienced in obtaining loans/advances and their applications are cleared within a period of two months at the most.

1.72 The Committee note that neither the provisions of Beedi and Cigar Workers (Conditions of Employment) Act, 1966 nor the Labour Welfare Fund Act are applicable to the eatable (Jarda) workers. The Jarda Workers are facing all those problems which are faced by the beedi workers. The Committee have been informed that nine states have laid down minimum wages for Jarda Workers. The Secretary, Ministry of Labour informed the Committee that implementation of the schemes for the Jarda workers was dependent on the State Governments and the problems of Jarda Workers have not come up before the Labour Ministers Conference in particular. He assured the Committee that the problems of Jarda workers will be included in the agenda of the next Labour Ministers Conference.

1.73 The Committee recommend the levying of cess on eatable tobacco (Jarda) on the lines of the cess levied on the manufactured beedis be considered for the purpose of extending to the all those benefits which have

already been provided to beedi workers. The Committee recommend that all the modalities in this regard should be completed as early as possible. The Committee would like to be apprised of the precise steps taken in this regard within six months.

II

REPRESENTATION REGARDING GRIEVANCES AND DEMANDS OF CONSTRUCTION WORKERS

2.1 Chairman, National Campaign Committee for Central Legislation on Construction Labour, New Delhi, and other construction workers submitted a representation on 5 December, 1986 regarding their grievances and demands.

2.2 In their representation, the petitioners, *inter alia* stated as follows:

“That construction activity is the second largest economic activity in our country. It is estimated by authentic studies that about 2 crores of persons are regularly engaged in construction activity. But there is no comprehensive law to govern this industrial activity; no legal protection for security and regulation of employment of these workers.

* * *

The existing welfare legislation such as Maternity Benefit Act, Employees State Insurance Act, the Provident Fund Act, intended to apply to fixed employer-employee situations apart from being inapplicable, are unworkable even if extended to the construction workers as experience from different parts of the country demonstrates. The other legislations such as the Contract Labour (Regulation and Abolition) Act, Inter-State Migrant Labour Act, Minimum Wages Act, Equal Remuneration Act, etc. have no workable inbuilt machinery in the law for their implementation in respect of construction labour.

2.3 The petitioners suggested inclusion of the following points in the proposed Bill on construction workers :

- (1) Constitution of Construction Labour Boards representing the Governments, the Construction Workers and the employer which will regulate all construction activities and employment of construction labour by the principle of registration of employers and contractors and construction labour.
- (2) Those who do construction either by themselves or through contractors, as ‘Utilisers of Labour’ shall be individually and

jointly liable to meet the various obligations such as construction levy and welfare levies including benefits of provident fund, medical benefits, pension, accident compensation etc. The Construction Labour Board would secure these obligations.

- (3) The Construction Labour Board would be empowered to determine wage structure and provide minimum guarantee wages and be entrusted with management of security and welfare funds.
- (4) The Central and State Governments are the biggest construction employers. The proposed law should cover their cases also.

2.4 The representation was referred to the Ministry of Urban Development on 23 December, 1986 for furnishing their factual comments thereon. The Ministry of Urban Development have furnished their factual comments *vide* their O.M. dated 26 November, 1987, as follows :—

“The tripartite constitution of the proposed Labour Boards, will be a highly useful step which will look into the problems of the construction workers, which have been so far remained an unorganised sector. The Construction Labour Board will also exercise its powers for the smooth run of the construction industries and it is considered that although as a machinery to look into the service conditions of the construction workers, it will not be one of the machineries as incorporated in the Industrial Disputes Act, it will have its own independence of functioning and coordinating the affairs of the construction workers.

There are several provisions of law which give some protection to the contract labour, such as under Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 a contractor shall be responsible for payment of wages to each worker employed by him and such wages shall be paid before the expiry of such period as may be prescribed. The wages have to be paid in the presence of the principal employer or his representatives and in case the contractor fails to make the payment of wages within the prescribed period or makes short payment then the principal employer shall be liable to make payment of wages in full for the unpaid balance due, as the case may be, to the contract labour employed by the contractor. The labour has also the protection under the Payment of Wages Act, 1936. Under Section 3 of this Act every employer shall be responsible for the payment to persons

employed by him of all wages required to be paid under the Act. Under the definition "employer" include the legal representatives of the deceased employer and establishment include the work relating to the construction, development or maintenance of buildings, roads, bridges or canals etc. etc. Then there is the Minimum Wages Act, 1948, under section 12 employer has to pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by notification issued under Section 5 of the Act. Under the definition "employer" means any person who employed whether directly or through another person or on behalf of any other person one or more employees in any scheduled employment. Lastly, under Section 11 of the Industrial Disputes Act a Conciliation Officer or a member of board or court or the presiding officer of a Labour Court, Tribunal or National Tribunal may take cognizance of any industrial dispute after due notice. Under the definition "industry" includes avocation of workman. DDA cannot commit itself to take the contract labour permanently as the nature of work itself is not of a permanent nature.

The subject matter of the petition essentially concerns the Ministry of Labour who are already seized of the problem. A Tripartite working group on Building and Construction Industry has been constituted by that Ministry with the following terms and reference:—

- (a) To identify the specific difficulties being faced by the Building and Construction Industry in complying with the social security legislation viz. Employees Provident Fund and Miscellaneous Provision Act and the schemes framed thereunder, the Gratuity Act etc.; and
- (b) To work out what type of social security measures should be formulated for the workers in the Industry keeping in view the difficulties under (a) above.

A draft legislation is already under finalisation in the Ministry of Labour and a number of meetings have been held by that Ministry with the representatives of all concerned interests to consider the draft.

Provisions already exist pertaining to health, safety, welfare, minimum wages, payment of wages, service conditions of the construction workers, as there are laws to cover these aspects. Anything in the shape of amendments in the existing provisions to provide for better conditions of work and employment would be in order."

2.5 In a supplementary memorandum submitted to the Committee, the petitioner *inter alia* stated as under :—

“It was expected that the Bill that the Government will introduce, will be really a comprehensive one dealing particularly with the most important problem facing the construction workers, namely insecurity of services.

The feature that comes out most clearly when we analyse the situation obtaining in the construction industry *vis-a-vis* the workers is the absence of established and enduring employer-employee relationship between an employer and a set of workmen. This is the position in respect of the vast bulk of the industry and this is the result of a system of contracting and sub-contracting *ad nauseum*, which conveniently enables the principal employer or even his main contractor to escape from the obligations that any employer will have to discharge. In such a situation, even wages are not correctly and promptly paid and the shifting nature of the employment results in the workmen and the work women (women account for over 10 per cent of the work force in this industry; children who work in this industry in large numbers do not altogether figure in official statistics or employers registers) not being in a position to demand even their due wages. The position is so unjust that to think in terms of other benefits like leave, bonus, maternity benefit, accident compensation, child care and social security sounds like day-dreaming.

What is required is a self-regulating legislation, a legislation that will guarantee and protect the rights of the workmen, not merely those relating to employment and payment of wages but also to social security above all, a legislation that will avoid the pitfalls of implementation by a Governmental agency, by providing for workers' participation in a substantial measure in the implementation of the legislation through tripartite bodies on which workers will have a commanding role.

The schemes to be drafted under the law will provide for regulation of the industry by way of registration of the principal employer or the promoters. A levy calculated at a certain percentage of the capital cost of the project, be it a residential or commercial building, road or canal, will be collected before the Tripartite Board approves the project. This levy will be used for meeting the expenses that will have to be incurred in respect of welfare and social security measures for the workers. The Board will also similarly register the workmen

and so regulate the employment of workers in various categories to ensure that only registered workers are provided employment. The scheme would also provide for a certain minimum guarantee of employment for all registered workers, in addition to providing social security measures like provident fund, medical and health benefits, gratuity and the like. The payment of wages in full and promptly to the workers will also be ensured by the Board by regulating all payments through the Board and its offices.

The Board would also take necessary steps for the training of the workers to enable them to acquire and/or to improve their skills. Over a period of time, the Board will be in a position to stabilise employment in this sector so that productivity of the workers is enhanced, construction cost reduced, current abuses and shortcomings in the quality of construction, delays in construction etc. are minimised. The Board will also regulate the inter-state movement of construction workers so that the objectives of Inter-State Migrant Workers Act do not merely remain on paper.

For this purpose, the workers demand that the implementation of the proposed law, more particularly the provisions relating to registration of the employers and of workers, regulation of employment, minimum guaranteed employment, payment of wages, measures for welfare and social security, etc. must be through the Tripartite Labour Boards and their agencies at the appropriate levels. The workers also realised that there may be disagreement and differences between the parties in the actual implementation of law and scheme and therefore they want that the law must provide for an inbuilt machinery for dealing with disputes and differences."

2.6 A bill entitled "Building and other construction workers (Regulation of employment and conditions of service) Bill, 1988 was introduced in Rajya Sabha by the Minister of Labour on 5 December, 1988. According to the statement of objects and reasons given in the Bill, the proposed legislation *inter alia* provides for the following matters, namely :—

- (i) to apply it to every establishment which employs or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work;
- (ii) to define "appropriate Government" in respect of various establishments and also to enable the Central Government to

notify any public sector undertaking which is owned, controlled or managed by the Central Government in respect of which the Central Government will be the appropriate Government;

- (iii) to empower the Central Government and the State Governments, as the case may be, to constitute Advisory Boards to advise on such matters arising out of the administration of the proposed legislation as may be referred to them. Such Advisory Boards shall consist, *inter alia*, of persons representing the employers, building workers, association of architects, engineers, accident insurance institutions and any other interest which in the opinion of the Government ought to be represented on such Boards;
- (iv) to provide for the constitution of one or more expert committees consisting of persons especially qualified in building or other construction work for advising the Government for making rules under the proposed legislation;
- (v) to provide for the registration of certain establishments, as defined in the proposed legislation, carrying on building or other construction work;
- (vi) to enable the appropriate Government to fix hours for normal working day, day of rest, payment of wages for the day of rest, payment of overtime allowance and other welfare measures, such as, facilities regarding drinking water, latrines and urinals, creches, first-aid and canteens in respect of building workers;
- (vii) to make adequate provisions in respect of building workers for their safety and health measures including appointment of safety committees and safety officers therefor;
- (viii) to empower the Central Government to frame model rules for safety measures;
- (ix) to provide for the appointment of appropriate inspecting staff including Director General of Inspection at the Central level and the Chief Inspector of Inspection of Building and Construction at the State level for ensuring effective implementation of the proposed legislation;
- (x) to make special provisions regarding responsibility of employers to ensure compliance of the provisions of the proposed legislation and payment of wages in time to building workers;
- (xi) to provide for deterrent punishment for contravention of provisions of the proposed legislation.

2.7 The Committee held discussions with the representatives of the petitioners in regard to the points raised in the petition. Giving a background of the work done by the National Campaign Committee for Central Legislation on Construction Labour, its Chairman (Justice V. R. Krishna Iyer—Retired) deposed before the Committee as under:

“What has happened is all the workers involved in the construction sector in various States have gathered together, held conferences and from them some members were selected as representatives. Then, we drafted the Bill. The Bill was discussed and amendments were suggested. Ultimately, we have reached certain consensus, nation-wide, in what the Bill should be. This is one of those novel processes that is, in a third world country like ours, the workers themselves draft legislations. You may imagine how utterly democratic it is to invite the workers and other categories of people, victims of injustice, to give their ideas about drafting of legislation. They are not draftsmen. They do not have the technical expertise. Some of us have helped them. Anyway, we have ultimately reached a stage where some form of legislative Bill has been formulated.”

He added :

— “But more relevant and more important, if I may say so, is that the thrust of the whole effort is on implementation. In our country all, or most of the welfare legislations have met their Waterloo at the implementation level. So, some of us thought that in a situation like in India, the most important thing is to focus attention on implementation itself.”

2.8 Explaining the broad framework of the legislation prepared by the petitioners, Justice Iyer stated :

“We have a Board. It consists of three agencies including representatives of the employers. It is because, employers are very much involved in the process of amenities for workers, security for workers, wages for workers and things like that. So, the employer is an important partner in the process of enforcement.

Second is the worker. Once in history, he may say that “I will implement the law because it benefits me” and the employer may say “I will also be a party to it because I am the man who is to foot the bill and meet other responsibilities and so on.” Over and above this is the Government. It is because in our Welfare State or the Social Justice State, it is

the Government which has got to oversee the functioning. So, the functional contribution to the efficient implementation of this legislation is taken care of by a Board which contains three partners."

He added :

"The implementation is the prime essence of social legislation. That can be taken care of only where the worker himself is an active partner. He should be active in the process of implementation by legislative statutes. So, we have now brought in a Bill which brings in a tripartite arrangement for implementation. This is very significant. More than all these things is the type of legislation which is in existence today for getting minimum wages, for getting maternity benefits, for babies being looked after and so on. All these things have to be enforced through a Court or a Labour Court or something like that. The entire range is not covered by the existing legislation. Various loopholes are there."

2.9 Commenting on the Bill introduced in Parliament, a representative of the petitioners stated before the Committee as under :

"The Bill introduced in Parliament still follows the same pattern of employee-employer relationship as you would find in the Motor Transport Workers Act, for example. But looking at the position of construction labour in India, which means well over 11 million people—of which 10 per cent to 15 per cent are women—the place of work, workers and the employer all the three change, unlike in a factory, where the factory remains at the same place, and where they are all in a constant location. Here all the three change. If that is the feature of the construction industry where the relationship, even temporarily, is of such a short duration, how do we solve the problem of implementation, unless you give the powers of implementation to the total groups of employers, employees and the Government forming themselves into a tripartite board."

He further added :

"I would like to draw the attention of the Committee to what happened 40 years back in the Dock labour industry, where loading and unloading of cargo takes place, where they did not know when the next ship would come. They will not know the number of employees needed to be employed. So, there was a large number of workers waiting for employment. They

were as unorganised at that time as the construction workers are today. Then, we had the Dock Workers Act and the Dock Workers (Regulation of Employment) Act of 1948. This former Act today has enabled a certain regularity of employment and equitable distribution of employment, category-wise. And so, this has enabled the workers to grow in strength, so that the dock workers today are one of the most well-organised people. Following this, we also have got the Matari workers in Maharashtra and Andhra Pradesh, for whom you can bring in such a Bill, and regulate their employment. We want the same type of an Act here."

2.10 Pointing out the drawbacks in the Bill which had been introduced in Parliament, the representative of the petitioners further stated before the Committee as under :—

"Even if the Bill before Parliament is passed, will it ensure, for example, gratuity to the workers—because it says that it will apply to any establishment having 50 workers per day. But the point is that after the work ceases, the workers and employers go away. How then do we guarantee these facilities including health insurance. So, though this Bill calls itself 'Building and Construction Workers (Regulation of Employment) Bill', there is nothing there by way of regulation of employment of workers. This Bill is directed towards safety and certain conditions of service while they are at work. But the problem with construction workers is not merely related to work. There are questions like payment of wages, welfare etc., about which this Bill is silent. That is why we think that anything short of a tripartite system of management, of administration and even composition of committees will not serve the purpose for which any legislation is made. That is why we think it is necessary to have a legislation of this type recommended by us."

2.11 Giving details of the draft legislation prepared by the petitioners, a representation of the petitioners stated before the Committee :—

"The scheme that we have proposed is something like that. When workers are registered for employment, the employer can set aside a portion of the wage, for this purpose. The workers can have a system envisaged on the pattern of the Dock Labour Board system. The employer fixes the wages to be paid and the Board know it; it is the Board which gives the wages to the workers. Otherwise all sorts of pitfalls will be there in the implementation.

Registration within the framework of tripartite registration having a provision for registration, licensing and so on, should be there."

The witness further stated :—

"We cannot implement the whole system overnight throughout the country. It may be made applicable to all the metropolitan cities Delhi, Bombay, Calcutta and Madras or it may be made applicable to major projects where five thousand persons are employed. After that we can go down and implement the whole system at the District level and other levels."

2.12 To a question whether the State Governments should be consulted before making a move in the matter, Justice Iyer replied:—

"There is no doubt that we must consult the State Governments and the implementation part fall on the State Governments. When I talked to the Chief Minister of Karnataka, he told me that he would be very happy to implement this kind of a legislation. But we have not gone into the details. When I was in Madras sometime back I contacted the State Labour Minister in this regard. He did bring a legislation, but unfortunately that fell short of the requirement. I do not think any State Government would not be eager to implement this kind of a legislation. After all the State Governments would be keen to see that social justice is given to the workers."

Justice Iyer further stated :—

"The malady is not the State Government or the Central Government, but elsewhere. Of course the State Government must be much more serious than the Central Government in this respect.

Concurrent legislation obviously gives plenary power to the Union to make a legislation. The State Governments are an independent constitutional entity and they are just organs of the Statute and they have got to obey the statute mandates. For that reason we need not consult, I am not against consulting the State Governments. The affected groups must be consulted. In fact the State Government could even bring a legislation.....

All that we can say is that when the Parliament enacts a legislation, we expect the State Governments to be vigilant in implementing it."

2.13 Pleading for the formation of Labour Boards for construction workers, a representative of the petitioners stated :—

“The Construction Labour Board can also collect two kinds of levies that we have suggested in our Bill. One is, when the principal employer starts construction and he has to get the plan sanctioned, at that point he has to pay two per cent of the total estimated cost to the Board for welfare purposes. viz., for housing, for education of children and so on. Secondly, while the workers are being employed through the Board, the employer has to pay a certain amount as levy which will go into the social security benefits and various other kinds of benefits, including the expenditure of the Board.”

2.14 During evidence of the representatives of the Ministry of Labour and others, the Committee enquired whether any consultations were held with the labour representatives before introduction of the bill in Rajya Sabha. The Secretary, Ministry of Labour, stated as under :—

— “The normal procedure is that before we finalise any legislation in the Labour Ministry, we do undergo a well structured procedure. There is tripartite consultation among the Government, the employers and the workers organisations. This is a fairly long process. In January, 1980, all the State Governments and the Union Territories were consulted on the introduction of a central legislation to regulate the safety of workers engaged in building and construction work. The focus of the consultation was in relation to the Bill that has been introduced in the Rajya Sabha.

In the 31st session of the State Labour Ministers' Conference it was recommended to bring about a central legislation to regulate the working conditions, improve the payment of wages and to have welfare and other safety measures. These factors have also been incorporated in the Bill which is now before the Rajya Sabha. Also in our process we have consultations with the Central Ministries and Departments.”

2.15 With regard to consultations with the organised labour unions, he added :—

“In the national seminar on safety of construction workers, the representatives of recognised trade unions like INTUC and CITU have participated. We have discussed this matter with them. So it has been a long process of consultation and crystallisation of opinion which has gone into the framing of the Bills.”

2.16 Asked whether the National Campaign Committee for Central Legislation on Construction Workers were consulted in the matter, the Labour Secretary stated :—

“.....I do recall that Justice Krishna Iyer had forwarded a memorandum to the Labour Minister sometime in 1986. That was examined in detail in the Ministry and a reply was also sent to him.”

He further added:—

“Our structure of tripartite consultation is a fairly well set pattern. We have the formal bodies which are called for consultations. They are recognised also. But the NCC is not a part of the ten recognised national trade unions. In the State Labour Ministers' Conference also this matter has been considered. But somehow the well set practice could not be changed. So in our view we have carried out the consultations. Since NCC is an ad-hoc body we are rather helpless in this respect.”

2.17 The Committee pointed out that after the passage of the legislation, the rules will have to be framed by the Department and in framing such rules, the petitioners' views could be given due consideration. The Labour Secretary stated :—

“.....There is no difficulty in our meeting with the National Campaign Committee members across the table. We are always open to the discussion.”

2.18 With regard to the total number of persons employed in the construction industry, the Labour Secretary stated :—

“The National Commission on Labour has estimated 2 million workers in this industry. There are other estimates, which I understand, will be around 3 to 3.5 million workers. Of course, the Nation Coordination Committee has a very extended definition of building, that is, including workers in, what they call, ancillary operations like brick-kilns and other industries. There are very wide-ranging figures of the total number of workers in this industry. It depends on the definition that one thinks.”

2.19 Commenting on the Bill prepared by the National Campaign Committee, the Labour Secretary state:—

“The subject-matter was, of course, fairly elaborate. Various measures have been contemplated in the scheme. But it is not

a very practicable scheme. It has been stated there would be an administrative body in every place where there are 100 construction workers and more. There has been no lower limit placed on the number of workers who would be covered in any establishment. Therefore, if any person, throughout the length and breadth of the country, employs someone to repair his house which has fallen down due to flood or storm or any other natural calamity, he will come within the ambit of the huge administrative structure that has been proposed. Trying to cover the entire length and breadth of the country by out-law and administrative structure, firstly, the cost of administering though such a structure should be taken into consideration."

2.20 Commenting upon the mechanism for implementation of a large number of laws on the statute book, the Secretary, Ministry of Urban Development stated:—

.... "While it is true that a fair portion of the construction labour may be engaged in projects funded by the Central Government or the State Government, I would like to submit that essentially the State or the Centre carry out works through contracts. Therefore, neither the State nor the Centre can be regarded as an employer of the construction labour. They are only engaging contractors for execution of works, but notwithstanding that, so far as welfare measures are concerned, or safety, including fair wages etc. are concerned the Government have devised an extensive procedure and this procedure is included as a part of the contract and the contractor bidding for work is expected to follow the conditions of this contract with regard to various facilities that have to be provided and those are insisted upon. There are provisions for making sure that those rules are followed and compensation to contractors is determined on the basis of their adhering to these contractual conditions."

The Secretary added:—

"The DDA also follows the contractual conditions adopted by the CPWD with some modifications of their own. I would only submit that where a contractor fails to observe the contractual conditions stipulated, DDA have the right to take action against the contractor under the contract. It amounts to breach of contractual conditions. I would respectfully submit that

while the CPWD and the DDA may be regarded as the organisations engaging the contractors, they do not *ipso facto* become the employers."

2.21 To a question whether it was not necessary to set up an organisation which could be approached by the workers for grant of justice to them, the Labour Secretary replied:—

"If a construction labourer has to travel say from Bastar to Bhopal to get justice, I can only say that whatever system that we set up, it will be cumbersome and administratively unworkable."

2.22 When asked to suggest some other workable alternative to provide justice to construction workers, the Labour Secretary deposed before the Committee as under:—

"As far as payment of wages is concerned, we have the Minimum Wages Act. In all the major employing organisations whether governmental or public sector, the construction workers employed have very attractive terms and conditions. But we are talking of a very large number of construction works where these workers are employed. Here I must say that the trade unions must organise these workers and they must exert. There are the contractual laws which are in force. The regulatory and enforcing mechanisms must necessarily be at the State level. And the major employers are certainly covered under our Act. When we come to the generality i.e. building workers who are not covered under the major employing agencies, then we have to fall back upon the State agency for enforcing all the other labour laws."

The Secretary, Ministry of Urban Development added:—

"The approach that is provided for in our own contract conditions is definitely a way out because we have a provision that when a particular number of labourers are employed, there is a Labour Officer who is posted by the Department. For instance, if there is any irregularity noticed in the payment of minimum wages, the Executive Engineer makes the payment direct to the labourers and deducts that amount from the contractor's contract."

2.23 The Committee note that next to agriculture, the construction industry employs the largest number of workers. Being closely connected with the development of the economic and industrial base of the country, the construction activity attracts considerable financial investment also. As in several other areas, the labour engaged in construction activity of any kind is totally unorganised with the result that there is no security of employment for the workers. These workers are generally paid very low wages because they lack the bargaining capacity. At the same time there is no legislation under which these workers may be provided any social security benefits. Some of the labour laws such as Contract Labour (Regulation and Abolition) Act, 1970, Payment of Wages Act, 1936, Minimum Wages Act, 1948 are stated to be applicable to construction workers like other contract labour, but there is no in-built mechanism for ensuring that the benefit of these laws actually accrues to the construction workers. The contract document of Government Departments, public sector undertakings and organisations like CPWD, DDA, etc. which undertake large scale construction activity, do contain some provisions about payment of wages, safety measures etc. but these do not go far enough to look after the welfare of workers and what is worse are not enforced effectively even in the limited areas mentioned therein. Although several Members of Parliament have in the past initiated action in the form of Private Members' Bills, which are introduced in Parliament from time to time, it was only in December, 1988 that the Government of India introduced a Bill in Rajya Sabha aimed at protecting the interests of such a large force of workers. The Committee cannot but emphasise that the proposed legislation should not only be comprehensive enough to cover the entire gamut of the problems and rights of the construction workers but at the same time it should be ensured that it is brought on the statute book without any avoidable delay.

2.24 Presently, the Committee have under consideration a representation given on behalf of the construction workers in the country. This representation has been routed through the National Campaign Committee for Central Legislation on Construction Labour, which is headed by Retired Chief Justice V. R. Krishna Iyer. The Committee find that this Committee has done considerable useful work at the grassroot level to organise the construction workers with a view to enabling them to demand central legislation as a right to provide security of employment and other social welfare measures, to which they should be entitled like workers in the organised sector. This Committee has also formulated a draft legislation,

which if enacted should serve the interest of the construction workers. The draft legislation prepared by the Committee proposed compulsory registration of all employers and the workers, vesting of responsibility for determining and disbursement of wages through an autonomous body and the constitution of Tripartite Labour Boards comprising employers, construction workers and Government agencies for looking into and regulating the service conditions of the construction workers. It also lays extra emphasis on the implementation aspect as the actual implementation of all social legislations in the country leaves much to be desired.

2.25 The Committee have been informed that before a legislative measure affecting the labour class is finalised in the Ministry of Labour, under a well established procedure, tripartite consultations among the Government agencies, employers and workers organisations are held. For consultations with the workers' organisations, only recognised trade unions like INTUC and CITU are invited to participate. Accordingly while formulating the Bill intended for the construction workers only ten recognised national trade unions were consulted and the National Campaign Committee for central legislation on construction workers was not formally consulted. The Committee feel that since this Campaign Committee has done a good deal of pioneering work in this area and formulated certain proposals after in-depth study of the problems faced by construction workers, it would have been appropriate if this Committee had also been invited by the Ministry for consultations and discussions on the proposed legislation. The Committee consider that even now the representatives of the Campaign Committee, which is headed by an eminent person like Justice Krishna Iyer, may be invited for an exchange of views on the scope and objects of the Bill and how these can be best attained.

2.26 Without going into the merits of the schemes proposed by the Campaign Committee, the Committee desire that the Ministry of Labour should take a careful note of the suggestions made by the Campaign Committee and see to what extent these could be incorporated in the Bill already introduced in the Rajya Sabha. Further even after the passage of bill and at the time of framing detailed rules for implementation of the provisions of the bill, the Campaign Committee may be involved in the process of consultations so that the objectives underlying the measure could be implemented in letter of spirit.

2.27 From the statement of objects of the bill introduced in Lok Sabha, the Committee find that the present bill will apply only to establishments which employ or had employed fifty or more building workers in any building or other construction work. Thus all establishments employing less than fifty workers will presumably be beyond the purview of the present

bill. Thus the workers employed by private persons and institutions for construction work will not be entitled to any benefit arising from this legislation, if the total work force employed is less than fifty. As against this, the scheme formulated by the Campaign Committee seeks to cover all construction workers wherever they may be employed. The scope of the legislation formulated by the Campaign Committee would thus appear to be more comprehensive and wide-ranging. It is in this context that the Committee desire that the legislation proposed by the Campaign Committee may be examined and considered and all good features thereof may be suitably incorporate in the Government bill.

2.28 A perusal of the scheme of legislation framed by the Campaign Committee shows that the main emphasis is on the creation of a tripartite body on the lines of Dock Workers Board, which will register all construction workers in the country, regulate their employment opportunities in such a way as to ensure that every worker has an equal opportunity of getting work, create and manage a Welfare Fund from which welfare activities for the workers will be financed. The proposed legislation by the Campaign Committee also envisage creation of a machinery on all-India basis for effective implementation of the measures. According to the Campaign Committee what is required is a self-regulating legislation, a legislation that will guarantee and protect the rights of the women.

2.29 The Committee are of the view that there can be no two opinions about the scope and intent of the proposed legislation. The Committee are indeed glad to note that Government are also of the view that the setting of tripartite Construction Labour Boards as suggested by the Campaign Committee will be "a highly useful step". The Committee, therefore, need hardly emphasise that it is for the Government to ensure that the legislation which is finally enacted encompasses all the above features to the extent practicable. The Committee, therefore, recommend that the bill pending in Rajya Sabha be withdrawn and a fresh comprehensive bill be introduced so as to cater to the long felt demands of a hitherto neglected segment of the working class.

NEW DELHI:

BALASAHEB VIKHE PATIL,

May 31, 1989

Chairman,

Jyāishtha 10, 1911 (Saka)

Committee on Petitions.