

Ministry of Labour and Employment

Implementation of Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970

1 Introduction

1.1 Industrial Disputes Act, 1947

1.1.1 Labour laws have been framed by the government to protect the interests of labour. The Industrial Disputes Act, 1947 (referred to hereinafter as Act) was enacted in April 1947 to provide machinery for investigation and settlement of industrial disputes.

1.1.2 The Act provides for the establishment of a special machinery of conciliation officers, work committees, courts of inquiry, labour courts, industrial tribunals and national tribunals, defines their powers, functions and duties and also the procedure to be followed by them. It also enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when these can be declared illegal or unlawful, conditions for lay off, retrenchment, discharge or dismissal of a workman, circumstances under which an industry can be closed down and several other matters related to industrial employees and employers. Under the Constitution of India, labour is a subject in the concurrent list where both the Union and the State Governments are competent to enact legislations subject to certain matters being reserved for the Union. The Union Government is the appropriate government for industries, which are carried on:

- by or under the authority of Union Government,
- by a railway company,
- by a controlled industry, specified for this purpose, and
- in relation to certain industries enumerated in Section 2(a) of the Act.

1.1.3 Most of the states have adopted the Central Act by engrafting amendments to suit their respective local conditions.

1.2 Contract Labour (Regulation and Abolition) Act, 1970

1.2.1 The Contract Labour (Regulation and Abolition) Act and Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force from 10 February 1971 mainly to prevent the exploitation of contract labour. It has been enacted to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. This Act applies to:

- every establishment where 20 or more workmen are employed on any day of the preceding 12 months,
- every contractor, who employed on any day of the preceding 12 months, 20 or more workmen.

1.2.2 A workman is deemed to be employed as a contract labour when he is hired in connection with the work of an establishment by or through a contractor or sub-contractor. Contract workmen are indirect employees. Contract labour differs from direct labour in terms of employment relationship with the establishment and method of wage payment. Contract labour is, by and large, not borne on the pay roll of an organisation and is not paid directly. They are hired, supervised and remunerated by the contractor, who in turn, is remunerated by the establishment hiring his services.

1.2.3 The Union Government is the appropriate government in respect of industries and establishments for which it is the appropriate government under the Industrial Disputes Act, 1947. The Union Government has jurisdiction over establishments like railways, banks, mines etc. and the state governments have jurisdiction over units located in the state. The appropriate government may make rules for carrying out the purposes of the Act. The State Governments of Maharashtra¹, Tamil Nadu² and West Bengal³ have framed Contract Labour Rules.

1.2.4 The 'appropriate government' can apply provisions of this Act to any establishment, irrespective of the number of labourers employed, after giving two months' notice in the official gazette. The Act does not apply to an establishment where work of a casual or intermittent nature is performed. The work will not be intermittent or casual if (i) performed for more than 120 days in the preceding 12 months; and (ii) it is of seasonal character and is performed for more than 60 days in a year. Exemption from the applicability of the provisions of the Act or the rules made thereunder is granted to an establishment or contractor in the case of an emergency.

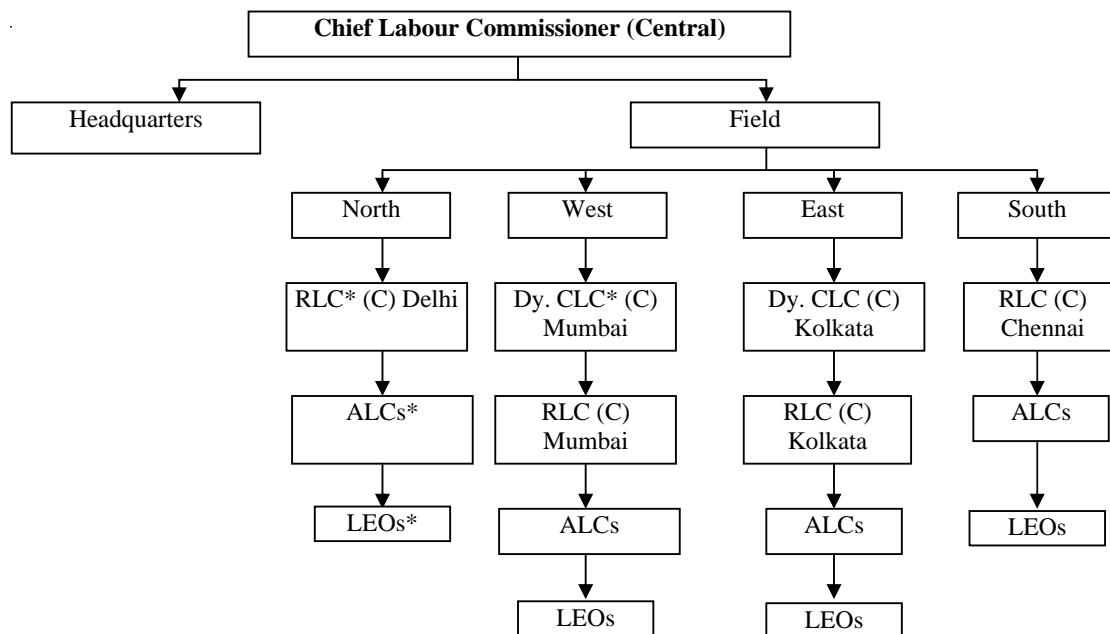
1.3 Organisational set-up

The Central Industrial Relations Machinery (CIRM) functions as an attached office under the Ministry of Labour & Employment. The organisation of the Chief Labour Commissioner (Central) also known as CIRM was set up in April 1945 in pursuance of the recommendation of the Royal Commission on Labour in India. The organisation of the Chief Labour Commissioner (Central) acts as the primary conciliatory agency in the Union Government for industrial disputes. It has been entrusted with the task of maintaining industrial relations and enforcement of labour laws in the Central sphere. Its offices are spread across the country with zonal, regional and unit level formations. The organogram depicting the organisational set-up of CIRM is given below:

¹ Maharashtra Contract Labour (Regulation and Abolition) Rules, 1971

² Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975

³ West Bengal Contract Labour (Regulation and Abolition) Rules, 1972



1.3.1 The Labour Department headed by the Labour Commissioner/Secretary implements the Industrial Disputes Act, 1947 in the states. This organisation of Labour Commissioner is also known as SIRM. Additional Labour Commissioners, Joint Labour Commissioners, Deputy Labour Commissioners, Assistant Labour Commissioners and Labour Officers act as COs in different parts of the State on behalf of the Labour Commissioner.

2. Audit objectives

A performance audit of the implementation of the Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970 was taken up with a view to assessing whether:

- the mechanism for settlement of industrial disputes was effective,
- exploitation of contract labour was eliminated, and
- the impact evaluation of the adjudication mechanism was carried out for improvement in the system.

3. Scope of audit

The performance audit examined the progress of various functions relating to the implementation of the Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970 in the Union Ministry of Labour and Employment and Labour Departments of the State Governments in four metropolitan cities namely Chennai, Delhi, Kolkata, Mumbai and their suburbs. Audit covered the period 2001-02 to 2005-06 and was conducted between June to October 2006 through sample check of industrial disputes handled under the Industrial Disputes Act, 1947

* abbreviations have been expanded in the list of abbreviations.

and inspection reports under the Contract Labour (Regulation and Abolition) Act, 1970.

4. Audit criteria

The audit criteria used for assessing the efficacy of the implementation of the Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970 were:

- prescribed time frame for the settlement of disputes by conciliation officers;
- prescribed action on the failure of conciliation reports by the Ministry;
- prescribed time frame for disposal of cases by the adjudicatory machinery viz. labour courts, industrial tribunals and national tribunals;
- prescribed conditions for the grant of registration and licence by Registration/Licencing Officer;
- norms for inspection;
- sanctioned strength and persons-in-position in respect of the inspecting staff, and
- prescribed time frame for filing cases in court by the department.

5. Audit methodology

5.1 Before taking up the performance audit on the implementation of Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970, an entry conference was held with the Ministry of Labour and Employment on 19-06-2006. Similar conferences were held in the States by the Principal Accountants General/Principal Directors of Audit/Accountants General (Audit) of the concerned States with the representatives of the Central/State Governments.

5.2 The sampling methodology used for the selection of industrial disputes under the Industrial Disputes Act, 1947 and selection of inspections reports under the Contract Labour (Regulation and Abolition) Act, 1970 are given in **Annex-I**. The extent to which the methodology was followed, the sample selected and actually audited is discussed in **Annex-II**.

6. Acknowledgement

We acknowledge with thanks the cooperation of the Ministry of Labour & Employment and the Labour Departments of the State Governments of Delhi, Maharashtra, Tamil Nadu and West Bengal in providing willing assistance in conduct of the performance audit.

7. Industrial Disputes Act, 1947

7.1 Machinery for settlement of industrial disputes

The instrumentalities for settlement of disputes provided in the Act are works committees (WCs), mediation and conciliation, board of conciliation, investigation, arbitration and adjudication.

7.2 Constitution of Works Committees (WCs)

According to the provisions of Section 3 of the Act, in the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate government may, by general or special order, require the employer to constitute in the prescribed manner, a WC consisting of representatives of employers and workmen in equal number. The representatives of the workmen are to be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade unions, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

In the **Central sphere**, in **Chennai**, in three units the WCs had been formed. In Chennai Port Trust, no WC was constituted since August 1983 despite protracted correspondence by the Labour Department. The Department did not furnish details of any other eligible units. In **Delhi**, WCs were in existence in 12 out of 13 units where they were required to be constituted. In **Kolkata**, out of three Assistant Labour Commissioners (ALCs), the information on functioning of WCs was furnished to Chief Labour Commissioner (CLC) by one ALC only and the other two ALCs did not maintain the requisite information. As per the information available with one ALC, out of seven units, which are required to constitute WCs, WCs were formed in respect of six units. Although one industrial unit (Kolkata Port Trust) had 10,000 employees, no WC was constituted. There was no system of collecting data regarding the number of disputes settled by the WCs and the workers who benefited out of such settlement. In **Mumbai**, the Labour Department stated (February 2007) that approximately nine industrial establishments were eligible for constitution of WCs, but no WCs were constituted during 2001-02 to 2005-06.

In the **state sphere**, in **Chennai**, the Labour Department of Government of Tamil Nadu did not furnish the details of units eligible to constitute WCs. In **Delhi** and **Mumbai**, no WCs were constituted during 2001-02 to 2005-06. In **Kolkata**, despite directions by the Labour Department of Government of West Bengal from time to time, only 115 out of 587 eligible units had set up WCs. Data in respect of the number of meetings held by these committees and the disputes settled by them was not maintained by the Department. Instead, the Joint Labour Commissioner submitted a half yearly 'Nil' report to the Labour Commissioner during 2001-2006. Thus, the industrial relations machinery could not ensure that all the eligible units constituted WCs. In respect of the units in which WCs were constituted, their functioning viz. disputes settled etc. was not monitored at all.

Thus, a preventive mechanism envisaged under the Act to maintain industrial peace and goodwill and reduce the occurrence of industrial disputes was not effective in both **Central** and **state spheres**.

Recommendation

- **Efforts should be made to activate works committees in both the Central and state spheres.**

7.3 Mediation and conciliation in Central Industrial Relations Machinery (CIRM)

Section 4 of the Industrial Disputes Act authorises the ‘appropriate government’ to appoint Conciliation Officers (COs), charged with the duty of mediation in and promoting the settlement of industrial disputes between the workmen and the management. Regional Labour Commissioners (Central) and Assistant Labour Commissioners (Central) act as COs in different parts of the country on behalf of the Chief Labour Commissioner (Central). A CO’s basic task is to find a solution acceptable to both the parties rather than to determine the rights and wrongs of a problem. The parties may accept his recommendations, use them as the basis for some other settlement, or reject them altogether. If conciliation fails, the next stage may be a compulsory investigation or a compulsory adjudication. If a settlement of the dispute or any of the matters in the dispute is arrived at in the course of the conciliation proceedings (CPs), the CO shall send a report to the appropriate government together with a memorandum of the settlement (MOS) signed by the parties to the dispute. In case, no settlement is arrived at, the CO shall, as soon as practicable after the close of the investigation, send to the appropriate government, a full failure of conciliation (FOC) report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with the reasons on account of which, in his opinion, a settlement could not be arrived at. As per Section 12(6) of the Act, a report is to be submitted within 14 days of the commencement of the CPs or within such shorter period as may be fixed by the appropriate government. Subject to the approval of the CO, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute. This time limit of 14 days was reiterated by the Supreme Court in its judgment in the case of ‘**Andheri Marol Kurla Bus Service vs. State of Bombay AIR 1959 SC 841**’.

7.3.1 Disputes received and handled by the CIRM

Details of disputes received and handled by the CIRM in all the four metros during 2001-02 to 2005-06 are given in table 1 below:

Table 1: Disputes handled and disposed during 2001-06

Metro	Opening balance	Receipt	Total	Disposed			Total disposed	Pending
				Failed in conciliation	Otherwise disposed/closed	Settled in conciliation		
Chennai	-*	1074	1074	560	301	54	915	159
Delhi	168	1906	2074	810	690	320	1820	254
Kolkata	63	1050	1113	323	269	360	952	161**
Mumbai	260	1057	1317	615	507	118	1240	77
Total	491	4993	5578	2308	1767	852	4927	651

* Opening balance for the year 2001 was not available.

** Includes 44 cases pertaining to one ALC, of which the disposal position was not available.

7.3.2 Low success rate of conciliation proceedings

- Out of 5578 disputes handled during 2001-02 to 2005-06, only 852 (15 per cent) could be settled through conciliation proceedings. The maximum success rate of 32 per cent in CPs was noticed in Kolkata and minimum success rate of 5 per cent was in Chennai. The year-wise and metro-wise details are given in Annex-III & IV respectively.
- Out of 4927 disputes shown as disposed in all the four metros, 1767 (36 per cent) represented otherwise disposed (OD)/closed cases. Disputes otherwise disposed/closed include disputes not registered in the right jurisdiction, cases closed due to absence of parties or absence of interest, withdrawal of the case by the union representing the case of the employee. In all these cases, actual disposal has not taken place.

Test check revealed that in **Chennai**, there were delays upto six months (19 cases), between 7 to 12 months (14 cases), between 13 to 24 months (13 cases) and more than 24 months (10 cases) in transferring the cases to another jurisdiction for redressal of disputes. In **Delhi**, five cases were disposed as OD cases with a delay between one to six months as these cases did not fall within their jurisdiction. In **Mumbai**, out of 38 cases disposed as OD, five were disposed after delays ranging from 15 to 912 days on the grounds that these cases did not fall within their jurisdiction.

7.3.3 Delay in completing conciliation proceedings

Out of 1101 disputes test checked in four metros, CPs were completed within 14 days in respect of 95 (9 per cent) dispute cases. In respect of the balance i.e. 1006, there were considerable delays as detailed in table 2 below:

Table 2: Metro-wise position of time taken in conciliation proceeding

Metro	Within 14 days	15 days to 6 months	7-12 months	13-24 months	More than 24 months	Pending	Total
Chennai	27	138	39	15	8	2	229
Delhi	28	175	135	53	12	11	414
Kolkata	33	134	32	12	1	5	217
Mumbai	7	182	39	11	2	-	241
Total	95	629	245	91	23	18	1101

In **Chennai**, the delay was due to absence/non-availability of either management or workmen or both the parties to the dispute and also due to the non-availability of the COs due to their pre occupation with the implementation of other Acts. In **Kolkata**, the COs took an average of 43 days to commence CPs from the date of receipt of disputes. Delay in concluding the conciliation proceedings was mainly due to the absence of either of the parties involved in the dispute on the day of proceeding, both the parties being unable to come to an amicable settlement leading to increased number of conciliation proceedings and the time gap between successive dates of conciliation proceedings being more than 14 days in all the selected cases. In **Mumbai**, out of 241 test-checked cases, in respect of 69 cases, the time taken in registering a dispute after its receipt was between 16 and 365 days. In three cases, the time taken was between 12 to 24 months.

7.3.4 Delays in submission of FOC reports to the Ministry

Under Section 12(4) of the Industrial Disputes Act, if no settlement is arrived at as a result of the intervention of the CO, the CO is required to send an FOC report to the appropriate government. As per the CLC manual, a time limit of 48 hours has been prescribed for the CO to send the FOC report to the Ministry.

In **Chennai**, out of 229 test-checked cases, 130 were FOC cases. Out of these 130 cases, in 96 cases, the FOC reports were sent to the Ministry within 6 months, in 23 cases between 7 to 12 months, in 9 cases between 13 to 24 months and in 2 cases reports were sent to the Ministry after 24 months. Out of 414 test-checked cases in **Delhi**, the time limit was not adhered to in all the 203 FOC cases. In 176 cases, reports were sent within six months, in 15 cases, reports were sent to the Ministry after 7 to 12 months and in four cases after 13 to 24 months. Eight FOC cases were yet to be sent to the Ministry. No reasons for the delay were on record. In three cases CPs were terminated in August and October 2003 but FOC reports were not sent to the Ministry (December 2006). As a result the disputes could not be referred to the next stage of resolution. The Labour Department stated in January 2007 that the CPs had been held by the then ALC-I and the present ALC-I had been advised to complete the process immediately. The Department also stated that instructions had been issued to all the ALCs to adhere to the instructions while submitting the FOC reports in future. In **Kolkata**, out of 217 test-checked cases, 118 were FOC cases. In 96 *per cent* of the cases, the time limit fixed for sending the report to the Ministry was not complied with and the average period of delay was 75 days. No reasons for the delay were on record. In **Mumbai**, out of 241 test-checked cases, 177 were FOC cases. Only in respect of 29 cases, reports were issued to the Ministry on time. In respect of 133 cases, the reports were sent to the Ministry within 6 months, in three cases within 7 to 12 months and in two cases 13 to 24 months after the completion of CPs. In respect of 10 cases, details were not available with the Labour Department. Delays in submission of FOC reports to the Ministry adversely affected the objective of speedy disposal of industrial disputes. The Department accepted (October 2006) the audit observation and stated that the concerned COs would be advised suitably.

7.3.5 Failure to obtain approval of CLC to extend CPs

As per the departmental manual of Chief Labour Commissioner, Part-III Industrial Relations (Vol. I), if the dispute can not be disposed within one month and it is expected that the dispute is likely to be kept pending for more than two months, the CO will take prior approval of the CLC. Approval of the CLC to extend the CP beyond two months was not taken by the COs in **Chennai, Delhi, Kolkata** and **Mumbai**. In **Kolkata**, the Department stated that in some cases it was not possible to complete the CPs within fourteen days and the time for submission of the report may be extended by such period as may be agreed upon by the parties to the dispute. Reply of the Department was not tenable because prior permission of the CLC is required for extending the CPs beyond two months.

7.3.6 Deficient/non-maintenance of industrial disputes registers

Proper maintenance and upkeep of industrial disputes registers is essential for effective monitoring of disputes from the date of receipt till award implementation. In **Delhi**, the dates of registration of the case and dates of CPs were not mentioned in all the four registers maintained by the Department. In **Kolkata**, relevant particulars like date of receipt of dispute, dates of commencement of CPs, dates of disposal were not recorded in a number of cases in the registers maintained by the Department. The Department stated (November 2006) that the audit observations have been noted and the registers will be authenticated. In **Mumbai**, registers were maintained calendar year-wise for certain periods and financial year-wise for some periods. The dates of registration of the cases, dates of CPs, details of the outcome of conciliation e.g. FOC/MOS/OD, dates of reference to the Government, Government's reference for adjudication, result of adjudication award, implementation of award etc. were not entered in the relevant columns of the register. **The Department stated (October 2006) that the audit observation had been noted and necessary instructions will be issued to the COs to maintain the registers.**

7.3.7 Undue delay in referring the disputes for adjudication

As per Section 10(1) (a) to (d) of the Industrial Disputes Act, the appropriate Government may refer the dispute by an order in writing, to a board of conciliation, or court of inquiry or labour court/tribunal. Section 12(5) enables the Government to decide whether the FOC report is fit for reference to a board of conciliation or for adjudication and, if not, to communicate to the parties the reasons for not making such a reference. No time limit was prescribed for the Ministry to take action on the recommendations made by the CO. All the FOC reports are forwarded to the Ministry of Labour. Ministry scrutinises these FOC reports for assessing their fitness as industrial disputes. The industrial disputes pertaining to public sector undertakings/departmental undertakings are referred to the concerned administrative Ministry for obtaining their comments within a period of 60 days. Conciliatory efforts are also made at the level of the Ministry so that the dispute can be settled at the top management level of the unit.

In **Delhi**, out of 149⁴ test checked cases, in 67 cases, the Ministry took six months in referring/declining the dispute for adjudication, in 48 cases between 7-12 months and in 27 cases more than 12 months. In **Kolkata**, out of 118 test checked cases, in 38 cases, the Ministry took six months in referring/declining the disputes for adjudication, in 17 cases between 7-12 months and in four cases more than 12 months. As of August 2006, out of 59 cases pending with the Ministry, three were pending for less than six months and 51 cases were pending for more than six months. In respect of five cases, the dates of sending FOC to the Ministry were not mentioned in the records. No follow up action had been taken by the CO/Labour Department in any of the cases.

Such delays on the part of the Ministry in referring disputes for adjudication adversely affected swift disposal of cases as envisaged in the Act. The Ministry accepted the audit observation and stated that the delay in some cases was mainly due to exigencies of work and the shortage of supporting staff. The Ministry further stated that efforts were being made to reduce the pendency.

7.4 Disputes received and handled by the SIRM

Details of disputes received and handled by the SIRM in all the four metros during 2001-02 to 2005-06 are given in table 3 below:

Table 3: Disputes handled and disposed during 2001-06

Metro	Opening balance	Receipt	Total	Disposed			Total disposed	Pending
				Failed in conciliation	Otherwise disposed/closed	Settled in conciliation		
Chennai	557	6556	7113	3237	1884	1519	6640	473
Delhi	2352	36268	38620	23458	9283	4492	37233	1387
Kolkata	2469	9211	11680	1115	4127	3591	8833	2847
Mumbai	620	6126	6746	2746	2532	954	6232	514
Total	5998	58161	64159	30556	17826	10556	58938	5221

7.4.1 Low success rate of conciliation proceedings

Out of 64,159 disputes handled during 2001-02 to 2005-06, only 10556 (16 per cent) could be settled through conciliation proceedings. The maximum success rate of 31 per cent of CPs was noticed in Kolkata and the minimum success rate of 12 per cent in Delhi. The year-wise and metro-wise details are given in **Annex-V & VI** respectively. Out of 58938 disputes disposed in all the four metros, 17826 (30 per cent) disputes were 'otherwise disposed/closed' cases which did not represent actual disposal of cases.

7.4.2 Delay in completing conciliation proceedings

Out of 6043 disputes test checked in four metros, in 4012 (66 per cent), CPs were completed within six months, in 1052 (17 per cent) between 7-12 months, in 625 (10 per cent) between 13-24 months and in 334 (6 per cent) CPs were completed after 24 months. Details are given in table 4 below:

⁴ Out of 203 FOC cases, only 149 cases were produced to audit

Table 4: Metro-wise position of time taken in conciliation proceeding

Metro	Within 14 days	15 days to 6 months	7-12 months	13-24 months	More than 24 months	Pending	Total
Chennai	74	1219	61	-	-	-	1354
Delhi	323	1225	98	-	-	-	1646
Kolkata	56	793	603	528	323	-	2303
Mumbai	-	322	290	97	11	20	740
Total	453	3559	1052	625	334	20	6043

In **Chennai**, out of 1354 test checked cases, in 74 cases conciliation proceedings were completed within 14 days, in 1219 cases in 15 days to 6 months and in 61 cases between 7 to 12 months. In **Delhi**, out of 1646 test checked cases, delay beyond the prescribed period of 14 days was noticed in 1323 cases. In **Kolkata**, the report was required to be submitted within sixty days after completion of CPs. This time could be extended for a period not exceeding six months if agreed to by all the parties to the dispute. Only 849 (37 per cent) disputes out of 2303 disputes were finalised within six months. In **Mumbai**, as per the 'Manual for Conciliation Officers of Government of Bombay 1959', the maximum time limit allowed for completion of CPs is six months. Only 322 disputes out of 740 taken up for conciliation were finalised within six months. The Labour Department stated that the dispute cases could not be disposed within the prescribed time limit due to requests for adjournments by the parties, non-cooperation by the management and transfer of COs.

7.4.3 Delay in submission of FOC reports to the department after failure of conciliation

As per Section 12(4) of the Act, if no settlement is arrived at as a result of the intervention of the CO, he is required to send to the government, as soon as practicable, after the close of the investigation of the dispute, a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. In **Chennai**, out of 727 test checked cases, in respect of 284, FOC reports were submitted to the Labour Department by the COs in 3 months and in 443 cases between 3 to 12 months.

7.4.4 Attendance of disputant not enforced in Delhi state

In **Delhi**, out of 1646 test checked cases, in 1053 cases (64 per cent) conciliation was held to have failed as the management did not turn up for the proceedings in a majority of the cases thus pushing the disputes to the next level of dispute resolution without invoking the provisions of Section 11(4) of the Act, which empowers the CO to enforce the attendance of any person relevant to the industrial dispute which would have facilitated resolution of the disputes at the conciliation stage itself.

7.4.5 Improper/non-maintenance of industrial dispute registers

For effective monitoring of disputes from the date of receipt till the award implementation, proper maintenance and upkeep of industrial disputes registers is very essential. In **Delhi**, the maintenance of records at district and headquarters' level was grossly incomplete and ad-hoc which hindered effective cross-linking at each step of the process involved in disposal of disputes. Even vital columns like nature of disputes, date of commencement of disputes, nature of disposal, date of disposal, etc. were not mentioned in the conciliation registers. In **Kolkata**, the industrial dispute and FOC registers were not maintained properly as the full particulars were not recorded. Further, there was no inspection of these basic records by Labour Commissioner/other officials.

Recommendation

- **In both Central and state spheres, delays at different stages of conciliation such as completion of conciliation proceedings and submission of FOC reports to the government should be reduced. In the Central sphere, a time limit should be stipulated for the Ministry to take action on FOC reports.**

7.5 Board of conciliation, investigation and arbitration

Sections 5 and 6 of the Act authorise the appropriate government to constitute a 'board of conciliation' and 'court of inquiry' for promoting the settlement of industrial disputes and inquiring into any matter appearing to be connected with or relevant to an industrial dispute respectively. No board of conciliation and court of inquiry had been constituted by the Union Government/State Governments in both **Central** as well as **state sphere** during 2001-02 to 2005-06. Similarly, when conciliation fails it is the duty of the CO to persuade both the parties to accept arbitration under Section 10A of the Act. In case the parties agree to this proposal, a brief report on FOC should be submitted to the appropriate government with comments that an arbitration agreement was arrived at during the course of CP. No case had been settled through arbitration by the Union Government/State Government in the **Central** as well as **state spheres**. In **Kolkata Central sphere**, the CO was successful in persuading both the parties to agree for voluntary arbitration only in one out of 323 FOC cases. The case involving Postal Department was sent to the Ministry in November 2004, but was still pending with the Ministry as of August 2006. The Labour Department had not taken any follow-up action to pursue the case. Thus, the mechanism of arbitration remained ineffective during 2001-02 to 2005-06 in all the four metros.

Recommendation

- **Attempts should be made to tap the avenues of board of conciliation, investigation and arbitration for the resolution of industrial disputes as envisaged in the Act.**

7.6 Adjudication mechanism

Adjudication refers to the mandatory settlement of industrial disputes by quasi-judicial bodies under the Act or by any other corresponding authorities under analogous state statutes, with specialised jurisdiction in the field of labour management. Section 7 of the Act empowers the appropriate Government to constitute Labour Courts (LC) for adjudication of industrial disputes relating to any matter specified in the second schedule. Section 7A of the Act empowers the appropriate Government to constitute Industrial Tribunals (IT) relating to any matter, whether specified in the second schedule or the third schedule. As per Section 7B of the Act, a National Tribunal (NT) can be constituted only by the Union Government for the adjudication of industrial disputes involving questions of national importance or industrial disputes in which industrial establishments situated in more than one state are likely to be interested or are likely to be affected. An order referring an industrial dispute to a LC/IT/NT shall specify the period within which such LC/IT/NT shall submit its award on such dispute to the appropriate government. Where a dispute is connected with an individual workman, such period shall not exceed three months. However, the period can be extended where parties to a dispute apply to the LC/IT/NT whether jointly or separately for extension. In such cases, if the Presiding Officer (PO) considers it necessary or expedient, he may extend such period by such further period as he may think fit. The Act does not provide for appeals or revisions against the awards of the adjudicatory authorities.

7.6.1 Adjudication in the Central sphere

In the **Central sphere**, IT and LC function under the same PO and are collectively known as Central Government Industrial Tribunal cum Labour Court (CGIT). Details of CGITs and NTs set-up, disputes handled and disposed by them in the four metros during 2001-2006 are given in table 5 below:

Table 5: Constitution of CGITs/National tribunals, disputes taken up and disposed

Metro	National Tribunals	CGITs	Cases taken up	Cases disposed	Cases pending (percent)
Chennai	-	1	1618	1024	594 (37%)
Delhi	-	2	1930	977	953 (49%)
Kolkata	1	1	485	188	297 (61%)
Mumbai	1	2	3421	2097	1324 (39%)
Total	2	6	7454	4286	3168 (43%)

In **Chennai** out of 1618 disputes taken up by the CGIT during 2001-05, 594 (37 *per cent*) were pending as on 31st December 2005. Out of these, 425 cases were pending for 1-2 years, 167 cases for 2-5 years and two cases for more than five years. The disposal of disputes declined from 92 *per cent* in 2001 to eight *per cent* in 2005. In **Delhi**, out of 953 disputes pending in both the CGITs, 313 disputes (33 *per cent*) were pending for more than five years. 22 of these disputes were pending for 14 to 18 years. As per Rule 10B(10) of the Industrial Disputes (Central) Rules, 1957, the LC/IT/NT is required to submit its awards to the Union Government within one month from the date of arguments/oral hearing or within the period mentioned in the order of reference whichever is earlier. In 12 cases referred to CGIT-I in **Delhi**, 6-12

years ago, final arguments were completed in the year 2004, but no award was pronounced by the CGIT-I till October 2006. In **Kolkata**, out of 477 cases handled by the CGIT, only 188 cases (39 per cent) were disposed during the period 2001-06. 266 cases involving 3215 workers were pending with the CGIT for more than one year to 26 years. The post of PO remained vacant for a brief period of nine months (January 24 to October 30, 2003). Of the eight cases with the NT, none had been finalised up to 31 March 2006. Five cases out of eight were pending for periods between 5 to 7 ½ years. Under Section 33(2)(b) of the Act, 65 cases were filed in the CGIT, Kolkata in connection with a case referred to the NT. In spite of the settlement of the main case by the NT in 1999, these 65 cases remained pending as the CGIT had no power to settle the cases and the NT which was set up specifically for the disposal of the main case, ceased to exist after the disposal of the main case in 1999. In **Mumbai**, 3421 disputes were taken up by the two CGITs and one NT out of which 1324 (39 per cent) were pending as on 31st March 2006. The percentage of disposal of disputes by CGIT-I during 2001-02 to 2005-06 fluctuated between 10 to 27 per cent, while the percentage of disposal of disputes by CGIT-II decreased from 56 per cent in 2001-02 to one per cent in 2004-05 and increased slightly to three per cent in 2005-06. The pace of disposal of cases by the NT was three per cent in 2001-02 and 22 per cent in 2004-05. Even though pending cases in NT declined from 312 in 2001-02 to 153 (50 per cent) in 2005-06, the number of cases pending for more than five years increased from 16 (5 per cent) in 2001-02 to 66 (43 per cent) in 2005-06. Low percentage of disposal by the LCs/CGITs/NTs was mainly due to vacancies in the post of POs.

In respect of the test checked cases, in **Delhi**, 106 were referred for adjudication but awards were pronounced in respect of 20 only and 86 cases were pending. These 20 cases were disposed in 6 to 47 months and out of 86 pending cases 67 cases were pending for more than 12 months, 7 cases between 7-12 months and 7 cases between 3 to 6 months. Five cases that were referred in August 2006 were also pending as on October 2006. In **Kolkata**, out of the selected sample, 37 were referred for adjudication but final awards were pronounced only in seven cases. Out of these seven cases, in five cases ‘no dispute settlement award’ was given which means that no award was given in favour of either party and the cases were dismissed. Out of the remaining 30 cases, 29 were pending in the CGIT and one was pending in the NT.

7.6.2 Adjudication in the state sphere

Detail of LCs and ITs set-up and disputes handled and disposed by them in the four metros during 2001-2006 are given in table 6 below:

Table 6: Constitution of LCs/ITs, disputes taken up and disposed

Metro	Labour Courts	Industrial Tribunals	Cases taken up	Cases disposed	Cases pending
Chennai	3	-	8644	4773	3871
Delhi	17	3	63169	39161	24008
Kolkata	2	9*	4118	1783	2335
Mumbai	12	8	10314	6657	3657
Total	34	20	86245	52374	33871

* It includes two ITs functioning at Jalpaiguri & Durgapur as separate data in respect of awards given by seven ITs functioning at Kolkata was not maintained by the Labour Department.

In **Chennai**, 8644 disputes were taken up for disposal by three LCs and 4773 (55 per cent) were disposed during 2001-05. The percentage of disposal of disputes fluctuated between 12.6 (2001) and 26.7 (2003). In **Delhi**, out of 24008 cases pending as on 31 December 2005, 12537 cases (52 per cent) were pending for more than two years including 1890 cases (8 per cent) pending for more than 10 years. In **Kolkata**, out of 4118 disputes taken up, only 1783 (43 per cent) were disposed by the LCs/ITs and 2335 (57 per cent) were pending as on 31 December 2005. Out of 1306 disputes disposed by ITs, only 14 cases were disposed within three months during 2001-05. It was further noticed that during 2001-05, the post of PO was vacant in four ITs for more than one year and in both the LCs for more than two years. Vacancies in the post of PO, frequent transfers, and extension of time sought by both the parties were the main reasons for non disposal/delayed disposal of cases. In order to overcome the non-availability of POs, a bill passed by the State Assembly relaxing the qualifications for appointment of POs was awaiting assent (August 2006). Besides, out of a budget provision of Rs. 13 lakh for 'setting up of ITs and LCs' during 2001-06, Rs. 11.71 lakh (90 per cent) remained unspent. The details of disposal of disputes by the LCs/ITs during 2001-06 in **Mumbai** are given in table 7 below:

Table 7: Disposal of disputes by LCs/ITs

LCs/ITs	Within 1 year	1-2 year	3-5 years	5-10 years	10-11 years	Total
Labour Courts	163	769	2449	1959	657	5997
Industrial Tribunals	12	70	225	229	124	660

The Registrar of IT, Mumbai, Maharashtra stated (August 2006) that the delay was mainly on account of the fact that the statements of claims by the workmen/unions and the written statements by the companies were not being filed in the prescribed time. More cases were being referred to each court and tribunal than what was considered the normal workload of 200-250 cases for ITs and 800-1000 cases for LCs.

In **Delhi**, out of 1053 cases of the selected sample that were referred for adjudication, the Labour Department of Government of Delhi could not trace 626 cases for making them available for audit due to lack of reference numbers and only 427 cases could be test-checked. The details of disposal and pendency of the 427 cases by the LCs during 2001-06 are given in table 8 below:

Table 8: Disposal and pendency of disputes by LCs

Cases disposed	Cases pending	Pendency		
		Less than 1 year	1-2 years	2-5 years
233	194	7	41	146

Further, test check of 183 disposed cases revealed that 118 cases (64 per cent) were closed without any award on the ground that the workman was no more interested in pursuing his claim as he had failed to file his statement of claim. Out of these 118 closed cases, files of 74 cases were made available to audit. It was observed that the first notice itself was issued after more than one month in 44 out of 45 cases while details of notices issued were not available in the remaining 29 case

files. Delays in disposing cases frustrated the objective of speedy disposal of cases. In **Kolkata**, out of the selected sample, 791 cases had been referred for adjudication, but awards had been pronounced in respect of 431 cases only and the remaining 360 cases were pending with Labour Courts/Industrial Tribunals. In **Mumbai**, out of the selected sample, 222 cases had been referred for adjudication, but only 60 cases were disposed during 2001-05 and the remaining 162 cases were pending.

Recommendation

- **The reasons for delays in disposal of cases at the adjudication stage should be identified and redressed to ameliorate the problem of chronic delays and pendency.**

7.6.3 Lok adalats

Lok adalat constituted as per Legal Services Authorities Act, 1987 literally means Peoples' Court. This system dispenses justice on the basis of discussions, counselling, persuasion and compromise. Lok adalats involve assembling of persons having disputes in the presence of experienced conciliators and the latter persuading the disputing parties to find amicable settlements for their disputes. During 2001-02 to 2005-06, in the **Central sphere in Chennai**, one lok adalat was constituted in the State during the year 2004. Out of 61 cases referred, no case was settled. In **Delhi** as per the data provided by both the CGITs for the period 2001-02 to 2005-06, 17 lok adalats were held and 64 cases were taken up for settlement out of which only 38 cases (59 *per cent*) could be settled. However, the Ministry stated (October 2006) that a total of 134 cases were settled in these lok adalats. Reasons for the difference in figures were requested from the Ministry, but no reply has been received. In **Kolkata**, due to non-furnishing of procedure and guidelines required to formulate the functioning of lok adalats by the Ministry of Labour, no lok adalat could be held. In **Mumbai**, two lok adalats were held jointly by the CGIT-I & II during the year 2003 and 2006. 91 cases were taken up from all the LCs, CGITs and NTs out of which only six cases (6.6 *per cent*) could be settled.

In the **state sphere**, in **Chennai, Delhi and Kolkata**, no lok adalat had been held. In **Mumbai**, during 2001-02 to 2005-06, 27 lok adalats were held and 439 cases were taken up for disposal but only 41 cases (9 *per cent*) could be settled.

Recommendation

- **The causes for poor effectiveness of lok adalats should be identified and corrective action should be taken to make them effective.**

7.6.4 Implementation of awards

7.6.4.1 Delay in publication of awards in the gazette

When an industrial dispute is referred to a labour court/tribunal, it has to hold its proceedings urgently and within the period specified in the order referring such industrial dispute or further period extended under the second proviso to sub section (2A) of Section 10, submit its award to the appropriate government. The appropriate

government under Section 17 of the Act publishes the award in the official gazette within a period of 30 days from the date of receipt of the award. In the **state sphere** in **Chennai**, in respect of test-checked cases there were delays between one to five months in publication of 32 awards. In the **state sphere** in **Delhi**, during 2001-05, 32509 awards were received for publication out of which 32484 (99.9 *per cent*) awards were published after the time prescribed under the Act. There was a delay of upto three months in respect of 5161 awards, 3-6 months in 14829 awards and more than six months in 12494 awards.

7.6.4.2 Delay in implementation of awards

Once an award is pronounced, it is to be implemented by the employer within 30 days from the date of its publication in the official gazette. In case the employer fails to do so, the workman may submit an application to the department under Section 33(C)(1) of the Act, for the recovery of the money due to him, and if the Government is satisfied that any money is so due, it shall issue a recovery certificate (RC) for that amount to the collector who shall proceed to recover it in the same manner as an arrear of land revenue. An award remains in operation for a period of one year. Before the expiry of the said period, the appropriate government can extend the period of operation by not more than one year at a time and the total period of such operation of any award should not exceed three years. The heads of CIRM and SIRM are the implementing authorities in respect of awards in their respective sphere.

In the **Central sphere** in **Kolkata**, out of 138 awards given by the CGIT, the Labour Department maintained information pertaining to 44 cases only. Out of these, awards were not required to be implemented in 20 cases and in 16 cases awards were implemented. In respect of seven cases, writ petitions had been filed against the award and in one case award was under implementation. In **Mumbai**, out of 103 award cases, 26 cases were not produced to audit reportedly due to the records not being traceable. In respect of the remaining i.e. 77 awards, only six could be implemented till October 2006. There were delays ranging between 6 to 10 months in the transferring of 10 case files between RLC and ALCs for issue of necessary show cause notices (SCNs). In respect of 19 cases, the Labour Department took no action after issue of SCN. In respect of three cases, SCNs issued were received back due to incorrect address/change of address etc. No efforts were made by the Department to reissue these to the employer to the correct address. The Department accepted (October 2006) the audit observations and stated that necessary instructions would be issued to the concerned officers.

In the **state sphere** in **Delhi**, the total number of awards received were 32509 out of which the number of awards to be implemented was 5907. Out of 5907 awards to be implemented, applications were received in 3669 cases. Out of 3669 cases, RCs were issued in 2217 cases and awards were implemented in 442 cases. In respect of those cases where applications were not received i.e. 2238 cases the Labour Department of Government of Delhi intimated in October 2006 that it was not monitoring the implementation of the awards. Hence, it was possible that awards being depicted as pending implementation had actually been implemented by the employer. In **Kolkata**, during 2001-05, 1783 awards were given by the courts and

152 awards were pending at the beginning of the year 2001. Out of this, 1591 awards were being implemented including 1161 awards which were not referred for implementation and hence it was assumed that these awards would have been implemented by the employers without the intervention of the Labour Department of Government of West Bengal. The Department referred 207 awards to the State Government for orders of prosecution. Action taken by the government in respect of these awards was not intimated to audit. At the end of 2005, a total of 137 awards were pending for implementation. Out of 430 awards actually implemented by the Department, it was noticed that 24 awards were implemented after delays of 6-12 months, 383 awards were implemented after delays of 12 months and more and 23 awards were implemented after delays of 36 months and more. Reasons for non-implementation or delay in implementation of awards were not on record. In **Mumbai**, information regarding the implementation of awards and petitions received from aggrieved parties was called for, but no reply was furnished by the Labour Department of Government of Maharashtra.

In the **state sphere in Delhi**, test-check of the implementation of awards given by the LCs/ITs revealed that out of 183 cases, action for implementation of awards was required only in 12 cases. All these 12 awards pertained to the year 2001 to 2003 and involved individual workers. The Labour Department of Government of Delhi was not aware of the position of implementation in eight cases while the award in one case was pronounced only in September 2006. None of the awards had been implemented as yet though three of the workmen had filed claims (Dava) for implementation of the award.

7.6.4.3 Non existence of a mechanism for monitoring the implementation of awards

As per Section 17A of the Act, an award (including an arbitration award) becomes enforceable on the expiry of 30 days from the date of its publication. Further, it has been stipulated in the CLC manual that it is the responsibility of the CIRM to secure implementation of awards on its own initiative as soon as the awards are published in the gazette without awaiting a complaint from any aggrieved party regarding non-implementation of the award. Instructions/guidelines have also been issued to RLCs/ALCs for strict compliance, within a specified period, at different stages/levels towards securing implementation of awards and maintenance of registers of awards in the prescribed form by the concerned field officers.

There was no mechanism in the labour departments in both the **Central and state spheres** to watch the implementation of awards. The department comes to know about the non-implementation of the award only when a petition under Section 29 of the Act is filed by the aggrieved party. In the **state sphere in Chennai**, the Department issued a circular to watch the implementation of awards *suo moto* only in December 2005.

Recommendation

- **A mechanism for timely implementation of awards should be institutionalised in both Central and state spheres.**

7.7 Contract Labour (Regulation and Abolition) Act, 1970

In the **Central sphere**, the CIRM is entrusted with the responsibility of enforcing the provisions of the Contract Labour Act and the rules made thereunder, through registering officers, licensing officers, appellate authorities and inspectors appointed under this Act. The State Government is the appropriate government in respect of industries and establishments under the **state sphere** and therefore SIRM is responsible for implementing the provisions of the Act and the Rules made thereunder.

7.7.1 Registration of establishments employing contract labour and licensing of contractors

The Act provides for registration of establishments employing contract labour and licensing of contractors. The head of the establishment engaging contract labour is known as PE (Principal Employer). The appropriate government may, by an order notified in the official gazette appoint such persons, being gazetted officers of government, as it thinks fit to be Registering/Licensing Officers and define the limits, within which they shall exercise the powers conferred under this Act. No contractor, to whom this Act applies, can undertake or execute any work through contract labour except under and in accordance with a licence issued in this behalf by the Licensing Officer. A licence under Section 12(1) may contain conditions of hours of work, fixation of wages and other essential amenities to be provided. A licence granted shall be valid for the period specified therein and may be renewed from time to time for such period, and on payment of such fees and on such conditions as may be prescribed. Every licence granted under Rule 25 or renewed under Rule 29 remains in force for 12 months from the date it is granted or renewed. In the **state sphere** in **Kolkata** and **Mumbai**, every licence granted under Rule 23 or renewed under Rule 29 of Contract Labour Rules remains in force up to 31st December of the year for which licence is granted or renewed.

7.7.2 Absence of mechanism to ascertain the unregistered establishments and unlicensed contractors

In the **Central sphere**, in all the four metros, no survey was conducted for identification of establishments/contractors engaging contract labour. Registration of PEs was done and licence was issued to the contractors on the basis of applications submitted voluntarily by the PEs/contractors engaging contract labour or on identification of establishments engaging contract labour at the time of field inspection conducted by the inspectors for enforcement of various labour laws.

In the **state sphere** in **Chennai**, no mechanism existed to ascertain the total number of unregistered establishments and contractors. In **Delhi**, in the absence of any survey, the Labour Department of Government of Delhi is not in a position to know whether all the eligible establishments/contractors were registered/issued licences. 64 major work orders had been issued by Government agencies viz. Public Works Department, Delhi Tourism and Transport Development Corporation and Delhi State Industrial Development Corporation during 2005-06. These works were

to be carried out by the contractors, but only one contractor had the requisite licence under the Act. There is no provision in the act whereby these Government agencies could insist on a licence before awarding the work. In **Kolkata**, in the absence of any planned survey or adequate inspection, the unregistered establishments engaging contract labour were not identified. In **Mumbai**, it was observed that the data available with the Labour Department of Government of Maharashtra on registration of establishments employing contract labour and licensing of contractors was not being updated periodically. In reply, the Department stated (August 2006) that due to lack of staff and shortage of stationery, the posting of registration certificates and licences was not done in the registers and records. The Department added that attempts would be made to bring the data up to date and steps would be taken to ensure that eligible establishments and contractors obtain registration certificates and licences.

Recommendations

- **Priority should be accorded to setting up of a mechanism for *suo moto* identification of establishments/contractors employing contract labour which will help in tracking down defaulting contractors.**
- **Production of licence should be made a pre-condition for awarding a contract to an establishment/contractor.**

7.7.3 Inspections under the Act

As per the provisions of the Act, the appropriate government may, by notification in the official gazette, appoint such persons as it thinks fit to be inspectors for the purposes of the Act, and define the local limits within which they shall exercise their powers under the Act. In the **Central sphere**, Assistant Labour Commissioners and the Labour Enforcement Officers (LEOs) are the main authorities conducting inspections of the PEs/contractors. In the **state sphere**, the inspecting staff is designated as Labour Inspector/Government Labour Officer. Deputy Commissioner/Assistant Commissioner of Labour also conducts inspection under the provisions of the Act. Inspection of work places at regular intervals and follow-up action thereon is necessary in order to translate the legal provisions into reality. The Supreme Court in the case of '**Labourers working on Salal Hydro-Electric Project vs. State of Jammu & Kashmir, 1984SCC538 (S.C.2J)**' issued directions to the Central Government to tighten its inspection machinery so as to ensure, that the welfare amenities meant for workmen are provided to them and to ensure that the provisions of labour laws are complied with. The details of inspections conducted, irregularities detected, prosecutions launched and convictions in **Central** and **state spheres** during the period 2001 to 2006 are given in table 9 below:

Table 9: Details of inspections conducted, irregularities detected, prosecutions launched and convictions

Item	Central sphere					State sphere				
	Chennai	Delhi	Kolkata	Mumbai	Total	Chennai	Delhi	Kolkata	Mumbai	Total
No. of inspections conducted	656	934	1826	587	4003	2107 ⁵	152	13493	3420	17065
No. of irregularities detected ⁶	1360	6743	12998	587	20328	70	270	4242	10692	15204
No. of prosecutions launched	1360	769	1178	469	3776	70	103	169	99	371
No. of convictions	187	482	154	55	878	59	65	177	61	303

7.7.3.1 Inadequate inspection/non-achievement of target

In the **Central sphere** in **Kolkata**, there was 2837 PEs available for inspection, out of which only 489 (17 *per cent*) were inspected. The achievement vis-à-vis targets fixed for inspection under the Act showed a decreasing trend over the last five years. The total inspections conducted during 2001-06 were 1826 (76 *per cent*) against the target of 2400 except in the year 2001-02 when the inspections conducted were 486 (101 *per cent*) against the target of 480. During 2002-03 to 2005-06, the percentage of inspections conducted against the target fixed ranged between 37 to 89 *per cent*. In the year 2005-06, the percentage of inspections conducted against the target fixed was only 37 *per cent*. Three to five posts of LEOs were lying vacant during 2001-02 to 2005-06. The Department stated (November 2006) that this was on account of non-filling-up of vacancies of LEOs during the last five years and also on account of verification of union membership during 2005-06.

In the **state sphere** in **Delhi**, during 2003-04 to 2005-06⁷, 270 registration certificates and 609 licences were issued to the PEs/contractors and 152 inspections were conducted. Inspections conducted during 2003 to 2005 were very low with reference to the registration certificates/licences issued in the said period. Against 20 sanctioned posts of Inspecting Officers (IOs) there was a shortage of 9 to 20 IOs between 2001-05. During 2004 and 2005, all the posts of IOs remained vacant. Further, it was noticed that nine IOs conducted 15 inspections during 2001, while 11 IOs conducted 28 and 16 inspections in 2002 and 2003 respectively. Thus, there was no consistency in the number of inspections conducted. In **Mumbai**, there was no uniformity in conducting inspections. During 2001-02, inspections of 1270 establishments were carried out, but during the subsequent four years, the number of establishments inspected ranged between 487 to 571. A complete list of registered establishments was not available with the Labour Department of Government of Maharashtra. The inspectors conducted the inspections as per their convenience and

⁵ There was no exclusive inspection under CL(R&A) Act i.e. inspections were conducted under the various Acts simultaneously.

⁶ In Chennai, the number of irregularities excludes those which were dropped and in respect of which no prosecution were launched.

⁷ Details of registration certificates/licences issued during 2001-03 were not made available.

not according to any inspection programme. They submitted copies of their Inspection Reports (IRs) alongwith their monthly diaries to Dy. Commissioner. No register containing consolidated details of IRs was shown to audit. The Department stated (August 2006) that steps would be taken so that every establishment engaging contract labour could be inspected periodically. As per the norms fixed by the Commissioner of Labour (September 1994), inspecting officers are required to conduct six inspections in a month under the Act. Total inspections conducted during 2001-06 were 3420 (73 *per cent*) against the target of 4704. Except in the year 2001-02, when the inspections conducted were 1270 (158 *per cent*) against the target of 804, the percentage of inspections conducted against the target fixed ranged between 46 to 64 *per cent*. The Department stated (August 2006) that the targets could not be achieved due to increase in the workload under various Acts relating to unorganised workers, child labour, domestic workers and bonded labour.

7.7.3.2 Non-conducting of check inspection

With a view to ensuring that the LEOs conduct inspection in accordance with the laid down rules and regulations and to detect omission or lapses on the part of the LEOs in conducting inspection, there is a system of check inspection conducted by higher officers of the Labour Department in the Central sphere. As per the departmental manual of CLC, ALCs should conduct 10 *per cent* check inspection of the total inspections conducted by the LEOs in his jurisdiction and RLCs should conduct one *per cent* check inspection under the Acts in his region.

In the **Central sphere in Delhi**, no check inspection was conducted by the RLC during the period 2001-02 to 2005-06. In **Kolkata**, out of 183 check inspections required to be conducted, the RLC issued only 21 (11 *per cent*) check inspection orders during the period 2001-02 to 2005-06. Thus, there was a shortfall of 89 *per cent* in issue of check inspection orders. Out of these 21 check inspection orders, the check inspection was actually conducted only in one case and in the remaining 20 cases check inspections were not conducted. Reasons for non-compliance of check inspection orders could not be ascertained as there was no system of monitoring of these cases.

7.7.4 Follow up of inspection reports

As the practice of engaging contract labour is rampant both in organised and unorganised sectors, there is an imperative need for a mechanism of inspection to ensure that exploitation of contract labour is effectively curbed through regular inspections of establishments/contractors engaging contract labour. Irregularities detected during inspections should be rectified and the person contravening any provision of the Act or any rules made thereunder should be punished as per the provisions of the Act. To make inspections purposeful, the inspection reports should be followed up. Re-inspection of an establishment is conducted to verify the compliance report received from the employer and to verify the extent to which the irregularities detected in earlier inspections have been rectified.

In the **Central sphere in Delhi**, the RLC did not resort to re-inspection of any establishment for verifying rectification of irregularities detected in earlier

inspections. In **Kolkata**, out of 89 re-inspection orders issued as a corrective measure of earlier inspection orders, in 80 (90 *per cent*) cases, re-inspection was not conducted. In **Mumbai**, out of 96 inspection reports scrutinised by audit, re-inspection was ordered only in two cases in the year 2005. It was stated by the Labour Department (February 2007) that re-inspection of these cases has not been conducted by the concerned LEOs till date and action is being taken against the concerned LEOs.

In the **state sphere** in **Chennai**, the Labour Department of Government of Tamil Nadu stated (March 2007) that there is no system of re-inspection. When the enforcement officer goes for subsequent inspection they verify whether the defects pointed out in the earlier inspections have been rectified or not. If a similar contraventions exists, the contractor/PE is issued a SCN. However, suitable instructions will be issued to the enforcement officers to take further action on subsequent offences. In **Delhi**, the Labour Department of Government of Delhi did not resort to re-inspection of any establishment for verifying rectification of irregularities detected in earlier inspections. In **Kolkata**, re-inspection was not conducted in all cases. Re-inspection was conducted only on receipt of complaints.

Recommendation

- **Inspection should be strengthened by fixing norms for the inspection of all eligible establishments, conducting check inspection in a more vigorous manner and giving greater emphasis to re-inspection.**

7.7.5 Prosecution under Section 197 of the Code of Criminal Procedure

Whoever contravenes any provision of Act or any rule made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under the said Act shall be punished as per provisions of Section 23 of the Act. As per provisions of Section 197 of the Criminal Procedure Code, 1973, prior sanction of the concerned administrative Ministry is necessary for launching a prosecution against the public servant who contravenes the provisions of the Act. Complaint of offence is to be made within three months from the date on which alleged commission of the offence comes to the knowledge of an inspector and no court shall take cognisance of an offence after three months.

In the Central sphere, during 2003 to 2006⁸, 323 PPs were sent to the administrative Ministries out of which in respect of 116 PPs the irregularities had either been rectified by the concerned administrative Ministries or the PPs were dropped. The Ministry stated (November 2006) that in the remaining cases, sanctions for prosecution were awaited from the administrative Ministries.

No reminders had been issued in respect of cases where neither compliance nor approval for prosecution was received. It was further observed that separate files were not prepared for each PP. All the PPs of a year were kept in one single file and there was no noting in respect of PPs issued. In some cases it was noticed that PPs of

⁸ For the years 2001 and 2002 information was not provided by the Ministry.

different dates received from CLC (Central) office were shown as received and diarised on one particular date in the Ministry. The Ministry stated (November 2006) that PPs could not be processed on priority basis due to frequent and sudden meetings of group of Ministers on labour reforms, meetings of Central Advisory Contract Labour Board, various court cases, parliament questions, assurance and private member bills.

Recommendation

- **The processing of PP cases by the Ministry of Labour and Employment needs to be streamlined.**

7.7.6 Delay/non filing of prosecution in court of law

Filing of complaints in the courts of law for various offences under the Act is a very important aspect of the process of prosecution of defaulters as the success of the prosecution depends on this. As per Section 27 of the Act, no court shall take cognisance of an offence punishable under this Act, unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector. As per CLC's manual, the field officer should ensure that complaints/claim applications are filed within seven days of the receipt of a sanction from RLC/CLC or within such short period depending upon the time limit/limitation period for the specific cases.

In 57 out of 234 files test checked in the **Central sphere in Delhi**, complaints were filed in the appropriate court of law after the lapse of more than one month from the date of getting administrative sanction from the RLC. In **Kolkata**, out of 21 re-inspection orders examined, in 15 cases (71 *per cent*) re-inspection orders were issued on the last date for filing the case as the time stipulated in the Act had either expired or there was not much time left to process the case for prosecution. In **Mumbai**, out of 93 test checked IRs, in 12 cases, complaints were filed with the court only after the expiry of three months from the date of the alleged commission of offence. The Labour Department accepted (October 2006) the audit observation and stated that the inspecting staff would be advised to file the complaint on time in future. In two cases, complaints could not be filed against the contractor/employer concerned rendering the whole inspection procedure unfruitful. In 12 cases, the offence of non-obtaining of licences was not mentioned in the complaint lodged with the court even though the irregularities were pointed out in the I.R. In reply, the Department stated that the mentioned offence could not be included in some cases since applications for licences were being processed. The Department's reply is not tenable as commencement of work without obtaining licences is against the provisions of Section 12 of the Act which stipulates that licences should be obtained before commencement of work.

7.8 Central/State Advisory Contract Labour Board

The Act provides for the constitution of Central and State Advisory Contract Labour Board to advise the concerned governments on matters arising out of the administration of the Contract Labour Act as may be referred to it and to carry out other functions assigned to it under the Act. The Advisory Boards of the Union and

State Governments comprising representatives of the government, employers and workers advise the respective governments on the question of abolition of contract labour system in establishments. The Central Board or the State Board, as the case may be, may constitute such committees to inquire into the question of prohibition of the contract labour system in different establishments.

In **Delhi**, four Board meetings were held during 2001 to 2006 and five cases were referred to the Board but not a single case had been disposed as of October 2006. In **Kolkata**, out of 33 cases referred by the SACLB to the Committee during 2001 to 2005, 17 cases were pending as on 31st December 2005. The Board disposed only four cases out of 16 (25 per cent) received by it with recommendations from the committee during 2001 to 2005. In terms of Rule 13 of the West Bengal Contract Labour (Regulation and Abolition) Rules, 1972, the Board should meet at such places and times as may be specified by the Chairman. During the years 2001 and 2002, no meeting of the Board was held for which reasons were not on record while only four meetings were held during 2003 to 2005. As a result, the number of cases disposed by the SACLB was very poor (25 per cent). In **Mumbai**, only one Board was constituted for three years (4 February 2002 to 3 January 2005). In its 41 meetings, the Board recommended 122 cases for abolition of contract labour. However, notifications in respect of 22 cases only had been issued by the Government while in respect of the remaining 100 cases, notifications for abolition had not been issued so far. Thus, the purpose of constitution of the SACLB was not served. The Commissioner stated that the recommendations of the SACLB were not binding on the Government. Since January 2005, the SACLB itself had not been reconstituted.

Recommendation

- **Steps should be taken to ensure that the SACLBs function in an effective manner and their decisions should be processed on priority basis.**

7.9 Monitoring and evaluation

7.9.1 Lack of monitoring of returns

As per Contract Labour Rules both in the **Central** and **state spheres**, every contractor executing work through contract labour has to submit half yearly returns in form XXIV not later than 30 days from the close of the half-year. Similarly, the PE of a registered establishment is responsible for submitting an annual return in form XXV so as to reach the registering officer concerned not later than the 15th of the February following the end of the year to which it relates. In the **Central sphere**, in **Chennai, Delhi, Kolkata** and **Mumbai** monitoring was not done to ensure that all the contractors and registered establishments submit their annual and half yearly returns. The situation was similar in the **state sphere** in **Chennai**.

Thus, due to absence of effective mechanism for coordination and cross verification of returns received from the PEs and contractors, renewal of licences as required under the Act could not be watched properly.

7.9.2 Evaluation

In respect to the **Central sphere**, audit enquired whether any independent evaluation of the adjudication mechanism had been conducted. No reply has been received so far (January 2007).

In the **state sphere** in **Delhi**, the Labour Department of Government of Delhi had not undertaken any exercise to evaluate the impact of the steps taken by it to implement both the Acts and to assess whether their objectives were being achieved. In **Kolkata**, there was no mechanism for evaluation of the performance of the adjudication machinery nor was any independent agency appointed by the Labour Department of Government of West Bengal to evaluate the efficiency of SIRM. In **Mumbai**, it was observed that impact evaluation of the adjudication mechanism had not been carried out for the last 25 years.

Recommendation

- **Monitoring mechanisms available under the rules should be enforced vigorously.**

8 Conclusion

The Industrial Disputes Act, 1947 was enacted to provide for settlement of industrial disputes. The Act provides for the establishment of a special machinery of work committees, conciliation officers, courts of inquiry, labour courts and industrial tribunals.

Works committees which function as a means to settle disputes between the employer and the employee without any third party intervention were not constituted in several cases. In the Central and state spheres, the success rate of conciliation proceedings was very low. There were delays in completion of proceedings and also in submission of FOC reports. Alternative mechanisms for resolution of industrial disputes viz. board of conciliation, court of inquiry and arbitration were not constituted. The disposal by adjudication mechanism was very low and cases were pending for periods upto 26 years. Lok adalats remained ineffective in reducing the burden of pending cases in adjudication. The labour department did not have any mechanism to watch the progress of disputes from conciliation to award implementation.

In respect of the Contract Labour (Regulation and Abolition) Act, 1971, in the Central sphere, there was no system of conducting a survey to ensure that eligible establishments/contractors were registered and had obtained licences under the Contract Labour Act. Inspections were not conducted in a planned manner and were inadequate to ensure prevention of exploitation of contract labour. Follow up action on inspection reports was not adequate. There were delays in filing prosecution cases in the courts and cases filed were not watched properly. The functioning of the State Advisory Contract Labour Board was ineffective in Delhi, Kolkata and Mumbai.

Independent evaluation of the adjudication mechanism had never been conducted in the Central sphere. Similarly, in the state sphere, no evaluation was conducted to assess the effectiveness of implementation of both the Acts in Delhi, Kolkata and Mumbai.

**New Delhi
Dated**

**(A.K. THAKUR)
Director General of Audit
Central Revenues**

COUNTERSIGNED

**New Delhi
Dated**

**(VIJAYENDRA N. KAUL)
Comptroller and Auditor General of India**