

Chapter I

Performance Audit Report on Implementation of Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970

The Industrial Disputes Act, 1947 was enacted to establish a machinery and forum for expeditious settlement of industrial disputes and maintenance of industrial harmony. The Contract Labour (Regulation and Abolition) Act, 1970 was also enacted to prevent exploitation of contract labour and safeguard their interests. A performance audit of the implementation of these two legislations revealed *inter alia* the following:

Highlights

The conciliation and dispute redressal machinery envisaged in the Industrial Disputes Act was not fully constituted and activated. Works Committees and Boards of Conciliation which are mechanisms for amicable resolution of disputes had not been set up.

(Paragraphs 1.7.1, 1.7.2 and 1.7.3)

There was delay (on an average of 18 days) in commencement of the conciliation proceedings by the Conciliation Officers. Similarly, of the 2036 cases test checked, delay in completion of conciliation proceedings beyond the prescribed period of 14 days was noticed in 82 per cent of the cases, including 30 per cent of the cases where delay beyond 90 days was noticed.

(Paragraphs 1.7.2.5.1 and 1.7.2.5.2)

The success rate of resolving or settling the disputes at the level of Conciliation officers was only 9 to 11 per cent. Conciliation efforts failed in 60 per cent of the cases test checked, as the management did not turn up for the proceedings even though the Conciliation Officers were empowered to enforce the attendance of any person relevant to the industrial dispute.

(Paragraphs 1.7.2.2 and 1.7.2.4)

The number of cases pending at the adjudication level was 24,008 at the end of December 2005. Of the 24,008 cases, 52 per cent were pending for more than two years, including 28 per cent that were pending for more than five years.

(Paragraphs 1.7.4 and 1.7.4.1)

There were delays in publication and implementation of awards. About 95 per cent of the awards were published after the time period of 30 days as prescribed under the Act. Of the 7,162 awards to be implemented during 2001-06, the department could implement only 6.5 per cent of the awards. The department also did not monitor implementation of 34 per cent of the awards where the workmen did not insist upon implementation.

(Paragraphs 1.7.5.1 and 1.7.5.2)

The status of enforcement of awards and recovery of dues from the employers of workmen was far from satisfactory. Out of 5,548 recovery certificates aggregating Rs. 133 crore issued during 1998 to 2006, recoveries in 1,697 cases amounting to Rs. 46 crore were pending as of December 2006.

(Paragraph 1.7.5.4)

The enforcement of Contract Labour Act was weak. The department did not carry out periodical verification of establishments/contractors to ensure that they were registered and had the requisite licenses under Contract Labour Act. Inspections were not conducted in a planned manner and follow up action on inspection reports was not adequate to ensure prevention of exploitation of contract labour.

(Paragraphs 1.8.1, 1.8.2 and 1.8.4)

Summary of recommendations

- *The mechanism of conciliation and adjudication may be streamlined in order to achieve the objective of faster resolution of industrial disputes.*
- *A mechanism for timely implementation of awards may be institutionalized to reduce the hardships faced by workmen.*
- *A system may be established for identification of establishments/contractors employing contract labour to enable identification of*

violations and corrective action as envisaged in the Contract Labour (Regulation and Abolition) Act, 1970.

- *The use of inspection as a tool for enforcing the implementation of Contract Labour (Regulation and Abolition) Act, 1970 may be strengthened.*

1.1 Introduction

Industrial dispute means any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons.

To ensure the welfare of labour and maintenance of industrial peace, the Industrial Disputes Act, 1947 was enacted by the Parliament to provide a machinery and forum for investigation and settlement of industrial disputes. The Act came into force with effect from the first day of April 1947. The Act envisages settlement of industrial disputes through collective bargaining, mediation and conciliation, arbitration and adjudication.

Contract Labour is, by and large, not borne on the pay roll of an organization 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. With a view to eliminating exploitation of workers employed under the contract labour system, the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into effect from 10 February 1971. This Act regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act applies to every establishment where 20 or more workmen are employed and to every contractor who employs 20 or more workers. The Act also applies to establishments of the Government and local authorities.

1.2 Organisational set-up

In Delhi, the provisions relating to the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 are administered by the Department of Labour (department), Government of National Capital Territory of Delhi. The department is headed by the Labour Commissioner-cum-Secretary who is assisted by three Joint Labour Commissioners. Each of the nine administrative districts is headed by a Deputy Labour Commissioner. The functional powers of the department are exercised by the conciliating

machinery and other inspectorate at the grass-root level. The adjudication and arbitration activities are exercised through 17 Labour Courts and three Industrial Tribunals.

1.3 Scope of audit

A performance audit covered the implementation of the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970 in the National Capital Territory (NCT) of Delhi during the six years period from 2001 to 2006.

1.4 Audit objectives

The 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 efficient and effective;
- adequate mechanism was established and action taken to prevent exploitation of contract labours required under the Act; and
- the impact evaluation of the adjudication mechanism was carried out for improvement in the system.

1.5 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:

- dispute resolution and conciliation mechanism envisaged under the Industrial Disputes Act;
- adequacy of manpower to effectively implement the provisions of the Acts;
- prescribed time frame for the settlement of disputes by conciliation officers;
- prescribed time frame for disposal of cases by the adjudicatory machinery *viz.* Labour Courts, Industrial Tribunals; and

- enforcement of provisions of the Contract Labour (Regulation and Abolition) Act in terms of registration of principal employers and issue of license to contractors.

1.6 Audit methodology

The audit methodology included:

- scrutiny of the records of the Department of Labour and of the 17 Labour Courts and three Industrial Tribunals;
- selection of 2,398 sample cases through statistical sampling methods under the Industrial Disputes Act 1947 and 77 cases under the Contract Labour (Regulation and Abolition) Act, 1970 (as referred to in Annexure- I & II) for detailed scrutiny;
- communication of preliminary audit findings to the departmental authorities for confirmation of facts and for comments; and
- issue of the draft performance audit report along with the draft recommendations to the administrative department for their views.

Audit Findings

1.7 Machinery for settlement of industrial disputes

The primary objective of the Industrial Disputes Act is the early settlement of industrial disputes in an amicable and peaceful manner through mediation, failing which through arbitration and adjudication so as to maintain industrial peace and harmony. To achieve such objectives, the Act envisages the setting up of Works Committees, Conciliation Officers and Boards of Conciliation. Audit appraisal revealed that conciliation as a mechanism of dispute resolution was not effective on account of low success rate, chronic delays during disposal as well as referral of cases to the Labour Courts/Industrial Tribunals, publication of awards and lack of a suitable mechanism for watching implementation of awards as discussed in the succeeding paragraphs.

1.7.1 Constitution of Works Committee

A Works Committee consisting of representatives of employer and workmen in equal number is to be constituted in an industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months. The duty of the Committee is to promote measures for securing and preserving amity and good industrial relations in the

establishment. However, no Works Committees were constituted as of September 2007.

The Government stated (February 2007) that there were a limited number of industrial establishments in Delhi in which 100 or more workmen were employed and, therefore, applicability of this provision was limited. It further stated that the works committees were generally not encouraged by either the trade union leadership who felt it encouraged internal leadership or by the management as it created an 'election-like' atmosphere in the organization.

Works Committees are preventive mechanism to maintain industrial peace and goodwill and reduce the occurrence of industrial disputes. The reply indicated that the nature and purpose of the Works Committees as envisaged in the Act had not been fully appreciated by the Government.

1.7.2 Mediation and conciliation

Section 4 of the Act authorizes the Government to appoint Conciliation Officers who are charged with the duty of mediation and promoting the settlement of industrial disputes between the workmen and management. The Government of Delhi authorized all its 10 Assistant Labour Commissioners and 10 Labour Officers in the nine districts to act as Conciliation Officers. The department was also to evolve an effective mechanism for registration, investigation and timely disposal of the dispute cases through conciliation proceedings. Audit finding on the implementation of above provisions of the Act are discussed below.

1.7.2.1 Disputes received and handled by Conciliation Officers

Details of disputes cases received and handled by the Conciliation Officers during January 2001 to December 2006 are given in the table below:

Table: 1 Details of disputes cases received and disposed by the Conciliation Officers

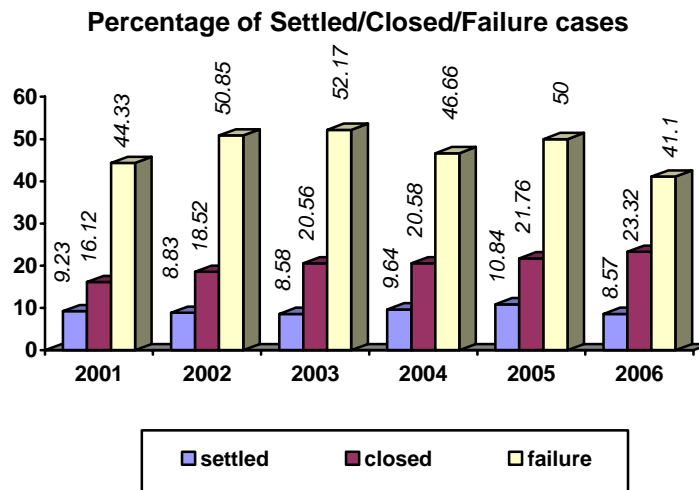
Year	Opening balance	Cases registered during the year	Total cases	Disposal	Pending	Percentage of cases pending
2001	2352	8292	10644	7417	3227	30
2002	3227	7744	10971	8580	2391	22
2003	2391	7680	10071	8190	1881	19
2004	1881	6521	8402	6459	1943	23
2005	1943	6031	7974	6587	1387	17
2006	1387	5499	6886	4957	1929	28
Total		41767		42190		

District-wise position is given in the Annexure-III.

The Conciliation Officers disposed off 42,190 cases out of total 44,119¹ dispute cases received as of December 2006, leaving a balance of 1,929 cases pending at the end of 2006. On an average about 23 *per cent* dispute cases remained pending with the Conciliation Officers each year. Despite consistent downward trend in the number of cases registered during the last six years, the position of pendency did not improve.

1.7.2.2 Low success rate of conciliation proceedings

While the rate of disposal (96 *per cent*) was encouraging, most of the disposals did not result in resolution of the disputes. Large percentages of cases remained unresolved and were taken to the next level of dispute resolution i.e. Labour Courts and Tribunals. The year-wise details of industrial disputes settled, closed and failure cases during the period 2001-2006 at conciliation level are as indicated below:



The percentage of settlement cases ranged from 8.57 to 10.84 *per cent* while the failure rate ranged from 41.1 to 52.17 *per cent* during 2001-06. Low rate of settlement and high percentage of failure cases undermined the effectiveness and purpose of the conciliation machinery.

The Government stated that most of the cases related to termination of services which restricted the scope for discussions. Most of the workmen were not willing to settle for anything short of reinstatement and, consequently, most of the cases resulted in failure of conciliation.

¹ 41,767+2,352=44,119

The reply of the Government indicates that the existing system of conciliation is not effective and is ultimately resulting in majority of the cases being referred to the next level of adjudication.

1.7.2.3 District-wise registration of disputes and settlement

The number of cases registered was significantly higher in South (22.51 *per cent*), West (21.42 *per cent*) and North-West (16.31 *per cent*) districts constituting more than 60 *per cent* of the total number of disputes registered in NCT of Delhi during 2001-2006. On the other hand, New Delhi (3.68 *per cent*), North-East (4.21 *per cent*) and East (5.2 *per cent*) districts accounted for a small portion of the total number of disputes registered (Annexure-III). The percentage pendency of disputes was higher in North-West district. Analysis of cases registered and pending during 2006 disclosed that 46 *per cent* cases in North district, 37 *per cent* in North-West and 32 *per cent* in New Delhi were pending as on 31 December 2006. District-wise position of pending cases is given in Annexure-IV.

Audit test checked a sample of 2036 cases and analysed district-wise position of cases settled, closed and referred to next adjudication level due to failure of conciliation. It was observed that failure rate was significantly higher in all the districts ranging between 48 to 71 *per cent*. Failure rate of conciliation was as high as 71 *per cent* in Central district, 67 *per cent* in New Delhi and 62 *per cent* in North-West District.

Each of the nine districts had at least two conciliation officers *viz.* one Assistant Labour Commissioner and one Labour Officer. In addition, each of the five Deputy Labour Commissioners was also entrusted with one to three districts each to function as Conciliation Officers. An analysis of the receipt and disposal of the cases in the districts revealed no rational linkage between the number of Conciliation Officers in a district, the number of cases registered, disposed off and the number of failure cases reported. There was clearly a need for establishing proper norms for disposal of cases coupled with a review of the distribution of the case load amongst the available Conciliation Officers in different districts.

The Government accepted the need for a review of distribution of case-load amongst the Conciliation Officers.

1.7.2.4 Attendance of disputant not enforced

Out of 2,036 cases test checked, in 1,221 cases (60 *per cent*) conciliation was held to have failed as the management did not turn up for the proceedings in 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 Conciliation Officer to enforce the attendance of any person relevant to the industrial dispute.

The Government stated (February 2007) that Conciliation Officers could not compel the parties into a settlement. The department felt that when it was clear that the management was not interested in settlement, further time should not be wasted in prolonging proceedings. Government added that section 11(4) was not invoked, as violence against the management representatives were frequent and in such a scenario, it was not considered prudent to compel management representatives to attend the proceedings. The reply is not tenable as adhering to the provisions of the act may encourage attendance of the parties and facilitate early and smooth resolution of disputes at the conciliation stage itself.

1.7.2.5 Delay in Conciliation Proceedings

Section 12 of the Act stipulates that where any industrial dispute exists or is apprehended, the Conciliation Officer shall hold conciliation proceedings for the purpose of bringing about a settlement without delay. If no settlement is arrived at, the Conciliation Officer shall as soon as practicable after the close of the investigation, send to the Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the disputes and for bringing about a settlement together with the reasons on account of which, in his opinion, a settlement could not be arrived at. A report under this section is to be submitted within 14 days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the Government.

1.7.2.5.1 Commencement of Proceeding

While no clear time limit has been prescribed in the Act for commencement of the proceedings, test check of 1,943 cases during 2001-06 revealed that the Conciliation Officers took on an average 18 days to commence the conciliation proceedings from the receipt of the dispute.

1.7.2.5.2 Completion of Proceedings

Out of 2,036 cases test checked, delay in completing conciliation proceedings beyond the prescribed period of 14 days was noticed in 82 *per cent* of the

cases as indicated in the table below:

Table 2: Delay in completing conciliation proceedings

No. of cases test checked	No. of cases delayed(beyond 14 days)	Delay analysis		
		up to 45 days	45-90 days	Above 90 days
2036	1673(82%)	690 (41%)	481(29%)	502(30%)

Out of the 1,673 delayed cases, 29 *per cent* of the cases were disposed off with the delay of 45 to 90 days and 30 *per cent* after more than 90 days delay. Delays in completion of proceedings were significant in North, New Delhi, Central and North-West districts where 48 *per cent*, 38 *per cent*, 36 *per cent* and 34 *per cent* of the cases were disposed off after a period of three months beyond the normal time of 14 days prescribed in the Act (Annexure-V refers).

Such delays in commencement and completion of conciliation proceedings ran counter to the intent and purpose of the Act of speedy disposal of disputes.

The Government stated that the time taken by an officer to commence conciliation proceedings should not be counted for the purpose of delay and cited section 20 of the Act which *inter alia* states that a conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock out under section 22 is received by the conciliation officer or on the date of order referring the dispute to a Board, as the case may be. The reply is not tenable, as section 20 relates to a situation of strikes or lock outs whereas the audit comment was based on the provisions in the section 12, which *inter alia* states that a report is to be submitted by the Conciliation Officer within 14 days of the commencement of the conciliation proceedings.

As regards delay in completion of conciliation proceedings, the Government referred to the discussions held before Hon'ble Supreme Court of India in the matter of Hospital Employees Union wherein the Hon'ble Court recognized the fact that sometimes notices cannot reach within 14 days. The Government stated that a time limit of three months had been approved by the Hon'ble Supreme Court for conciliation proceedings. Even after reckoning a time frame of three months, audit noticed delay beyond three months (90 days) in 30 *per cent* of the cases.

1.7.2.6 Manpower position

The year-wise position of availability of Conciliation Officers in the NCT of

Delhi is given in the table below:

Table:3 Year-wise staff position of conciliation officers (COs)

Year	Sanctioned	Men in position of	Shortage	Percentage
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	strength of COs	COs		of shortage
2001	21	10	11	52
2002	21	12	9	43
2003	21	12	9	43
2004	21	16	5	24
2005	21	20	1	5
2006	22	20	2	9

There was a serious shortage of Conciliation Officers in Delhi during 2001-2003 ranging from 43 to 52 *per cent*. Though the staff position has considerably improved in 2005 and 2006, there was no corresponding improvement in the number of cases settled, disposed off and conciliation reached as discussed at para 1.7.2.2 above.

Government accepted the audit finding.

1.7.3 Board of conciliation, investigation and arbitration

Section 5 and 6 of the Act authorize the Government to constitute a Board of conciliation and Courts 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 Courts of inquiry had been constituted by the Government during 2001-02 to 2006-07. Similarly, section 10A of the Act envisages referring of an industrial dispute to a Board of arbitration for promoting its settlement. However, the Government did not refer any case to the arbitration since 1996.

Government stated that Board of conciliation was created normally in respect of major national disputes. It further stated that a request for reference of industrial disputes to Boards of conciliation, courts of inquiry, Labour courts, Industrial tribunals etc. had to come from the parties to the dispute. However, no such requests had been received in this regard. It added that the large percentage of cases being dealt with by the Government of Delhi related to individual termination cases where Board of conciliation had no relevance.

1.7.4 Adjudication mechanism

Adjudication refers to mandatory settlement of industrial disputes by quasi-judicial bodies (17 Labour Courts and three Industrial Tribunals) constituted under the Act. These quasi-judicial bodies function under the administrative control of the High Court of Delhi. The position of dispute cases sent for adjudication, disposed off and pending as of December 2005 was as under:

Table 4: Position of pending cases at adjudication level

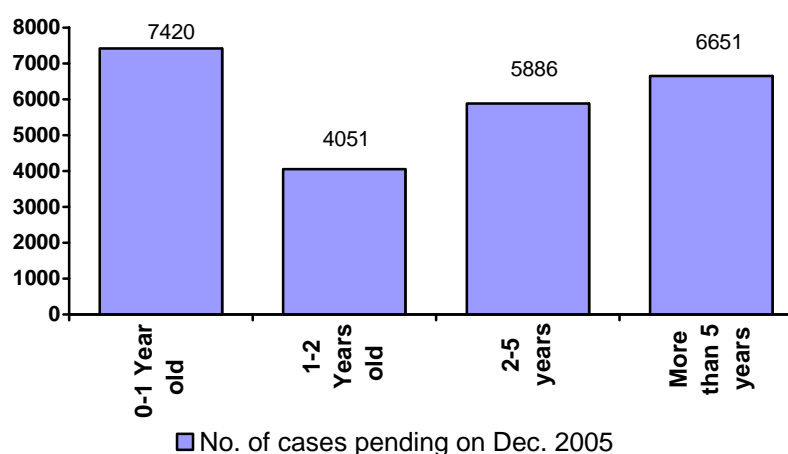
Year	Opening balance	Instituted during the	Total	Disposal	Pending cases	Percentage of Pending
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		year				cases
2001	28463	7075	35538	7623	27915	78.55
2002	27915	7190	35105	7637	27468	78.25
2003	27468	5601	33069	5992	27077	81.88
2004	27077	9887	36964	12026	24938	67.47
2005	24938	4953	29891	5883	24008	80.32
Total		34706		39161		

The number of cases pending with Labour Courts/Industrial Tribunals ranged between 67 to 82 *per cent* during 2001-2005. The number of pending cases was almost four times the average yearly receipt.

1.7.4.1 Status of disposal of old cases

An age-wise break up of the cases pending for settlement at the end of December 2005 in the Labour Courts/Industrial Tribunals was as under:



Of the 24,008 cases pending as on 31 December 2005, 12,537 cases (52 *per cent*) were pending for more than two years including 6,651 cases (28 *per cent*) that were pending for more than five years.

1.7.4.2 Delay in forwarding dispute cases for adjudication

Audit selected 1,221 cases that were referred to the Labour Courts/Industrial Tribunals for adjudication. Of these, the department could not trace 757 cases due to lack of reference numbers. Test check of the remaining 464 cases revealed substantial time taken by the departmental officials in forwarding the cases to the Labour Courts/Industrial Tribunals for adjudication as indicated below:

Table 5: Delay in forwarding references of disputes to Labour Courts/ Industrial Tribunals

Year	No. of disputes/cases selected for test check	No. of cases where reference numbers were not available in the department/ courts	No. of cases test checked	Time taken ranged between			
				Up to 3 months	3-6 months	6-12 months	More than 12 months
2001	249	111	138	37	60	25	16
2002	281	191	90	15	49	25	1
2003	279	165	114	7	40	58	9
2004	152	78	74	3	41	25	5
2005	133	95	38	4	5	14	15
2006	127	117	10	-	1	1	8
Total	1221	757	464	66 (14%)	196 (42%)	148 (32%)	54 (12%)

There was delay of more than six months in making references to the Labour Courts and Industrial Tribunals in 44 *per cent* of the cases test checked.

The Joint Labour Commissioner while admitting the delay in forwarding the references to the Labour Courts/Industrial Tribunals stated (January 2007) that the department had no proper record rooms or system for linking the references of the conciliation cases. Government further stated (February 2007) that in order to address the problem, the Act was amended by Industrial Disputes (Delhi Amendment) Act, 2003 allowing workers to file their cases under section 10 2A) directly in the Labour Courts.

1.7.4.3 Time frame for Award

Where the dispute is connected with an individual workman, Section 10(2A) of the Act stipulates that an order referring an industrial dispute to a Labour Court/Tribunal shall specify the period not exceeding three months within which the Court/Tribunal shall submit its award to the Government. Audit scrutiny revealed that no such time frame was prescribed by the department while referring the cases to the Labour Courts/Tribunals.

The Government stated that in few cases the period for disposal of industrial disputes have been specified, but generally it was not being specified in each Reference Order. It added that the same was now being done.

Audit analysed the time taken by the Labour Courts/Industrial Tribunals in

selected cases and the position is tabulated below:

Table 6: Disposal of cases referred to Labour Courts/Industrial Tribunals

Year	No. of cases test-checked	No. of award given by the Labour Court/ Industrial Tribunal during						Total cases disposed off	No. of cases pending
		2002	2003	2004	2005	2006	2007		
2001	138	5	25	28	21	7	1	87	51

2002	90	-	6	14	12	10	-	42	48
2003	114	-	2	8	48	23	6	87	27
2004	74	-	-	2	14	22	12	50	24
2005	38	-	-	-	1	8	9	18	20
2006	10					-	1	1	9
Total	464	5	33	52	96	70	29	285	179

Audit scrutiny revealed that more than 26 *per cent* of cases were disposed off by the Labour Courts/Industrial Tribunals after two years or more of their reference to the Labour Court/ Industrial Tribunal and 39 *per cent* cases were still pending adjudication. This indicated that only 35 *per cent* of cases were settled within a period of two years.

An analysis of the 179 pending cases in the Labour Courts during 2001-06 revealed that 70 *per cent* of the cases were pending for two to five years in the courts which defeated the objective of speedy disposal of industrial disputes.

1.7.5 Implementation of awards

1.7.5.1 Publication of awards in the gazette

The Act stipulates that the Government shall publish an award in the official gazette within a period of 30 days from the date of receipt of the award. The details of awards received and published during 2001 to 2006 was as under:

Table 7: Delay in publication of awards

Year	Number of awards received	Number of awards published with delay	Delay in publishing of the awards		
			Up to 3 months	From 3 months to 6 months	Above 6 months
2001	6008	6005 (99.9%)	101 (2%)	443 (7%)	5461 (91%)
2002	5265	5260 (99.9%)	1015 (19%)	4245 (81%)	Nil
2003	6393	6380 (99.8%)	3853 (60%)	2527 (40%)	Nil
2004	7412	7408 (99.9%)	99 (1%)	4423 (60%)	2886 (39%)
2005	7431	7431 (100%)	93 (1%)	3191 (43%)	4147 (56%)
2006	6434	4337(67%)	4337(67%)	--	--
Total	38943	36821 (94.55%)	9498	14829	12494

During 2001-06, 38,943 awards were received for publication, out of which 36,821 awards (94.55 *per cent*) were published after the time prescribed under the Act. There was delay in publication up to three months in respect of 9,498 awards, 3-6 months in 14,829 awards and more than six months in 12,494 awards.

Government admitted the fact that there had been delays in the publication of awards.

1.7.5.2 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 for 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. The position of implementation of awards in the state of Delhi as of December 2006 was as follows:

Table 8: Implementation of awards

Year	No. of awards received	No. of awards to be implemented out of total awards received	No. of workers affected	No. of applications received for implementation of the awards	No. of cases where RCs issued	No. of awards implemented
2001	6008	1074	1074	929	631	51
2002	5265	1299	1299	1117	776	220
2003	6393	1180	1180	868	513	154
2004	7412	1139	1139	799	265	17
2005	7431	1215	1215	632	32	0
2006	6434	1255	1255	391	328	24
Total	38943	7162	7162	4736	2545	466

The total number of awards received was 38,943, out of which, the number of awards to be implemented was 7,162. Out of 7,162 awards to be implemented, applications were received in 4,736 cases for implementation of awards. Out of 4,736 cases, Recovery Certificates were issued in 2,545 cases and awards were finally implemented only in 466 cases (6.5 per cent). In respect of those cases where applications were not received (i.e. 2,426 cases), the department admitted that it was not monitoring the implementation of the awards. Thus the number of cases where awards were implemented was quite insignificant.

The Government stated (February 2007) that the lack of monitoring in respect of awards where the workman does not approach the department does not undermine the worker's confidence in the conciliation machinery, since the workman himself, for various reasons, is not interested in following up the matter with the department. The Government, however, accepted that in cases where the workman does file a claim, expeditious steps need to be taken to get the awards implemented.

1.7.5.3 Delay in implementation of Awards

Test check of the implementation of awards given by the Labour Courts/Tribunals revealed that out of 285 cases, action for implementation of awards was required only in 15 cases. All the 15 awards pertained to the year 2001 to 2005 and involved individual workers. The position of the implementation of awards was as under:

Table 9: Details of implementable awards in cases selected by Audit

Year	No. of awards given	No. of awards to be implemented	No. of awards implemented	No. of awards not implemented
2001	87	3	-	3
2002	42	1	-	1
2003	87	8	-	8
2004	50	2	-	2
2005	18	1	-	1
2006	1	-	-	-
Total	285	15	Nil	15

None of the awards had been implemented as yet, though three of the workmen had filed claims (Dava) for implementation of the award. The department was not aware of the position of implementation in 12 cases.

1.7.5.4 Recovery of dues from the employers of workmen

The Act stipulates that where any money is due to a workman from an employer under a settlement or an award, the workman himself or any other person authorized by him in writing in this behalf, may make an application to the Government 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 RC for that amount to the collector who shall proceed to recover the amount in the same manner as an arrear of land revenue. Test check revealed that out of 5,548 recovery certificates aggregating Rs. 133.33 crore issued during 1998 to 2006, recoveries in 1,697 cases amounting to Rs. 46.28 crore was outstanding as of December 2006. The details are indicated below.

Table 10: Details of pending recovery certificates

(Rs. in crore)				
Year	Number of RCs issued	Amount to be recovered	No. of RCs where recoveries were pending	Amount outstanding
1998	422	12.47	12	0.89

1999	420	5.11	33	0.85
2000	453	5.03	62	1.71
2001	433	6.84	100	5.32
2002	442	6.53	112	5.94
2003	1365	33.69	387	12.40
2004	1060	46.68	307	9.74
2005	360	10.43	149	3.54
2006	593	6.55	535	5.89
Total	5548	133.33	1697	46.28

Delay in enforcement of the awards and recovery of dues from the employers of workmen was not only iniquitous but also bound to cause hardship to the workmen and undermine the objective of establishing and maintaining the dispute settlement mechanism as envisaged in the Act

The Government stated that recovery is entirely in the hands of the office of the Deputy Commissioner (DC) and shortage of staff both in the office of the DC and the department impaired their ability to enforce the recoveries.

Reply is not acceptable as Government should have effectively coordinated with the agencies concerned for prompt implementation of awards given by the Labour Courts/Industrial Tribunals.

1.7.6 Improper/non-maintenance of industrial dispute records

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. The maintenance of records at district and Headquarters' level was incomplete and ad-hoc which hindered effective cross-linking at each step of the process involved in disposal of disputes. Even the 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. Of the 2,398 cases selected for detailed scrutiny by Audit, the department was not able to produce 362 cases (including 37 cases pertaining to the year 2005 and 2006) due to poor record management. The details are given in Annexure-I.

The Government accepted the fact and attributed poor record management to lack of staff and frequent transfer of staff. The Government further stated that a proposal for setting up a proper record room with a well documented and retrievable filing system was on the anvil.

Recommendations

- *Given the large number of industrial disputes which are pending for settlement, the department may take immediate steps to constitute and activate mechanism like Works Committees to facilitate speedy resolution of industrial disputes as envisaged in the Act.*
- *The department may review the functioning of the conciliation officers to ascertain the reasons for the high percentage of failure cases and reduce delays at different stages of conciliation.*
- *The reasons for delays in disposal of cases at the adjudication stage may be identified and redressed to alleviate the problem of delays/pendency.*
- *The department may institutionalize an effective oversight mechanism for timely implementation of awards. Steps should also be initiated to monitor and expedite enforcement of recovery certificates.*

1.8 Contract Labour (Regulation and Abolition) Act 1970

The Labour Commissioner is entrusted with the responsibility of enforcing the provisions of Contract Labour Act and the rules made thereunder. The Act is administered through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under this Act. The Act provides for registration of establishments employing contract labours and licensing of contractors through whom the contract labours are arranged. All contractors under the Act are required to get a license which remains valid for 12 months and may be renewed from time to time on payment of fees and on such conditions as may be prescribed. The licenses may be revoked in case of contravention of any provisions of the Act or the rules. The Act also envisages periodic inspections of any place where contract labour is employed. Audit appraisal of the implementation of the Act revealed the following:

1.8.1 Inspection of principal employers/contractors

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 state sphere, the inspecting staff is designated as Labour Inspector. Deputy Commissioner/Assistant Commissioner of Labour may also conduct 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 and 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 Inspecting Officers employed and inspections conducted during the period 2001 to 2006 by the NCT Government are given in table below:

Table 11: Year-wise details of inspections conducted by the inspecting officers

Year	Sanctioned strength of Inspecting Officers	Number of Inspecting Officers(Men-in-position)	Number of inspections conducted
2001	20	9	15
2002	20	11	28
2003	20	11	16
2004	20	0	20
2005	20	0	73
2006	20	9	109
Total			261

Against the sanctioned strength of 20 Inspecting Officers, no Inspecting Officers were employed in 2004 and 2005 for conducting inspections of principal employers/contractors to ascertain whether they were complying to the provisions of the Act. In other years there were vacancies of about 45 to 55 *per cent* in the number of Inspecting Officers posted in various districts. Thus the Government of NCT of Delhi failed to provide adequate manpower of Inspecting Officers for effective implementation of the provisions of the Act.

Audit examination also disclosed that the number of inspections conducted during 2001-2003 was very low with each Inspector conducting merely two inspections per year. The position of inspections comparatively improved in 2005 and 2006.

During 2004 and 2005, while all the posts of Inspecting Officers remained vacant, the department conducted 20 and 73 inspections respectively through labour officers. Thus, not only the number of inspections carried out was inadequate, there was also no consistency in the number of inspections so conducted.

Government accepted that a mechanism need to be devised to ensure that while inspections do take place to protect the interests of the workers, there was no harassment to the employer.

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

Every principal employer of an establishment to which this Act applies is required to register the establishment with the registering officer of the department as per provisions of the Act. Further, no contractor can undertake or execute any work to contract labour except under and in accordance with a licence issued by the Licencing Officer under the provisions of the Act.

The department issued 408 registration certificates to principal employers of establishments and 943 licenses to contractors employing contract labours during the period 2003-04 to 2006-07. However, the department could not furnish the details of the registration certificates/licenses issued during 2001-02 to 2002-03. Further, the department did not undertake any exercise or survey to identify and ensure that all eligible establishments were registered and licenses were issued to the contractors who may be employing contract labour. In the absence of any such exercise, the department was not in a position to know whether all the eligible establishments/contractors were registered/issued licenses. Even in case of Government departments/agencies it was revealed that 64 major work orders had been issued by 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 licensed contractors, but only one contractor had the requisite license under the Act.

Government stated (February 2007) that identification of establishments which fall within the ambit of the Act for the purpose of their registration and licensing was not feasible in view of serious manpower constraints. The reply of the Government supports the audit contention that the Government has not taken adequate steps to strengthen the mechanism for effective implementation of the provisions of the Act.

1.8.3 Prosecution launched, convictions made and penalties recovered

The Act provides for penalties in cases of obstructions caused to the implementation of the Act. Whoever contravenes any provision of the Act or any rule made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a license granted under the said Act, shall be punished as per provisions of the Act. Of the 261 inspections conducted by the department during 2001 to 2006, the details of prosecutions launched, convictions made and penalties recovered were available in respect of 203 cases only as indicated below:

Table 12: Position indicating prosecutions launched, convictions made and penalties recovered

Year	No. of inspections	No. of irregularities Detected	No. of prosecutions launched	No. of convictions made	Penalties recovered (Rs.)
2001	14	52	14	13	46900
2002	24	84	24	19	97000
2003	7	39	7	4	27400
2004	11	10	11	8	30500
2005	47	85	47	21	69900
2006	100	216	33	19	149400
Total	203	486	136	84	421100

Out of 203 inspections conducted by the department, the irregularities detected were serious enough in 67 *per cent* cases to launch prosecutions. Of these, convictions were made in 84 cases (41*per cent*). A test check of 57 inspection reports was conducted to ascertain the nature of irregularities detected by the Inspecting Officers. Audit noted that the irregularities included non-maintenance of statutory records by the establishments exhibiting commencement of work, notice showing the rates of wages, hours of work, wage period, date of payment, place and time of disbursement of wages, provision of rest room, wage slips, employment cards, register of wages and muster roll, register of advance and overtime etc.

This indicated that the principal employers/contractors in Delhi were not complying to the provisions of the Act and there was, thus, a clear need for intensifying the inspections to cover all the licensed establishments and contractors as well as bringing all such establishments/employers within the ambit of the Act. However, no such effort was made by the department during 2001-2006.

1.8.4 Follow up of inspection reports

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. The department did not carry out re-inspection of any establishment for verifying rectification of irregularities detected in earlier inspections.

1.8.5 State Advisory Contract Labour Board

The Act provides for the constitution of a State Advisory Contract Labour Board to advise the Government on matters arising out of the administration of the Contract Labour Act and particularly on the question of abolition of

contract labour system in an establishment. Government of Delhi constituted the Board on 8 April 2003 for a period of three years. The first meeting of the Board was held on 21 April 2005. Five cases were referred to the Board. On the recommendations of the Board, Government has issued (April and July 2007) notifications for prohibition of contract labour in two cases: work of stuffing and destuffing of the containers in Inland Container Depot (ICD), Tuglakabad; and employment of contract labour in 15 specified works² in the office/establishment of Public Works Department.

Recommendations

- *The department may accord priority to set up a mechanism for early identification of establishments/contractors employing contract labour to monitor implementation of the Act and track down defaulting contractors/establishments.*
- *Production of license should be made a pre-condition for awarding Government contracts to establishments/contractors to whom this Act applies.*
- *Inspections should be strengthened and conducted in a planned manner to ensure prevention of exploitation of contract labour.*

1.9 Inadequate Training

Effective implementation of the Industrial Disputes Act and the Contract Labour (Regulation & Abolition) Act requires that the implementing staff should be properly trained and equipped to understand and deal with the intricacies and requirements of the Acts. However, no record was available in respect of any training having been conducted by the department except for training of three days duration imparted to three inspecting officers in 2001 in one out of the nine districts under the Contract Labour (Regulation & Abolition) Act.

The Government stated that shortage of manpower prevented the organization from resorting to adequate training programmes for the existing staff. The reply of the Government indicates its inability to implement the Act.

² Air Conditioner Mechanic, Air Conditioner Operator, Air Conditioner Khalasi/Helper, Electricians, Wireman, Khalasi (Electrical), Carpenter, Mason, Fitter, Plumber, Helper/Beldar, Mechanic, Sewer man, Sweeper and Foreman.

1.10 Impact Evaluation

The department did not undertake any exercise to evaluate the impact of the steps taken by it to implement the Industrial Disputes Act and or the Contract Labour (Regulation & Abolition) Act and to assess whether the objectives were being achieved.

1.11 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 Works Committees, Conciliation Officers, Courts of Inquiry, Labour Courts and Industrial Tribunals. The conciliation and dispute redressal machinery envisaged in the Act was yet to be fully constituted and activated. There was undue delay on the part of the Conciliation Officers in disposal of dispute cases and their success rate was poor at 9 to 11 *per cent*. The time frames envisaged in the Act for disposal of cases by the departmental officials and the Labour Courts/Tribunals were not being observed, thus, defeating the objective of expeditious resolution of disputes that is a pre-requisite for maintenance of industrial harmony. Even where awards were given by the courts/tribunals, implementation was delayed.

In respect of the Contract Labour (Regulation and Abolition) Act, 1970, there was no system of conducting a survey to ensure that eligible establishments/contractors were registered and had obtained licenses 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. No evaluation was conducted to assess the effectiveness of implementation of both the Acts.

Annexure- I
(Refers to Paragraphs 1.6 and 1.7.6)
(Industrial Disputes Act, 1947)
Selection of sample

Year	Total No. of dispute cases	No. of dispute cases selected as sample	No. of selected sample that could not be audited	No. of selected sample actually audited
2001	8292	501	117	384
2002	7744	501	117	384
2003	7680	496	55	441
2004	6521	299	36	263
2005	6031	299	30	269
2006	5499	302	7	295
Total	41767	2398	362	2036

Annexure- II
(Refers to Paragraph 1.6)
(Contract Labour (Regulation & Abolition) Act, 1970
Selection of sample

Year	Total No. of inspections carried out	No. of inspection reports selected as sample	No. of selected sample that could not be audited	No. of selected sample actually audited
2001	15	4	1	3
2002	28	9	0	9
2003	16	3	3	0
2004	20	9	5	4
2005	73	25	3	22
2006	109	27	8	19
Total	261	77	20	57

Annexure- III

(Refers to Paragraphs 1.7.2.1& 1.7.2.3)

Disputes received and disposed off in nine districts during January 2001 to December 2006

Sl. No.	Name of District	Opening balance on Jan 2001	Cases registered during Jan. 2001 to Dec.2006	Total No. of cases	No. of cases disposed off during Jan 2001 to Dec 2006	Cases pending
1.	East	66	2171	2237	2204	33
2.	North East	96	1760	1856	1834	22
3.	North	199	4525	4724	4280	444
4.	North West	143	6814	6957	6452	505
5.	West	327	8948	9275	8913	362
6.	South West	274	3819	4093	3943	130
7.	South	868	9400	10268	9993	295
8.	New Delhi	64	1538	1602	1550	52
9.	Central	315	2792	3107	3021	86
Total		2,352	41767	44119	42190	1929

Annexure-IV

(Refers to Paragraph 1.7.2.3)

District-wise details of percentage of pendency of disputes at the end of the year with Conciliation Officers

Sl. No.	Name of district	Percentage of pendency						Average percentage of pendency
		2001	2002	2003	2004	2005	2006	
1.	East	15	29	19	15	11	11	17
2.	North East	15	23	24	10	12	10	16
3.	North	38	9	32	22	15	46	27
4.	North West	52	21	14	24	20	37	28
5.	West	25	24	21	21	22	23	23
6.	South West	19	11	13	19	18	21	17
7.	South	30	25	17	31	12	22	23
8.	New Delhi	25	27	13	23	27	32	25
9.	Central	37	28	15	22	23	23	25

Annexure-V

(Refers to Paragraph 1.7.2.5.2)

Time taken in conciliation proceedings

Name of District	No. of cases test checked	No. of cases delayed checked	Delay		
			Up to 45 days	45-90 days	Above 90 days
East	122	91	53	28	10 (10%)
North East	102	86	46	27	13 (15%)
North	247	210	57	52	101 (48%)
North West	293	232	81	71	80(34%)
West	453	352	166	99	87 (24%)
South West	125	96	40	30	26(26%)
South	456	397	179	109	109 (27%)
New Delhi	81	74	22	24	28(38%)
Central	157	135	46	41	48(36%)
Total	2036	1673 (82%)	690 (41%)	481(29%)	502(30%)