



LABOUR LAW PRACTITIONERS'
ASSOCIATION, MUMBAI

1968-2018

Golden Jubilee

E-Souvenir

FROM THE DESK OF ADVOCATE RAJESH HUKERI

President, Labour Law Practitioners' Association, Mumbai

It gives me immense pleasure to welcome the Hon'ble High Court Judges, Retired Judges of the Hon'ble Supreme Court and High Court of Bombay, dignitaries, distinguished guests, Judges of the Industrial and Labour Courts and members of LLPA Mumbai and their guests on the occasion of Golden Jubilee Celebrations of our Association.



Our founding members were indeed visionaries when they decided that the LLPA be an inclusive Association of all those who practice Labour laws. They brought together Advocates, Trade Unionists and Management Consultants on a common platform. The members of the association were able to assist and settle various disputes through process of negotiations and mediation to the satisfaction of labour and industry. Several instances can be cited when the members stood united and firm to promote the interest of the litigants.

Many members have moved on from their practise in Labour/Industrial Courts to the Hon'ble High Court and / or Hon'ble Supreme Court. While in conversation with members , one realises the love and fondness that they have in their hearts for this Association. They recall the fierce arguments in the courts and many friendly cups of tea shared in the LLPA bar room as some of the Golden moments of their practice.

When the LLPA decided to organise Golden Jubilee function, we again realised how much the Association meant to members from the co-operation extended by them. The response was spontaneous and their contributions/donations were overwhelmingly generous. The deep rooted tradition to rise to the occasion and ensure participation was felt even in these celebrations.

The Association also has its own website which was inaugurated at the hands of Justice B. N. Srikrishna, on 10th April, 2010. With advancement in technology, the association has decided to launch an E-Souvenir which will be uploaded on the website for members to view at leisure. The concept of E-Souvenir is part of the Association's effort to go green. The members are welcome to express their views on the same. We are looking forward to introducing Associations App on mobile for convenience of members.

With your assistance, guidance and active participation we hope to satisfy the aspirations of Labour Practioners' in future.

- Rajesh Hukeri
Advocate



Justice (Retd.) Shri. B. N. Srikrishna

Supreme Court of India

“I am delighted that the Labour Law Practitioners’ Association, Mumbai is celebrating its Golden Jubilee. In its existence of fifty years, the Association has fostered the development of labour law, its practitioners and ensured that labour law practitioners are accorded their rightful place in society. It has been the breeding ground for many a counsel and judges of high repute. The younger members of this association can draw inspiration from the achievements of their seniors and emulate the high standards of advocacy, ethics and professional conduct which have been their hallmarks”.



Justice Hemant Laxman Gokhale

M. A. LLM

Former,

Judge, Bombay and Gujarat High Courts

Chief Justice, Allahabad and Madras High Courts

Judge, Supreme Court of India

I am happy to learn that The Labour Law Practitioners' Association is celebrating 50 years of its fruitful contribution. It is a unique organization of representatives of labour and managements and their Advocates. All these years, it has taken up issues concerning better facilities for the Industrial & Labour Courts and Labour Law Practitioners. It has been led by eminent Lawyers and Labour Representatives. I too had the opportunity of being the General Secretary of LLPA, Mumbai (one year).

I had the advantage of practicing in Industrial & Labour Courts in my formative years. Here I saw stalwarts in the field arguing their cases. It is here you learnt as to how to adjust the equities. My experience over here stood me good later when I shifted my practice to the High Court and became a Judge.

My best wishes to LLPA, Mumbai for it's future activities.

- Hemant Gokhale

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Ms. Kirti Shetty.....	Committee Member
Mr. F.R. Mishra	Committee Member
Mr. Mahesh Shukla	Committee Member
Mr. J.D. Fernandes	Committee Member

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WEBSITE – CONCEPT & DESIGN

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Ms. Kirti Shetty

MEMENTOS

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DESIGN OF ENTRY PASSES

Ms. Kirti Shetty

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SPECIAL THANKS TO

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Mr. Salil Desai
Ms. Monul Prabhu and his staff

LOGO & WEBSITE:

Mr. Sufyan Khan

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IN THE MEMORY OF LATE NARAYAN B. SHETYE, SENIOR COUNSEL



Nishita Mhatre

Hon'ble Justice (Retd.) High Court

Excitable, hard-working, meticulous, methodical, an erudite advocate, a man with a razor sharp intellect and a photographic memory were some of the words used to describe Narayan B. Shetye in the epitaphs at the reference held in the Bombay High court after his death on 27th July 2010. To some he appeared gruff with a stern visage. To others he was a man with an impressive personality and an infectious laugh. While some found him to be jovial, transparent and exuberant, others were wary of him.

Narayan Shetye was born on 27th August, 1930. His initial schooling was at the Lingraj School in Belgaum and later in Mumbai. While in school, he was influenced by Barrister Nath Pai and other Socialist leaders of the time, as a consequence of which he joined the Rashtra Seva Dal, a volunteer organization associated with the Socialist Party. Influenced by Ram Manohar Lohia and others who were at the forefront of the Goa Liberation Movement, he left home to join the movement. As a result he was arrested by the Portuguese Government in Goa, but released later as he was a minor.

After matriculation, Shri Shetye moved to Mumbai where he met Sane Guruji. He stayed in a commune in Dadar with Sane Guruji and other young Socialists like the late Shri P.D. Kamerkar, Advocate, Shri Chandu Patkar, Shri Keshav Gore, and Shri Baban D'Souza. As an active member of the Socialist party, he remained associated with Shri Lohia, Shri Madhu Limaye and others.

The trade union movement beckoned Shri Shetye. Being a member of the Socialist Party, he became actively associated with a number of unions under the umbrella of the Socialist Party including the Engineering Mazdoor Sabha and the Dock Workers' Union led by Shri P. D'Mello. From the early age of 18, Shri Shetye started representing unions and workers before the Labour Courts and Industrial Tribunals. The foundations of industrial jurisprudence were laid in some of the cases in which he appeared as an office bearer of the unions. Unfortunately, those cases are not reported in any of the law journals. As a trade unionist, he appeared against stalwarts in the legal field including Shri H.M. Seervai and Shri N.A. Palkhiwala, who were at the time briefed to appear in the Industrial Tribunals/Labour Courts. He argued successfully against them in matters concerning the calculation of Special Allowance while fixing minimum wages

and whether this calculation should be based on 26 days or 30 days. Legal luminaries and other trade unionists took notice of this young man, who was not awestruck or fearful of his opponents.

Shri Shetye often briefed Shri H. R. Gokhale (who later became a judge of the Bombay High Court and the Law Minister of the Union government) before the Bombay High Court and the Supreme Court, while still working with the trade unions. Encouraged by Shri Gokhale, Shetye completed his education and secured a law degree in 1965.

Armed with a degree in law, Narayan Shetye devilled in the chambers of Dr. Y. S. Chitale. He soon made a mark at the bar with his vast experience in labour jurisprudence which he had helped shape since the dawn of independence. Being a thorough professional, Shetye appeared for both employers and employees. At the time when there was a sharp dividing line amongst lawyers who appeared for employers and those who represented employees, Shetye enjoyed the confidence of both sides in equal measure, as they believed he would do justice to the brief.

Shri Shetye commanded great respect from the Judges of the Bombay High Court. When he cited a particular judgment, the Judges would rest assured that it was the last word on the subject. His mastery over the subject of industrial jurisprudence was legendary. Quick at repartee, his advocacy was second to none, as he was able to place a finger on the pulse of the Court, and adjust his argument midstream, a true testament to his legal acumen. He argued several intricate questions of law both as a trade unionist and as a lawyer. The law journals abound with such cases where he pushed the boundaries of industrial jurisprudence.

A small anecdote will illustrate the respect that Narayan Shetye enjoyed from the judiciary. A British Judge visiting the Bombay High Court was to sit on the dais with Mr. Justice Tarkunde. The latter informed Shri Shetye the previous day that his matter would be called out the moment the English Judge took his seat. As planned, the matter was called out and Mr. Justice Tarkunde called upon Narayan Shetye to explain the scheme of the Minimum Wages Act, as the matter pertained to that Act. Shri Shetye held forth on the provisions of the Act and the manner of fixation of minimum wages in the country. He continued his arguments for half an hour in the presence of the British Judge who was quite impressed with Shri Shetye's learning and insight.

Several trade unions engaged Shri Shetye to appear for them before the Labour and Industrial Courts. His old colleagues from the trade union movement like Ram Desai, R.J. Mehta, G.R. Khanolkar, Shri P.R. Krishnan and others briefed him to appear on behalf of the unions led by them in the High Court and the Supreme Court. These trade unionists along with Shetye and a handful of others in Mumbai were responsible for moulding our labour laws, including the complex nuances of wage fixation. Each of them was well versed in industrial law and was eager to contribute new concepts to industrial jurisprudence which were often tested and accepted before the Supreme Court. In 1975, Narayan Shetye was one of the Indian delegates at the Conference held in Oslo under the aegis of the International Labour Organisation where he represented the Mumbai Kamgar Sabha, a trade union led by the late Ram Desai.

Shri Shetye, like many other advocates practicing in the field of labour law initiated a matter in the Industrial Court, and continued with it into the Bombay High Court, and the Supreme Court. For example the oft quoted decisions in Hydro Engineers, Monthly-Rated Workmen of Indian Hume Pipe Company Ltd., S. G. Chemicals etc. were rendered in matters conducted by Shi Shetye in the trial court and through the hierarchy of Courts upto the Supreme Court.

Shri Shetye's cross-examination before the trial Courts was skilful and incisive. His arguments were precise. He did not believe in treating judges with kid gloves and did not hesitate in telling them when necessary, that their interpretation of well settled principles of law was incorrect. He was always ready to assist anybody in tackling a ticklish question of law. His penchant for hard work saw him rise at 3 in the morning on some days when multiple matters were listed for hearing on the same day. Rarely, if ever, was a matter adjourned because he was not prepared. When an exclusively labour bench was constituted for the first time in the Bombay High Court, it would not be an exaggeration to say that Shetye was engaged in almost every alternate matter listed on board for either the employer or the workmen.

Shri Shetye, though a hard task master, was very generous with his knowledge and secure in his belief that juniors must be afforded the responsibility to argue matters before the Courts. His only caveat was that the brief should be thoroughly worked on with the chronology of events, points to be argued succinctly stated, and judgements for and against the proposition made available with the brief. Juniors at the bar were treated to a master class in advocacy while watching him tackle major cases. He made the effort of sitting in the Court for some time before his matter was called out so that he could read the psyche of the judge. He knew exactly which argument would appeal to a particular judge and fashioned his arguments accordingly. He scarcely took more than five minutes to get a writ petition admitted. Such was the calibre of the judges then and Shetye's proficiency.

Shri Shetye was designated as Senior Advocate in 1985 when many recognised him as the uncrowned king of industrial law in Mumbai. At the peak of his career in the Bombay High Court, Shri Shetye shifted his practice to the Supreme Court in November 1986. Soon he established an enviable practice there and was briefed to appear in labour and service matters originating from High Courts all over the country. Shri Shetye had a few close friends at the bar like P. D. Karmarkar, Manek Gagrat and S. B. Naik. Firoz Damania and Shri Shetye shared a special camaraderie which enabled them to amiably settle several matters, irrespective of whether they appeared for the workmen or employer.

After more than fifty years of arguing cases before various courts, Shri Shetye retired to Gangtok from where his wife hailed. He passed away there, on 23rd July 2010. This was the colossus who strode the portals of the Courts – a veritable encyclopaedia of industrial law.



ADVOCATE M.S. NAIK SHARING HIS EXPERIENCE DURING HIS PRACTICE



Advocate M. S. Naik

I congratulate the Labour Law Practitioners' Association and all its founder members and the present members on completion of 50 years and wish the current members of the Association 50 years and more. The Labour Law Practitioners' Association and its practitioners have contributed and is still contributing to maintain the harmonial relations between the Labour and Industry by spreading knowledge of various Labour Laws and its processes. Labour Law practice is unlike Civil and Criminal Court practice, though the knowledge of Criminal Procedure Code and Civil Procedure Code is essential for understanding the procedure and practice of Labour laws. The Labour Court practice sounds common sense rather than strict provisions of law. The Courts also are being liberal in dealing with labour disputes over the years in application of labour laws rather than strict application of law as in the Civil Courts. But it should be remembered the practice in Labour Laws has its importance in shaping the economy with a liberal approach in its application in Labour dispute. Therefore, Labour Laws does apply in strict sense as law applicable in Civil and Criminal Courts, as also the Higher Courts have observed on many occasions that strict interpretation of law is not expected but if it occurs it is in favour of improving the relations of Labour and Industry towards achieving the growth of industry and country as a whole.

Personally, it is a strange coincidence as the law college in which I pursued my law is celebrating its Platinum jubilee this year and the Labour Law Practitioners' Association is celebrating golden jubilee this year. This brings to me great memories and experiences which I would like to share with my colleagues, friends, practitioners, members and law students.

I started my practice in Labour Laws as a Junior to a stalwart, Late Shri B. Narayanaswamy, respected father of Justice Shri B. N. Shrikrishna.. The Labour Court was then situated in a tabela (shed) which was converted into two Labour Courts and its offices on Gell street, Agripada.

I remember an instance when there was a strike in the transport industry (BEST) and there was a case before the Labour Court challenging the jurisdiction of the Court to declare whether "strike is illegal under the Bombay Industrial Relations Act" now known as Bombay Industrial Relations Act. I was surprised to see the then Advocate General Shri H.M. Seervai had come personally to the Labour Court at Gell street to appear in the said matter. The matter did not go on as the Union sought time in the matter and it was postponed. I am mentioning this

instance with a specific purpose as to the respect which was shown to the lowest court being Labour Court under Labour Laws by the Government and the Advocate General. The Advocate General could have sent a Government Pleader to attend the matter but instead the fact that he personally attended the Labour Court at Gell street itself speaks volumes about the respect which was shown by the Advocate General under the Labour Laws.

In one of my cases, I remember where the Labour Court was situated at Old Secretariat, Tata Company was a party and Shri Ratan Tata, Chairman of Tata Industry was impleaded as a Party to the proceedings by the Union represented by an active turbulent Union leader, Late Shri R.J.Mehta. In that matter notice was issued to Shri Ratan Tata and he had readily responded to the notice and volunteered to come to the Labour Court. This very fact of Ratan Tata, Chairman of Tata Industry personally attending the Labour Court showed the amount of respect and importance which an industrialist being a party to the proceeding to the Labour Laws and the Court which itself brought an end to the litigation there because the matter was not pursued further.

I also would like to share an instance during those days in matters of Premiere Automobiles, there were number of Labour disputes which were taken into Arbitration and the meetings used to take place almost everyday morning at Late Shri Narayanswamy's office at Matunga where Union Leader R. J. Mehta who was representing the union and a Labour officer Mr Ekhande was attending the proceedings at Late Shri Narayanswamy's office at Matunga. The Arbitration matters would involve huge number of workmen and thier reliefs and claims which resulted in bringing countless amendments to all the Labour Laws.

During the initial stage of my practice in the Labour Court there were two Judges of the Labour Court sitting at Gell street Agripada. They were Justice D.M.Vinn and Justice Dhingre. At that time there were active turbulent Union leaders like R.J.Mehta and G.R.Khanolkar, H.K.Sohni, B.N. Sane. The unions were represented by Senior Advocates like K.P.V Menon, S.J.Deshmukh, K.T. Sule and M.P. Mehta and employers were represented by practitioners/advocates like F.N. Kaka, F.D. Damania in matters pertaining to Bombay Industrial Relations Act, Industrial Disputes Act and Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act.

The above examples I have quoted from my experience in practising in Labour Court for the purpose of impressing upon the parties in litigation before the Labour Court and the practitioners who are representing them to note the importance of Labour Laws in those days. Over the 50 years which have lapsed and we are celebrating the golden jubilee of the association, I would urge the present and the future practitioners to embody the same in our practice and clients. This is an important issue to be considered by the Association. We must know that respect begets respect and this principle has to be observed in our practice in the Labour and industrial courts.

The Labour Law Practitioners' Association has played a major role in bringing together the Labour Law practitioners and Trade Union representatives and it has also produced some renowned publishers like S.L.Dwivedi of Labour Law Agency and S.D.Puri and Company who are still publishing number of publications in labour laws.

I conclude by wishing the Labour Law Practitioners' Association, its present and future members all the success and best wishes and to look forward for Platinum Jubilee of the Association.



UBIQUITOUS JOURNEY OF LABOUR LAW PRACTITIONERS SINCE 1968



S.D. PURI

Member Supreme Court Bar Association

Our Labour Law Practitioners Association was born after registration under Bombay Trust Act, 1960 and Societies Registration Act, 1960 by the efforts of the following personalities who promoted and then registered our Association 50 years ago on 4th October, 1968. The first Managing Committee and Committee Members who adored the then committee are:-

Managing Committee:- Adv. Shri B. Narayanaswamy – President, Shri G.G. Gawade – Vice President, Adv. Shri M.P. Mehta – Treasurer, Adv. Shri P.D. Kamerkar – General Secretary, Shri G.R. Khanolkar – Joint Secretary, Adv. Shri A.V. Ghate – Jt. Secretary **Executive Committee:-** Adv. Shri R.A. Jahagirdar, Shri. S. Subbiah, Adv. Shri M.A. Gagrath, Shri R.J. Mehta, Shri. V.N. Sane

The election to the office bearers / committee members in terms of the Constitution of our Association has been held since then on every two years. The names of **Present Managing Committee** of our Association, who adore the position are:- Adv. Rajesh Hukeri – President, Adv. Sandeep Chaubal – Vice President, Adv. S.N. Desai – Vice President, Adv. Vinay Menon – Gen. Secretary, Adv. Anupama Talekar – Jt. Secretary, Adv. Datta Patil – Jt. Secretary, Adv. Vijay Gehlot – Treasurer. **Committee Members:-** Adv. Prashant Pawaskar, Adv. Kirti Shetty, Adv. F.R. Mishra, Adv. Mahesh Shukla, Adv. Fernandes J.D.

The journey from the year 1968 to 2018, a year of Golden Jubilee, has been eventful. The successive office bearers left behind a rich legacy to the new generation of office bearers of our Association who are bestowed with great responsibility to carry out the task ahead from the point they left to make the Labour Law Practitioners Association to flower and blossom to new heights.

The Bombay City as it stood in the year 1915 had a tumultuous picture of full of textile mills numbering as many as 83. Later on, in the year 1960 or there about, that number had come down to 58. These textile mills dotted the Bombay skyline from Colaba to Mahim. These Mills alone directly employed nearly two and a half lakh workers. Besides, there were Dying & Bleaching Mills and Calendaring units. Later, Synthetic Fiber Mills were established. These Industrial units employed about lakh employees. In due course, Plastic, Pharmaceutical, electrical goods, transistors, radios and other manufacturing activities also started. However,

Cotton Textile and Ancillary mills were closed down due mainly to protracted strike and lock-outs in the year 1982. It is not that the textile mills did not assert themselves to survive in the face of stiff competition from the power looms and modernization of machinery in foreign countries by rationalization methods. The Cotton Mills introduced the super hydra methods by eliminating intermediate stages of production such as inter, stubbing and roving and from one loom to four looms per worker and by pulley belt drive to individual drive. But still all these rationalization efforts were in vein. These factors could not prevent the hastening of closure of Mills because the wage demands of the workers were so high that it could not withstand the competition posed by the power looms and other factors and in the face of strikes and lock outs, gheravos and violence in the mills orchestrated by inimical forces. The synthetic fibre and Art Silk Mills also came to be closed down in the year 1995 or thereabout. In the year ahead, powerlooms started at various places particularly, in Bhiwandi.

Historically, in order to meet the needs of dispute resolution of industrial & manufacturing activities, an enactment was brought into being viz. Trade Disputes Act, 1929. This enactment ultimately transformed into the present day Industrial Disputes Act 1947, incorporating there in many changes to suit the industries and labour of the present day. At the same time there was a Provincial enactment in accordance with the Government of India Act, 1935 viz. Bombay Industrial Disputes Act 1938 which later transformed to become Bombay Industrial Relations Act 1946 this Act covered among others Textile Mills, Dying and Bleaching and Silk Art Mills because of commonality and uniformity of production system. Therefore it necessitated to bring about legislation to cover all these industries under BIR Act 1946 in one go and the BIR Act was special to the Bombay Area. This Act has added "Wage Board" as additional provision. In the earlier period all the major disputes between the Trade Union and the Owners of the Mills were settled by collective bargaining involving all workers on one side and the representatives of the Mill Owners on the other. Wherever, the disputes could not be resolved for one reason or the other, the same were referred to "Wage Board" represented by employer, employee and Government representatives but the majority of the disputes were amicably settled by collective bargaining. Wherever, the individual disputes persisted the same were carried forward to be dealt with by the Labour Courts under Sec. 42(4) of the BIR Act 1946 r/ w Rule 53 of BIR Rules.

So far as Industrial Disputes Act 1947 is concerned, it is noticed that initially there was Bombay Gas Industry, located at Lalbaug and subsequently many industries which had started beyond Ville Parle and then Andheri onwards are governed by that Act. As the price of real estates skyrocketed in Mumbai, these manufacturing activities were closed down and most of them shifted out of the city limits. Many manufacturing activities virtually shifted to China. Only Head Offices and some other offices of these industries remained in the city. But with closing down of many manufacturing activities including Printing Presses, many service Industries replaced them such as Malls, Show rooms, Hotels, Restaurants, BPOs to cite a few which now dots the Mumbai sky line.

Organized Union

Right from beginning, for the textile mills, there came to be an organized labour by the name Rashtriya Girni Kamghar Sangh which came to be established on 2nd October, 1939 by late G.D. Ambekar and this labour union was re-christened as Rashtriya Mill Mazdoor Sangh in 1947. Late, Mr.G.D. Ambekar continued to organize and represent this union. On the other hand, Shripad Amrit Dange founder of CPI lead the Mill Workers' Union. During this period the strikes were common for bonus in the mills and late Mr. G.D. Ambekar who represented INTUC invariably negotiated with Mill Owners Association for bonus. The strikes and lock outs continued unabated even after passing the Payment of Bonus Act, 1965. Whereas there was Mill Mazdoor Sabha, a Socialist Union led by Bagaram Tulpule representing the workers in the Dying and Bleaching and calendaring as well as Synthetic Yarn and Art Silk Mills. The Mill Mazdoor Sabha led by Bagaram Tulpule used to negotiate the wage settlement and bonus etc. with SASMIRA. I was lucky to meet and interact with these stalwarts, G.D. Ambekar, S.A. Dange and Bagaram Tulpule, who carefully listened and acted upon the concerns of the Mill Owners when I was working in the Textile Mills as Labour Officer and then Chief Labour Officer.

In this scenario, the Bombay City then had really become the robust hub of all industrial and manufacturing activities employing lakhs of workers. As a natural consequence, the industrial disputes also grew in its size and dimensions and these were agitated in the Labour Courts. In initial stages, in the year 1939, Industrial Court was located at the premises of Bombay High Court and at that time Bombay was a province and later shifted to Jail Street at Arthur Road and thereafter to barracks opp. Churchgate then to old Secretariat and thereafter shifted to Arun Chambers at Tardeo since the year 30/5/1960, and at that time the jurisdiction of these courts were covered entire Maharashtra and subsequently relocated to the present place at Bandra in the year 7/6/1999. As the industrial and manufacturing activities spread, it was felt incumbent to constitute further Labour Courts and Industrial Courts in various districts of Maharashtra and thus, the industrial courts at Nagpur came into being in the year 4/5/1961 and at Pune on 22/10/1975 and at Thane on 15/11/1975 and at Kolhapur on 5/8/1980 and at Nasik on 8/9/1983 and at Aurangabad on 8/9/1983 and Amravati on 8/9/1983, Solapur 8/8/1984, Ahmednagar on 9/5/1986, Jalna on 1/1/1993, Akola on 7/5/1999, Yeotmal on 12/5/1999, Satara on 12/5/1999, Jalgaon on 12/5/1999, Chandrapur on 23/5/2003, Bhandara on 22/7/2003, Sangli on 28/7/2003, Latur on 28/7/2003 and Dhule on 22/7/2003. Hence the jurisdiction of Courts in Mumbai is curtailed following creation of various labour and industrial courts in phases in various districts of Maharashtra as stated above.

Whereas, in those days of 1950's in so far as enquiry proceedings are concerned, it used to be very simple and brief in summary form and never used to be in a legally vexed elaborate form as it is my personal experience that the enquiry into the misconduct of the mill worker in the period 1954 was not so complicated and arduous but confined to one witness and sheet of papers not more than one and half pages because very few employees used to invoke to labour court as they used to get easily an employment in any nearby textile mills. I remember to have once conducted such enquiry in Prakash Cotton Mill in the year 1954 when I was

Labour Officer and the same is shown to Adv. B. Narayanswami who approved the same and that sheet of enquiry paper withstood the test of enquiry before the Labour Court also. In other words there was no such thing as preliminary issue such as enquiry is not fair and proper and in that employer is allowed to lead evidence before the court to be decided in those days. The position has now diametrically changed and it has become more vexed and complex when we step into the later period of 1972 as set out in the judgement of Delhi Cloth and General Mills Company.

Labour laws became more complex and Technical

During this period the parliament amended section 11A of I.D. Act in the year 1971, whereby more power came to be vested with the Labour Courts/tribunals by abridging the rights of the employer. Earlier, the labour Courts could only interfere with dismissal/discharge of an employee subject to the four conditions being fulfilled as set out in the case of Iron and Steel Company Ltd. 1958 S.C.R.667. They are i) **when there is want of good faith** ii) **when there is victimization or unfair labour practice** iii) **when the management has been guilty of basic error or violation of principle of natural justice** and iv) **when on the materials the finding is completely baseless or perverse**. Whereas, by amendment to section 11A of I.D. Act, the Tribunals are now vested with vast powers to defer both on a finding of **misconduct arrived at by an employer as well as the punishment imposed by him** as has been settled in the judgement of the Workmen of Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. delivered in the year 1973 by the Supreme Court. The introduction of Sec. 25F, 25FF and sec.25FFF in Industrial Disputes Act, 1947 and enactment of MRTU and PULP Act 1971 which came into being in the year 1977 further made the labour laws more technical in nature. For example, after introduction of MRTU and PULP Act 1971, especially section 30(2) akin to Order 39 of CPC and introduction of the provision of contempt of Court proceedings u/s. 48 of that Act which is similar to proceedings under Contempt of Court Act, 1971 where High Court has jurisdiction u/s. 10 of that Act, the labour law practitioners have become more accomplished masters of CPC and Contempt Law. No other Act in labour laws contains the provisions such as interim relief and Contempt of Court Act. The enactment of further laws such as, the Contract Labour (Regulation & Abolition) Act 1970, the Payment of Gratuity Act 1972, the Sales Promotion Employees (Condition Service) Act 1976, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Cine Workers and Cinema Theatre Workers (Regulation of Employment and Conditions of Service) Act 1981, etc. are some of the instances, suggestive of expansion made in the field of labour laws. The Government of Maharashtra has also enacted MRTU and PULP Act in the year 1971 and notified the same in the year 1976 making the labour laws more complex and hyper technical for interpretation and presentation of which was made rather impossible without representation by an Advocate of repute there by altering the manner and method of proving a disputed questions of fact and law beyond the pale of an ordinary person because till then the presentations and arguments on behalf of the workmen were made by the union representatives in their official capacity, no matter, they did not hold a legal degree. In due course, the labour laws became more and more

complex and technical in nature. In earlier period, there was objection on the part of union representatives against representation of advocates on behalf of employers. But in due course their objection mellowed down and slowly now both sides are represented by advocates with due regard to the fact that the labour laws have become more and more complex and technical.

It is noteworthy to mention that there were then many eminent Union leaders representing labour in their disputes, arguing the cases of labour before the Labour Courts with ease and erudition on par with other Advocates. The present Labour Law Practitioners must be proud of their contributions. They were in no way less informed than the eminent lawyers who then practiced in the Labour Courts as members of LLPA. They were outstanding in the field in their own rights. They had vast experience and knowledge in employment laws and they had a passion about the work they did. They had the ability to break down the most complex concepts into simple and practical measures. It was a pleasure working with them as they were hard working and knowledgeable. The then judges were incredibly impressed with the quality of their work and they were really one of the earliest people to represent the labour. I must mention that these well-known personalities among others are Shri G.R. Khanolkar, R.J. Mehta, V.N. Limaya, A.D. Shastri, P.R. Krishnan. These eminent personalities served the vast arena of labour force of Mumbai and they functioned with dedication and rectitude. They were conducting the matter before these Courts and had acquired specialty and distinction in Labour matters and attained high degree of proficiency on par with any other learned advocate in the field.

The labour side was represented besides the above renowned union leaders by dedicated and eminent advocates. Among them notable were - Advocates - S.G. Deshmukh, Dr. R.S. Kulkarni, K.P.V. Menon, S.M. Dharap and Madan Phadnis. They have immensely contributed for its growth and development. They are indeed an inspiration and motivation.

I remember the eminent **Advocates of Employers** of that period whose contributions to the growth and development of Labour laws and to the cause of Labour Law Practitioners Association is phenomenal. They are Advocates - B. Narayanswami, F.N. Kaka, P.K. Rele, F.D. Damania, Darius Shroff, M.S. Naik, Manek Gagrath, R.A. Jagirdar, P.H. Purav, C.V. Pawaskar, Mahesh Bhatt, P. Ramaswami and other eminent Advocates.

They have enriched our Labour Law Practitioners' Association so much that the labour laws with which we are dealing with today during those days were just evolving or had not yet been settled. We also have in our midst today many legal luminaries who started their career by being with our Association and even today some of them practice in Bombay High Court and Supreme Court. My duty will be incomplete if I do not mention their names particularly Senior Advocates J.P. Cama, Shekhar Naphade, Chandar Uday Singh, Colin Gonsalves, Indira Jai Singh among others who practice in Supreme Court. Similarly we have Senior Advocates, K. M. Naik, A.V. Bukhari, Sudhir Talsania and others who rose from being the members of our Association to practice in Bombay High Court. Thus our Association has produced many legal luminaries who immensely contributed to the growth and development of Labour laws. The Labor Law Practitioner's Association is indeed lucky to have them in our midst.

Thus, to begin with, Labour laws were in a nascent state and were evolving and hence there was little difficulty in representation. But from the year around 1970 or thereabout, more and more labour laws are settled by the Apex Court and the appropriate government carried out more and more amendments to the existing laws to bring it in tune with the law pronounced by the Courts. Thus, as of now the various provisions of the labour laws could no longer be interpreted and argued before the courts by a non advocate though the I.D.Act still has the provision at variance with the Advocates Act. The scope and ambit covering the field of labour laws has touched all kinds of human relations beyond employer-employee and it has grown to embrace almost all Indian laws by the mere fact that the labour laws are a beneficial legislation and thus an Advocate specializing in labour laws is capable of mastering the nuances of almost all Indian laws.

We are proud that some of our labour law practitioners could rise in their stature to become eminent judges of High courts and Supreme Court and even one of our own could rise to the position of Chief Justice of India. I will not be doing justice to my cause if I do not mention their names. They are Hon'ble Shri. S. H. Kapadia former Chief Justice of India, Hon'ble Shri B. N. Sri Krishna former Judge of Supreme Court, Hon'ble Shri Hemant Gokhale former judge of Supreme Court, Hon'ble Rajan Kochar the former judge of Bombay High Court and Hon'ble Smt. Nishita Mhatre then Acting Chief Justice of Calcutta High Court. In the beginning Hon'ble Justice S.R. Samant who was practicing in the Bar was appointed as Judge of Industrial Court and then retired. His contribution to our association is invaluable. Besides above, even from Bench of Industrial Court, Judges are elevated to Bombay High Court. Among them are Hon'ble Judge H.H. Kantharia, Hon'ble Judge B.V. Chavan and Hon'ble Judge Chandrakant Vasant Bhadang are important to be mentioned.

Thus the journey of our Association for the last fifty years is indeed transcends into a golden period leaving behind rich legacy. I am grateful to all of them and I am duty bound to remember them today as far as my recollection goes for their pivotal role which is not at all a small measure. My grateful thanks therefore to one and all who have selflessly served the cause of labour and employer and our Labour Law Practitioner's Association. Therefore this journey of fifty years is really golden and memorable.

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LABOUR LAW PRACTITIONERS' ASSOCIATION, MUMBAI – IN RETROSPECTION



P. Shankar Shetty

Advocate

The Labour Law Practitioners' Association is celebrating golden jubilee of its registration as an Association on 6th October, 2018. On this occasion my memory goes back to the good old days of 1960s when I started practicing in the Industrial Courts, Labour Courts and Payment of Wages Authorities. During that time the Labour Courts were situated at Gell Street, Mumbai Central. The Courts of Payment of Wages Authorities were located in the barracks opposite Mantralaya. The Industrial Tribunals/Courts were located on the 1st Floor of the Old Secretariat Building at Fort. In the year 1965 or thereabout the Courts of the Payment of Wages Authorities and the Labour Courts were shifted to the Ground Floor of the Old Secretariat Building. During that period there was no organization of the Advocates and the persons appearing in these Courts on behalf of the employers and employees.

After the Labour Courts and the Courts of Payment of Wages Authorities were shifted to the Old Secretariat Building some of our stalwarts practicing in these Courts, felt that an Association of the persons who practice in the Industrial, Labour and Payment of Authorities Courts should be formed so that they will be able to represent the difficulties of the Labour Law Practitioners to the concerned authorities. Late Shri B. Narayana Swami, Advocate, Late Shri P. D. Kamerkar, Advocate, Late Shri H. K. Sowani, Advocate, Late Shri Maneck Gagrath, Advocate, Late Shri G. R. Khanolkar, Trade Unionist, Late Shri V. N. Sane, Trade Unionist, Late Shri R. J. Mehta, Trade Unionist were some of those who had taken a leading part in forming the Association.

The Association was formed in the year 1966. It is the conglomeration of Labour Law Practitioners consisting of Advocates, Labour Law Advisors, Trade Union Leaders and Employers. The objectives of the Association include upholding the rule of law and promoting peaceful resolution of industrial disputes. The basic belief of the Association is that the process of collective bargaining is an effective instrument in resolving industrial disputes and the establishment of industrial peace on a permanent basis. Though the Association was formed some time at the end of 1966, it was not a registered body. It had no place where the Association could carry out its activities. After great persuasion by the office bearers of the

Association then President of the Industrial Court, Shri Syed Taki Bilgrami, allotted a small room of about 10x12 square feet area on the 1st Floor of the Old Secretariat Building for the Association. Sometime in the year 1967-68 the Industrial and Labour Courts and the Court of Payment of Wages Authorities came to be shifted to the 3rd, 6th and 7th Floors of Arun Chambers at Tardeo. After shifting to Tardeo the Association was allotted a slightly bigger place for the Bar Room on the 7th Floor of Arun Chambers. Steps were taken thereafter by the office bearers to get the Association registered under the Societies Registration Act and the Association came to be registered on 4th October, 1968.

As time passed, the Association could impress upon the President of the Industrial Courts to allot a spacious bar room on the 7th Floor of Arun Chambers. In the year 1972 the Association could succeed in securing a much bigger space for the bar room on the 7th Floor of Arun Chambers. Then President of the Industrial Court Shri N. L. Abhyankar got his own Court Room partitioned and practically 1/3rd of the Court Room was given to the Association for maintaining a library and a Ladies Room. Another Court Room besides the Presidents' Court was vacated and was allotted to the Association as a Bar Room where the Association could maintain two Conference Rooms and a waiting room for clients and also a place for the members.

The Association has three types of members i.e. Ordinary members, Life members and Associate members. A number of companies and the Trade Unions are Associate members of the Association. The Renowned Biscuit Company was the first employer to become an Associate member and the Engineering Mazdoor Sabha was the first amongst the Trade Unions to become Associate member of the Association. Apart from the Advocates the Trade Union representatives practicing Labour Law in the Industrial Courts/Tribunals, Labour Courts, Employees State Insurance Courts, Payment of Wages Courts are also members of the Association.

There is complete cohesiveness amongst the members of the Association though by and large they represent the litigants having diverse ideologies/interests. In spite of the bitter fights in the courts while conducting the matters on behalf their respective clients once they come out of the courts the bitterness is forgotten. This is a unique feature in the Labour Law Practitioners' Association, Mumbai, unlike in some other bars.

During its long existence of 50 years the Association has taken up number of issues concerning the members and functioning of the Industrial and Labour Courts. In the good old days by and large the State Government used to appoint retired Judges of the High Courts or Civil Courts as Members/Judges of the Industrial and Labour Courts for short durations. By the time the Members/Judges got the grip of the Labour Laws it would be time for them to retire. This was creating lot of problems for not only the Labour Law Practitioners but also for the Employers and Employees/Trade Unions. There was no definite policy for the selection of Labour Court and Industrial Court Judges. The appointment of Judges was being made on ad-hoc basis. The Association, therefore, submitted certain proposal to the Government to frame definite policy for the selection of Labour and Industrial Courts, Judges/Members. It was

proposed by the Association that two separate cadres of Labour Court Judges and Industrial Court Members should be established and recruitment should be made through Public Service Commission and that 50% of the posts should be reserved for direct appointees from the bar. It was also proposed by the Association that the Labour Court Judges should be eligible for promotion to the Industrial Court. The Association also suggested that Civil Judges, Senior Division, should be eligible for being appointed as the Labour Court Judges and the District Judges and Assistant Judges of three years standing should be considered for being appointed as Judges of the Industrial Court. In the alternative, it was also suggested by the Association that the Labour Court Judges should be part and parcel of the cadre of Civil Judges (Senior Division) and the Judges of the Industrial Court should be a part and parcel of the cadre of District Judges and the posting in the Labour Courts and the Industrial Courts should be made by the Hon'ble High Court. It was also suggested that in no case should a person be appointed as a Judge of these Courts unless he is available for a period not less than five years and that no one from the Administrative Services should be appointed to these posts. The Association had also suggested that the short term extension to the Judges should be discontinued. As a result of the continuous efforts of the Association the Government had to take steps to appoint the Judges in the Labour and Industrial Courts from amongst the members of the bar to some extent and promote of the Labour Court Judges as members of the Industrial Courts. However, recently it is noticed that the Judges in the Labour and Industrial Courts are appointed for short term duration which causes serious problems to not only the Labour Law Practitioners' but also the litigants. I am sure that the Association will take the necessary steps in this respect in the coming days.

The Association also had a long fight with the State Government about the security of the Labour Law Practitioners' and litigants in the premises of the Industrial and Labour Courts. It was found that the premises of the Industrial and Labour Courts at Arun Chambers were not safe. Inasmuch as the plaster of the ceilings in the court premises started falling endangering the lives of the Practitioners' and Litigants. Even the Members/Judges of the Industrial and Labour Courts were not an exception. On a given day the ceiling in the chamber of Shri R. N. Gawande, then President of the Industrial Court, fell and the Hon'ble President was luckily saved. The Association, therefore, launched agitation for a long time including suspension of court work and relay hunger strike. Ultimately, the State Government realized the seriousness of the situation and agreed to allot alternate premises for the Labour and Industrial Court. A number of alternate premises were shown to the then office bearers of the Association and ultimately the Association approved the present premises at New Administrative Building, Government Colony, Bandra (East) where the Industrial and Labour Courts are presently situated. The Association has also taken up with the State Government its demand for an independent premises for not only the Industrial and Labour Courts but also all the Courts/ Authorities such as Payment of Wages Courts, Employees Compensation Courts. The Association is also pursuing its demand for locating all the Courts/Authorities including Criminal Courts which are dealing with the disputes arising out of industries in one premise.

As per its Constitution the President is the leader of the Association. From its inception the following persons have occupied the post of President of the Association.

1. Late Shri B. Narayanswamy - 1967-1968
1968-1969
1969-1970
2. Late Shri G. G. Gawade - 1970-1971
1971-1972
3. Late Shri M. A. Gagrat - 1972-1973
1973-1974
4. Late Shri K. T. Sule - 1974-1975
1975-1976
5. Late Shri P. D. Kamerkar - 1976-1977
1977-1978
6. Late Shri F. N. Kaka - 1978-1979
7. Late Dr. R. S. Kulkarni - 1979-1980
8. Shri M. S. Naik - 1980-1981
1981-1982
1985-1986
1992-1993
1993-1994
1995-1996
9. Late Shri G. R. Khanolkar - 1982-1983
10. Late Shri S. J. Deshmukh - 1983-1984
1984-1985
11. Late Shri K. P. V. Menon - 1986-1987
1987-1988
1988-1989
1989-1990
12. Shri S. S. Pathak - 1990-1991
1991-1992
1996-1997
1997-1998
1998-1999
2002-2003
2009-2010
2010-2011
13. Late Shri P. B. Akolkar - 1994-1995
14. Shri P. Shankar Shetty - 1999-2000
2000-2001

15. Shri M. S. Jamboulikar	-	2001-2002 2007-2008 2008-2009 2015-2016 2016-2017
16. Shri K. S. Desai	-	2003-2004 2004-2005
17. Shri V. T. Mirajkar	-	2005-2006 2006-2007
18. Shri S. S. Choubal	-	2011-2012 2012-2013
19. Shri S. N. Desai	-	2013-2014 2014-2015
20. Shri Rajesh Hukeri	-	2017-2018

In its long history the Association has seen that many legal luminaries have appeared in the Labour and Industrial Courts in Mumbai and contributed to the development of Industrial Law. Shri Ram Jethmalani, Advocate, Shri N. V. Phadke, Advocate, Shri P. P. Khambata, Advocate, Shri Madan Phadnis, Advocate, are some amongst them. The Association has also contributed to the judiciary. Shri S. P. Bharucha who has retired as the Chief Justice of the Supreme Court had also appeared in the Labour and Industrial Courts in a number of matters before his elevation as High Court Judge and later to the Supreme Court. Justice Shri B. N. Shrikrishna and Justice Shri Hemant L. Gokhale who have retired as the Judges of the Supreme Court were also the regular Practitioners in the Industrial and Labour Courts. Similarly, Justice Smt. Nishita Mhatre and Justice Shri R. J. Kochar who have retired as High Court Judges were also the regular Practitioners in the Industrial and Labour Courts. A number of Advocates who were regularly practicing in the Industrial and Labour Courts have also been appointed as Senior Advocates in the High Courts and Supreme Courts. Some amongst them are Late Shri P. K. Rele, Shri Chandar Uday Singh, Shri Shekhar Naphade, Ms. Indira Jaisingh, Shri Anand Grover, Shri J. P. Cama, Shri Collin Gonsalves and Shri A. V. Bhukari.

The Association had also taken up the issue of corruption in the Labour Judiciary and had successfully launched long agitations in some cases.

I hope that the Association will not lag behind in fulfilling its objectives in the coming days also.



COMMERCIAL ARBITRATION IN INDIA- SUCCESS OR FAILURE?



Pushpa Menon

Advocate

Arbitration is synonymous with speedy remedy or it is supposed to be so.

However, at present the delay caused in arbitration and the legal tangles involved thereat are such that more and more people are opting for non-arbitration remedies. For instance, at present, the Insolvency and Bankruptcy Code, 2016 is one of the most popular remedies resorted to by one and all for recovery of money from a company, only owing to the speedy disposal available under the Code.

The Law Commission had stated in its report¹:

“Proceedings in arbitrations are becoming a replica of court proceedings, despite the specific provisions in Chapter V of the Act which provide adequate powers to the arbitral tribunal. The Commission hopes that arbitral tribunals would use the existing provisions in the Act, in order to reduce delays.”

Although arbitration was fast becoming the preferred mode of dispute settlement amongst corporate entities for the settlement of commercial disputes, there were certain issues regarding the structure and implementation of arbitration in India. Although the Supreme Court has on many occasions delivered judgments which champion the cause of arbitration in India, its true potential could never be achieved due to certain loopholes contained in the 1996 Act, the major of them being:

1. Interference by courts was inevitable since most of the arbitral awards are challenged until they reach the Supreme Court.

2. There was no provision in the 1996 Act to expedite the arbitration process. In other words, the arbitration tribunal was not required through statutory provisions to make an award within a fixed period.

3. As a rule, most of the arbitrators are retired High Court or Supreme Court Judges and, in some cases, Senior Counsels and their sitting fees are prohibitory to an ordinary citizen and hence except in the case of disputes between multinationals and other big companies, the cost of arbitration was beyond the reach of others.

4. Besides, unlike some of the foreign countries, many of the arbitrators in India are not

inclined to grant the entire cost of arbitration, legal fees et cetera to the party succeeding in the arbitration as this is not strictly contemplated under Indian law.

The above reasons made dispute resolution through arbitration more time consuming and defeated the very purpose of the 1996 Act. The effects of this were quite evident by the fact that a growing trend emerged where even Indian companies who entered into contracts with international entities preferred arbitration proceedings conducted in a jurisdiction outside India. In fact, in the case of *White Industries v. Republic of India*, an investment arbitration claim, the award was pronounced against India due to severe judicial delays.²

In the above backdrop, the amendment to the 1996 Act is a welcome change that makes India more arbitration friendly.

The world's leading international arbitral institutions have been revising their respective rules over recent years in an attempt to make arbitration faster, more expedient and more efficient. Institutions such as the ICC Court of International Arbitration, the Hong Kong International Arbitration Centre and the Singapore International Arbitration Centre have all been reviewing and amending their procedural rules so as to create a more effectual and conducive environment for dispute resolution by arbitration.

The recent amendment of the 1996 Act has provided for fast track arbitration by the addition of Section 29A & 29B, which goes a long way in cutting down the prevailing epidemic of delayed proceedings. These provisions are at par with Expedited Procedure Provision in many leading international arbitral institutions. The section provides the parties to a dispute with an option to choose fast track procedure, ensuring that the award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference; which can be further extended by another six months by consent of the parties. The amendment has further incorporated features of Expedited Procedure Provision by allowing parties to settle disputes merely upon the basis of written pleadings, documents and submissions filed by the respective parties, doing away with oral hearings altogether. In fact, the enabling provision in Section 26 provides for fast track arbitration procedures to be applied to existing disputes if the parties mutually agree to the same.

It is noteworthy that the proviso to Section 29A(4) of the 1996 Act allows the Court, if it finds that the delays in the arbitration proceedings are attributable to the arbitrator, then it may order a reduction of fees of the arbitrator up to 5% per each month of delay. This too can serve as a deterrent to tribunals that are at times lax and allow delays in proceedings; and shall act as a tool for the tribunal to clamp down on the parties and ensure timely submissions from both parties.

The amendments to the 1996 Act are doubtless aimed at reducing inordinate delays that, unfortunately, are commonplace in dispute resolution in India. However, the seemingly advantageous incorporation of provisions mandating speedy disposal of disputes comes at the cost of sacrificing party autonomy. Party autonomy is the bedrock of arbitration and has been ever since its inception. In this regard, Section 29A(3) allows the parties to extend the period for passing an award by another six months if the award is not passed within 12 months.

However, according to sub-section 4, if such award is not passed in spite of the extension of six months, the mandate of the tribunal automatically terminates and only the court can, upon an application filed by either party and upon being satisfied of sufficient cause, extend the period for passing the award further. In other words, even if the parties to the dispute mutually agree to further extend the mandate of the arbitral tribunal beyond the 18-month period; they are precluded from doing so by the operation of sub-section 4. This mandatory requirement to file an application before the court, an agreement between the parties notwithstanding, is antithetical to the idea of parties having the autonomy to set down time limits and procedures for the adjudication of disputes.

The new amendment has introduced the Fourth Schedule which prescribes fees based on the claim in the arbitration. Though the model fee prescribed therein is substantial, it is a fixed amount, and the parties are aware of the amount required to be expended by them for the whole arbitration. Prior to the said amendment, arbitration proceedings used to stretch on for years together for no fault of the tribunal or the parties and since sitting fee is charged by the arbitrator or if it's a panel three times the individual sitting fee of an arbitrator is required to be paid by the parties.

Another amendment which helps the parties in arbitration is incorporated in section 12 read with Fifth, Sixth and Seventh Schedules which tries to ensure impartiality of arbitrators. The said provisions provide grounds which give rise to justifiable doubts as to the independence or impartiality of arbitrators, such as the arbitrator being an employee, consultant, advisor or any person having business relationship with one of the parties or affiliates of one of the parties or such other nexus with the party, its lawyer or law firm et cetera.

I have only set out the predominant amendments which have been introduced to make arbitration successful in India. However, unless the backlog of arbitration matters is dealt with before the High Court and Supreme Court, we would have a long way to go in making arbitration as successful in India as in some of the other arbitration destinations like Singapore, England et cetera.

¹ Law Commission Report 246, <http://lawcommissionofindia.nic.in/reports/report246.pdf>

² White Industries v. Republic of India, Final Award, 30 Nov. 2011



LLPA – PROVIDING SOLUTIONS FROM WITHIN THE SYSTEM



Vijay P. Vaidya
Advocate

This paper makes an attempt to debate some solutions that could be useful to overcome the twin problem of expeditious and quality disposal of labour litigation. While this has been a concern for all, appointment of adequate courts and increasing the working hours have been suggested by many as a solution. However, all the suggestions have failed to take off and the litigants continue their unending wait for justice. The litigants are denied justice first due to delay and then further delays in super courts. The quality of judgments and orders, at least of the lower court leave much to be desired.

Industrial disputes Act expressly contemplate mandatory conciliation as an Alternate Dispute Resolution (ADR) before adjudication of disputes. Conciliation officers are trained in industrial dispute mediation and have been armed with powers to enforce attendance of any person for examination of such person or to inspect any document which is relevant to industrial dispute and shall have the same powers as a civil court under Code of Civil Procedure. The attempt of conciliation must be bonafide and in the event of failure the report must reflect what steps were taken and the powers exercised by him for evaluation of facts in dispute. Most of the reports of failure of conciliation are wishy-washy with the conciliation officer summarily and arbitrarily recording failure. The conciliation machinery has been rendered completely impotent and useless due to lack of sincere mediation efforts. It is necessary to energize and activate this forum as the object of the Act 1947 is to investigate and settle industrial disputes.

Conciliation officers must stop being post-offices and perform the statutory functions enjoined upon them with sincerity and dedication. An enthusiastic and sincere conciliation will without doubt result in reduction of cases for adjudication especially in individual disputes of discharge, dismissal or otherwise termination.

In matters of collective disputes affecting several workmen or industries a Board of Conciliation is envisaged to be set up. In last 3 decades hardly has such a Board of Conciliation been set up even though Industrial disputes were common phenomena in 1980s and 1990s. A Board consisting of equal members of employers and employees must attempt to resolve a dispute by negotiations and collective bargaining. It is suggested that every collective dispute

must be put before such a Board of Conciliation before referring the dispute for adjudication..

Similarly, Chapter III pertaining to voluntary arbitration of disputes under section 10A of the Industrial Disputes Act, 1947 remains in cold-storage. Attempts must be made for voluntary arbitration of all Industrial Disputes as that can ensure quality as well as expeditious disposal of cases. Courts are burdened with litigation and it is only voluntary arbitration that can pass way of expeditious end to an Industrial Disputes. In fact when the matters are remanded by the superior courts – High Court / Supreme Court for reconsideration of facts or law or both then every remand must be made to arbitration under section 10-A and not to labour or Industrial Tribunal. This will ensure time bound and quality disposal of labour cases. A list of arbitrators along with a schedule of fees can be made available to the High Court or Supreme Court by LLPA it being the Premier Association of Labour Practitioners. This will have a twofold benefit. Firstly it would not clog the normal litigation with “remanded” litigation in the courts and secondly the parties would have the benefit of an experienced labour practitioner as an arbitrator.

Most of the Labour / Industrial Courts in Maharashtra are clogged with complaints of unfair labour practices. These complaints are required to be disposed off in 90 days. In order to achieve this Investigating Officer whose job is to assist the labor or Industrial Court can play a major role. The courts must utilize the services of investigating Officers to resolve disputed questions of facts. They could be directed to visit the premises and question the concerned parties and submit a report to the Court. In fact the court may appoint Investigating Officers from amongst the LLPA to expedite the disposal of cases of unfair labor practice.

It is suggested that rather than seeking solutions for expeditious disposal from outside the system; it is necessary for the stakeholders to seek solutions from within the provisions of existing law. LLPA can play a proactive role and assist in this task by providing competent, independent and practitioners’ with undisputed integrity to act as Arbitrators, Investigating Officers and Members of Board of Conciliation. Let this golden year celebrations open a new chapter in the role of LLPA. These suggestions can be put to test only if members of LLPA continue to play a positive and constructive role in resolution of industrial disputes.



LLPA : A NEED FOR PROACTIVE ROLE



P.M. Palshikar

Advocate

After almost 20 years, on 24.6.2006, a joint conference of Judges of High Court. Industrial Court, Labour Court and the Office bearers of the Labour Laws Practitioner's Association in Maharashtra was held at Aurangabad to deliberate the role and status of Labour adjudication in the state. The then Honourable Chief Justice of Bombay High Court while inaugurating the conference said, "Industrial jurisprudence has evolved over several decades and although broadly it is a part of service jurisprudence it has attained a distinct feature". Despite surge in Industrialization over a period of 2 decades, the conflict between the capital and labour has prevailed. The machinery for resolution of conflict seems tired and over stretched. Effective implementation of well fare legislation in the state remains circumvented; and the economically weaker section, which in labour laws forms the backbone of the bargainable category are deprived of its fruits. Effective and Speedy enforcement and implementation of labour laws and expeditious resolution of conflicts has remained a distant dream. The conference was initiated by the High Court to bring all the stake-holders on a common platform with a theme to discuss debate and suggest a forward path for timely and qualitative decisions in the resolution of Industrial Disputes.

The conference focussed on 3 core subjects for deliberation viz; (i) Early disposal (ii) quality disposal (iii) disposal in peoples' language. Eminent past, practioners' outlined the growth of labour litigation since 1939 when the 1st labour court was set up in Mumbai. Labour practioner's were unanimous in their view that lack of adequate infrastructure was a serious hindrance in early disposal of cases. Practitioners also suggested that periodic training sessions of judges and a proper library was needed for quality disposal of cases. Interestingly, the delegates were unanimous that the language of the court proceedings should be the local language by which the litigants were able to understand and appreciate the proceedings in the court of law. It was also pointed out that the other states had already successfully adopted local language in labour / Industrial Court proceedings.

Several labour proctioners wanted that the labour related litigation under various Acts like Factories Act, Mathadi Act Security Guards Act etc which is spread out in different courts and forums should be centralised in labour/Industrial Courts as this would facilitate the litigants.

The conference unanimously adopted the following resolutions:-

1) The proceedings before the Labour Courts through out the State of Maharashtra be conducted and judgments will be written in Marathi language subject to the :-

(a) Choice of the concerned litigants.

(b) Availability of infrastructure in terms of stationary, computer / printer and computer software etc., as well as the human resources which includes stenographers / typists in Marathi

It is further resolved that, in all the Industrial Courts (except at Mumbai) the litigants will be given choice of the language i.e. Marathi / English and efforts will be made to write the judgements in Marathi. Initially up to 50% of the cases. Where such cases relates to individual disputes.

2. The following recommendations for amendments of the I.D. Act and W.C. Act be made for speedy disposal of cases and to provide for efficacious remedies before the Industrial Court / Tribunal rather than the remedy of approaching the High Courts in a Writ Petitions:

(a) So far as the Industrial Disputes Act, 1947 is concerned, the House recommends amendment to section 10 on the lines of the amendments made in Karnataka State so as to approach the Labour Courts directly rather than approaching the Conciliation officer as at present.

(b) Section 17 of the I.D. Act deals with the publication of awards (part I and Part II). Instead of the word "Government" in the said section, the work "Labour Court or Industrial Court" be incorporated. Consequently, the Bombay Industrial Rules should be suitably amended so that the publication of awards is done at the earliest possible after they are pronounced by the Labour Court / Industrial Courts rather than waiting for the Government to publish the same and this action causes inordinate delayed as at present. The House also recommended that, the Industrial Tribunal should be given the revisional powers over the awards /orders passed by the Labour Court under the Industrial Disputes Act, 1947.

(c) Under the Workmen's Compensation Act, 1923 the remedy of appeal lies before the High Court. To make this appeal remedy more effective, it would be appropriate that, the Act is suitably amended so that the appellate authority designated is Industrial Court/Tribunal on par with the District Courts in the Civil Procedure Code, 1908.

3) The following steps have been requested to be taken by the High Courts to facilitate expeditious disposal of cases:

a) depending upon the pendency of ESI appeals, powers should be given by notifications to more than one member of the Industrial Court at the places like Mumbai, Nagpur, Pune etc.

b) Notifications for judicial powers should be issued simultaneously along with the posting orders. As at present few weeks months are spent in waiting for such notifications to be issued by the State Government.

c) The President of the Industrial Court may consider issuing a circular with the approval from the High Court, If so required, setting out the time to file reply/written statement i the proceedings under the Industrial Disputes Act, 1947, on par with the time schedule that has

been fixed for filing written statement, under the Civil Procedure Code, 1908 i.e. 30 days plus 90 days.

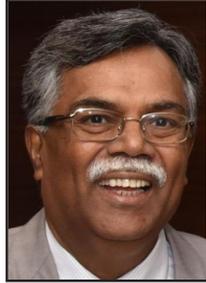
d) In some of the cities references by the Assistant / Deputy Labour Commissioner (Central) are made to the Industrial Tribunal Labour Court constituted by the State Government whereas in some other cities they are made to the Labour Courts/ Industrial Tribunal established by the Central Government. The Central Government Labour Court / Industrial Tribunal is located at Mumbai and, therefore, the disputes arising within Greater Mumbai District could be referred to Central Government Labour Courts / Industrial Tribunal. However, in other disputes to be referred by the Assistant / Deputy labour Commissioners (Central be referred unanimously to the Labour Court / Industrial Tribunal constituted by the State Government. The Registrar General of the High Court is requested to issue a request letter to the Central Labour Commissioner or the Labour Commissioner (Central) responsible for the Maharashtra State.

(e) To deal with the criminal cases / contempt petitions the issue of vesting Magistrate's powers to the learned Judges of the Labour Court who have been on transfer from the judiciary should be decided expeditiously by the High Court.

LLPA, celebrating its Golden Jubilee their year must play a proactive role in ensuring effective implementation of the unanimous decisions of the joint conference. The High Court on its part has directed the Government to provide necessary infrastructure to the existing courts and the courts to be newly set up. It also directed adequate finance for court infrastructure (see orders of Division Bench in PIL No.1827 of 2013 and PIL No.156 of 2011). It is now for LLPA to create appropriate pressure to ensure the implementation of these directions. In respect of other resolutions, they are needed to be energetically pursued. Apart from the judges, the members also require upgrading of their skills to keep up with the new development in law and technology. Training is also essential for promoting use of local language in pleadings and submission before the court. It is also suggested that the LLPA must take initiative for holding periodic joint conference to promote other suggestions ventilated in the last conference. We have no doubt that the LLPA will distinguish itself as a premier body which promotes participative role of all the stake-holders in labour litigation and stand out as an Association of eminence.



MY TRIBUTE TO FIVE LEGENDS OF THE LLPA MUMBAI



Mukund S. Jambaulikar
Advocate

I have been visiting the Labour and industrial Courts right from the year 1975 while studying law and had the privilege of seeing and hearing some of the great Advocates and Trade Union leaders practicing Labour Laws. I must admit that the influence of these greats persuaded me to select labour laws as my branch of practice. I entered the Labour and Industrial Courts as an Advocate after my initial stint of practice in the Criminal Courts with my then Senior Adv. Adhik Shirodkar, who was also at that time appearing and practicing in Labour and Industrial matters, by joining the chamber of Late Mr. Mahesh V. Bhatt, Advocate, an illustrious Advocate of his time practicing Labour Laws who showered upon me love and respect in abundance and taught me the intricacies of the subject as a true teacher. I reverentially bow to the memory of my late Senior in fond obeisance.

During my Association with LLPA since last more than four decades, I had the proud privilege of meeting, interacting, appearing with and opposing the legendary practitioners of the time. The list is far too long for me to enumerate entirely in details.

The Labour Law Practitioners' Association, Mumbai was registered under Societies Registration Act Xxi of 1860 on 4th October, 1968. The Founding fathers of the LLPA deserve special mention:

President: Shri B. Narayanaswamy
Vice-Prersident: Mr. Gangaram Govind Gawde
Vice-President: Mr. Manohar Pitamber Mehta
Secretary: Mr. Padmakar Dattatraya Kamerkar
Jt. Secretary: Mr. Gopal Raghunath Khanolkar
Jt. Secretary: Mr. Abhimanyu V. Ghate
Members: Mr. Raghunath Anant Jahgirdar
Mr. S. Subbiah
Mr. Maneck A. Gagrat
Mr. Rasiklal Jeewanlal Mehta
Mr. Vishnu Narhar Sane

As I pen these memoirs, a half-century has flashed by in the twinkle of an eye and we are today on the eve of the LLPA's Golden Jubilee, a truly momentous milestone. I realize that there are innumerable great personalities from the Labour law Practitioners' Association, Mumbai who have been instrumental in nurturing and building the Association. I have had the honor and the privilege of serving the Association first in the capacity of General Secretary and then in the capacity of President for several terms. The raison d'etre of my participation in the LLPA Committee is the driving force of five great legendary seniors, whose conduct, words and exemplary actions are etched forever in my heart. I am honoured to reminisce about their hallowed memories in these musings.

SHRI PADMAKAR DATTATRAYA KAMERKAR, ADV.

The Late Shri Padmakar Dattatraya Kamerkar, Adv., popularly and fondly addressed as P.D. Kamerkar was the founding father and the first General Secretary of the Association. He



thereafter went on to become the President of the Association and guided and encouraged the Junior Advocates of his time to take up the activities of the Association. The Federation of LLPA's Maharashtra was the brainchild of Kamerkarji. He was instrumental in establishing the Dewan Bahadur Kamerkar Library in the LLPA, which became a second home to me and many others like me. Fortuitously, his office was situated in Girgaon opposite my senior's office and many a times, we would travel by train together and I had the golden opportunity of interacting with him on a myriad of issues. In one of the agitations, my principles brought me face to face in confrontation with the position espoused by Kamerkarji and he had occasion to come out vehemently against my views. This however, was an opposition of opposing points of view, and never the opposition of those holding those points of view. After the meeting concluded, instead of being miffed and angry with me for opposing his views, Kamerkarji to the contrary complimented me for speaking my mind for the principles that I valued and held dear. He counseled and enthused me to always stand for the truth, justice and equality in all my actions. He stressed the need for new blood holding principles and values dear to their core and irrigate and rejuvenate the Association, which advice, I tried to implement and uphold in my own small way all throughout my tenure with the Association. I pay reverence to his pure untainted memory.

SHRI. GOPAL RAGHUNATH KHANOLKAR

The Late Khanolkarji, fondly addressed by his senior colleagues as "GR", was an illustrious personality and a legend in his lifetime. He was a learned, erudite man, holding a Master's Degree in Arts and Law. He was one of the founding fathers of the Association and was the Joint Secretary of the First Committee of the Association. He thereafter went on to hold the position of President of the Association for many terms. He was also a towering Trade Union

Leader, who founder three Unions, viz. Dyes And Chemical Workers Union, General Kamgar Union (Red Flag) and Race Course Employees Union. He also was a skilled exponent of the fine and subtle art of Advocacy and would conduct the most recondite, abstruse matters with the utmost finesse, ease and consummate command. I had the unique opportunity of learning from him, though we were opponents and had tooth and nail skirmishes in many hotly-contested matters. A particularly noteworthy aspect of the Late Shri. G.R. Khanolkar's mature thought was his firm belief that the unions and employees can survive only if the Industry survives.



His endeavour would always be to secure justice – for the employer as well as the employees. Late Shri. G.R. Khanolkar always shied away from needless publicity never hankered for any post and the opulence and riches of the world could never tempt him. Late Shri. G.R. Khanolkar was a bachelor and was married to the cause of the proletariat. His love for the proletarian class was unbounded and he showered affection on them as if they were his own children. His personality was like his dress code - spotless white. One memory stands out vividly in the vast galaxy of memories that are associated with Khanolkarji. In the same agitation that I have referred to herein above, when I expressed my point of view which was opposed to his views and in fact, to the views of many of that era's stalwarts, Khanolkarji thundered at me, "Don't try to teach us Trade Union activities! We have been in Trade Union activities even before you were born!" I retorted to his comment by saying "Nobody can claim monopoly over ideas-a teenaged Sant Dnyaneshwar composed the Dnyaneshwari!" Any other person would have been livid at my importunate and cheeky comment, and I was apprehensive and nervous about getting a stern reprimand from him the next day while entering the Bar room. To my utter shock and very pleasant surprise, such was the vast greatness of his temperament, that instead of coming out to scream at me, he burst out in to peals of resounding laughter and both he and Kamerkarji advised me to take active and zealous interest in the Association's activities. These were the great exemplars who taught me that the personal and the political are not to be mixed. Thereafter, I had the momentous opportunity of working closely with him in the Association as well as in the Federation of LLPA's and seek his blessings and guidance. My sincere adulations and homage to his revered memory.

SHRI MANECK A. GAGRAT, ADV.

The Late Shri Maneck A. Gagrat, Adv. was also one of the founding fathers of the Association. His humility was such that despite his seniority, he opted to be a Member of the First Managing Committee of the Association to grant impetus and unstinting support to the Committee. He thereafter held the position of President of the Association for many terms and guided juniors as an unfailing beacon. He was lovingly called as the Bishma Pitamaha of the Association. Mr. Gagrat was appearing exclusively for the employers and was representing the topmost companies of the day. Mr. Gagrat was known for his unbiased approach while dealing



with the matters and his appearance for the employers never deterred or dissuaded him from giving his free and frank opinion, even if the same supported the cause of the workmen. I can never forget the occasion in the year 1993 during the Seminar held by the Association at which time I was the General Secretary. We had a grave difficulty regarding the anchoring of one of the Sessions of the said Seminar and we urgently required some capable person to fill in the said role of anchor. I approached him with temerity and requested him to kindly help us out and to my delight, despite his towering stature of having occupied the highest Post in the Association of the President and inspite of the fact that the favour that I was seeking from him was not in keeping with his stature, Mr. Gagrart graciously and readily obliged and honoured my request and anchored the said Session with consummate ease and felicity. Over the long years that I was privileged to be associated with him, I was immensely fortunate to receive his love, affection and guidance incessantly and perennially. He will live in my heart forever.

K.P. VELAYUDHAN MENON, ADV.

The Late Mr. K.P. V. Menon held the position of the President of the Association for several terms. He was a live-wire who supercharged the atmosphere with his vibrant dynamism wherever he went. He was always eager to provide all possible assistance to juniors and was an unfailing guiding force to them. In fact, even as they would be addressing the Hon'ble Courts and make bumbling mistakes and errors, he would on his own prompt them from behind and correct and guide them! He always sided with the truth, and his was a voice that none could ever dream of silencing. The interest of the Association was an overriding concern with him at all times, to the extent that at a particularly trying phase in the history of the Association, he offered to become and in fact became the Vice President of the Association, though he had earlier served as the President of the Association for many terms. He did this selflessly without any motive or desire to gain office, but in order to lift and elevate the morale of the Association during that lean and trying phase. I had the absolute privilege of being his General Secretary at that particular point in time. An incident that occurred with him is forever etched in my memory. When I took on as General Secretary for the first time, declarations had been made by many seniors regarding donations to be given to the Asiatic Society, Mumbai. I received constant reminders in this regard from the Office-Bearers of the said Institution. In my youth and exuberance, I approached Mr. Menon and garnered the courage to ask him when he would be making the payment of the donation declared by him! Despite the fact that he had every right to feel slighted and hurt by my asking him, Mr. Menon graciously and magnanimously sent a Cheque the very day itself with a note which said "sorry for the delay."



This was a tremendously humbling and awe-inspiring moment for me! I am also blessed that he considered me as his son and showered me with genuine love, affection and guidance. I pay obeisance to his dynamic and vibrant memory.

MR. MADHAV SUBARAO NAIK, ADV.

Mr. M.S. Naik, Adv., was from the Chambers of the illustrious Shri B.N. Narayanaswamy, Adv., the First President of the Association. Mr. Naik thereafter emulated his worthy Senior and went on to become the President of the Association for many terms. He was also the President of the Federation of LLPAs for several terms, ably representing the Association all over Maharashtra. His service to the Association was phenomenal and immense. If Mr. Kamerkar, Mr. Gagrat, Mr. Khanolkar and Mr. K.P.V. Menon were the strong Pillars of the Association, Mr. M.S. Naik, in my opinion, was the main structure of the Association. I was doubly blessed in that I was associated with him closely for over two decades both in the Association as well as in the Federation of LLPAs, travelling with him over the length and breadth of Maharashtra for resolving a myriad of issues concerning the various member Associations of the Federation. Mr. Naik is in fact a living legend and is a metonym for the Association's long and vibrant history. Mr. Naik was fearless and principled and never shied away from calling a spade a spade, a trait which he shared with Shri. P.D. Kamerkar, Mr. G.R. Khanolkar, Mr. Meneck Gagrat and Mr. K.P.V. Menon.



On the occasion of the Golden Jubilee year of the Association, I cordially and sincerely compliment and thank Mr. Rajesh Hukeri, Adv., the President, Mr. Vinay Menon, Adv., the General Secretary and all the Office-Bearers and members of the present Committee for inviting me to write this article and re-traverse the by-lanes and the highways of memory and relive the golden moments of the Association and revitalize the memories of the great luminaries who adorned the Association and who enriched my life immeasurably. I wish the association all the very best and pray that it reaches and scales hitherto unimaginable heights and pinnacles of glory.



VIRTUAL COURTS



Rajesh Gehani

Advocate

1. We are now living in the age that is increasingly dependent upon computers, digital, artificial intelligence and information technology.

2. A few years back communication from one person to another was a task. Remember how we used to write letters and communicate with each other with letter addressed to someone in United States which would reach after three weeks and the reply would also take same amount of time. Therefore the correspondence used to take at least 6 weeks between a person in India and in United States. Telephone calls used to be called Trunk calls and used to take hours to get through. Those days are long gone. Today even by an ordinary e-mail to which all of us are so much used to takes hardly a few seconds to pass from one person to another irrespective of the location of these persons. This was unimaginable a few years back.

3. Today even emails have become obsolete. All of us have got smart phones and all of us know how to use a smart phone. The communication facilities available on today's smart phones which include Whatsapp, Video calling, VoP which is known as Voice over Packet, Skype etc. have made our life so easy that we can communicate with each other by sending text messages, sound files or even video files. Even communication has become real-time with hardly any time lag irrespective of the distance.

4. Mainstream media which used to comprise of printed media, newspapers, radio, television which was termed as the Mainstream Media has today been replaced by a two way inter-active Social Media.

5. Earlier we used to go to the market for buying various commodities. Now these commodities are available to us through any application which we can download on our smart phone. We select the items we want to buy, place the order make the payment through electronic banking system and the commodity is delivered to us at our doorstep. We do not even have to venture out to the market to buy anything as anything and everything is available at click of a button right in our hand.

6. E-commerce has made life much simpler for consumers as also for the businessman. It is a virtual shop. There is no need for any investment in real estate to store, display, sell the goods and to receive payment in cash. Entire conventional banking system has been replaced

by E-banking. Each and every bank has its own application which can be used for receiving or making payments. There are then some other e payment facilities and applications like Paytm, Payphone etc. which also act as a medium between payment modules and banking system.

7. It is therefore seen that the requirement of physical real estate, office space, shop space that required huge financial investment has almost become redundant. There is surely a requirement of less expensive real estate for the purpose of storage, warehousing, distribution and back-office work.

8. This real estate redundancy is likely to happen in various other aspects of life also. Gradually people will not be required to travel from one place to another. Their physical presence will also become redundant. Whatever work they have for which they were required to travel will also become doable through electronic media.

9. In our Legal field also we have seen the improvement in information sharing systems. Most of the lawyers, judges, administrative and clerical staff in the judiciary as also as in the lawyer's office have adopted word processing, legal research software of one type or the other, back office administration like accounts and billings software.

10. Websites like indiancourts.nic.in provides us with links to various High Courts in the country and accesses to the judgements published by these High Courts. Even most of the subordinate Courts have today started publishing their judgements online and are available to public. Electronic case management system is in place in all the Courts. Dates are electronically transmitted and shared on the web site. A proper Computer management Information System is in place in most of our Courts. Electronic filing has also started in some fields like Company Law and Arbitration in a number of courts.

11. Yet for some reason information technology has been to a very great extent been ignored by our judiciary. Our judiciary is still comfortable in and is reluctant to come out of its traditional cocoon. On one hand right to information is encouraged by the Courts, information relating to the matters and litigations pending before the Courts is kept secure though the functioning of the Courts is supposed to be open and in public.

12. Judicial system on our country is also reputed to be slow and inefficient. Filing of cases is increasing day by day, disposal rate is less and hence the matters remain pending for years together.

13. A traditional litigation happens in a traditional Courtroom and it comprises mainly of procedure for adjudication of disputes. In a litigation basically information comprising of pleadings, documents and evidence is assembled, sorted and presented by the parties through their advocates and counsels who interpret the same in their own manner applying law to the facts. The judge then considers rival theories and arguments advanced in respect of the material on record which include documents and facts brought out in evidence and decides the matter. Basically the entire process of adjudication comprises of data analysis and determination according to the prevailing laws which include statutory laws and precedents. There is then a possibility of the aggrieved party going in an appeal to the higher forum if available in

accordance with the law. In short any courtroom is a hub having a system of information exchange and management.

14 .Thus -

- a. Court premises are situated in and occupy expensive real estate.
- b. Litigants spend a lot of time travelling to the Court premises.
- c. Lot of paper work and wastage of time, energy and money is involved in leading oral and documentary evidence.

15. It is high time that our country should move towards an integrated, high-technology judicial system comprising of virtual courtrooms.

16. The advent of high-technology courtrooms conducting "virtual trials" is the need of the hour. A "virtual trial" is a trial in which all the participants and all information including Pleadings, documents, evidence, arguments are published and shared electronically in real-time. This can be done with the help of existing technology which includes hardware and software.

17. Court records would be electronically updated. Original documents would be kept separately either with the litigants or with the Court Administration as may be required in specific cases. Case information including the pleadings, documents, evidence, motions, exhibits etc must be properly hyperlinked and indexed. These records should be updated and uniformly shared on a public domain from where the same could be downloaded with proper security and privacy instruction apparatus in place. Huge amounts of paper, storage space and duplication and triplication will be avoided. These will be the benefits of electronic filing and electronic records of Courts. Of course adequate safeguards will have to be kept in place with antivirus systems along with proper real time backups on remote servers.

18. Once electronic information system is enforced, all the paper that is traditionally filed should be converted into electronic data. Litigants without facilities would be assisted by court staff or avail of services of independent operators and service providers when they wish to take advantage of their right.

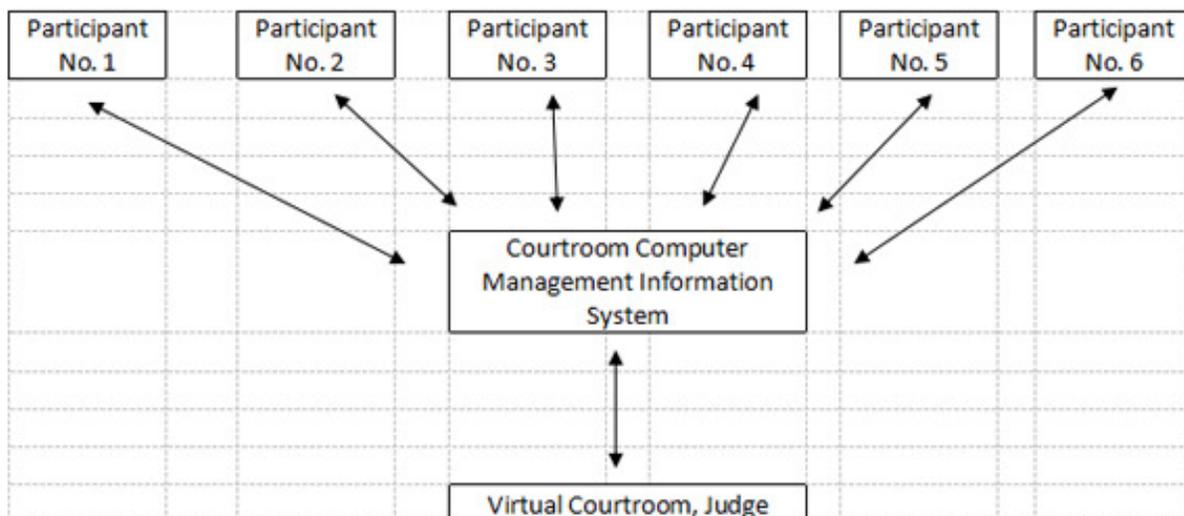
19. We have seen that today in our democracy and in public interest Right to Information is considered as a very important right. Once the information about any litigation is available in electronically and is accessible, there is no reason to limit the same to the Court, litigants and their Advocates. All our Courts and trials, except those in respect of some sensitive matters, are open to the public. Anyone can sit in any Court room for the whole day and watch any judicial proceedings even if the exact contents are not known to the observer. All the material on record of a public court should be shared online as the same can be of enormous interest to other parties and to the public. Once the basic information is available there is no reason for the same not to be available on the World Wide Web. The judgements based on these openly available records will also become open to public scrutiny and would be less likely to be open for criticism. The trials are therefore likely to be more fair, transparent and open.

20. Once the Electronic management system is in place, with the help of existing technology,

one can hold a virtual trial in an environment of a virtual courtroom with properly authenticated procedure comprising of proper digital signatures.

21. There can be video conferencing where the parties will come to gather in a virtual environment controlled by a judge sitting in his / her chamber. All the material on record will be simultaneously displayed on the nodes of the parties and their advocates. Evidence and Arguments may be by way of multi channel integrated video conferencing. This is already happening on Television News channels where debates are conducted and the participants though physically present at different locations, are brought together on the Television screen. The software and the hardware therefore is available. The only additional requirement is that the material on record uploaded in respect of a particular matter / litigation should also be made available in digital format to all the participants simultaneously in real time.

22. A graphical illustration of the virtual courtroom system is as under:-



23. The judges, parties, advocates and witnesses need not be at the same location nor any of them would be required to travel to a common place for conduct of trial or arguments in case of an appeal or a Writ. Parties can participate from their residences, offices where internet connectivity is available and in addition various hubs or nodes can be created at various convenient places from where the parties will be able to get access at predetermined time to connect to the virtual court room. All these facilities where Court hubs and nodes are situated may be outsourced to independent entities who will run these as a business centres on nominal payment based on unit of time..

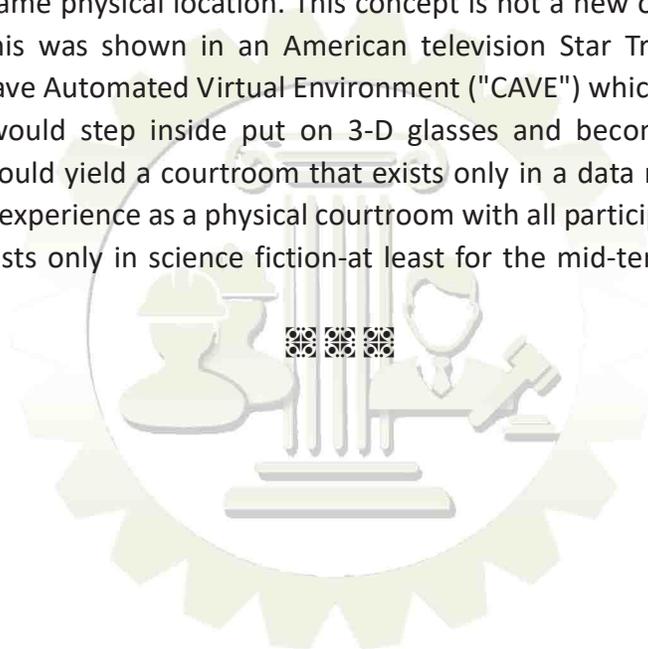
24. So basically a "virtual courtroom" will not be a physical location but will be a hub or a node where there can be exchange of audio, video, text and graphical information amongst the participants without concern for the physical location of those participants, except for jurisdictional requirements.

25. This would be in substitution of the traditional system of courtroom adjudication.

26. All required components including pleadings, documentary evidence in visual format and oral evidence in audio format as also transcribed digitally in textual mode, arguments, case laws relied upon by the parties would be available to all the concerned including the Judge connected to the data exchange network. This would be a Cyber Courtroom.

27. In fact all appeal and writ courts including the High Court and Supreme Courts can easily migrate to this system where proof of documents and oral evidence is not an integral requirement.

28. Today's virtual cyber courtrooms may be far limited in scope. They may permit participants to share the litigation information and to intercommunicate, while remaining physically distant. However, in not too distant future the virtual courtroom would be a courtroom in which participants, all of whom might be located physically elsewhere, would appear together electronically with each one perceiving the others, and the courtroom as if they were all in the same physical location. This concept is not a new one-at least in the world of science fiction. This was shown in an American television Star Trek series where virtual reality existed via a Cave Automated Virtual Environment ("CAVE") which was the size of a walk-in cupboard. One would step inside put on 3-D glasses and become part of a computer animation. A CAVE would yield a courtroom that exists only in a data network, but one which human senses would experience as a physical courtroom with all participants present. However, such a courtroom exists only in science fiction-at least for the mid-term future.



**LABOUR LAW PRACTITIONERS' ASSOCIATION :
A UNITED ASSOCIATION OF MODEST & DECENT
ADVOCATES MEMBERS OF THE BAR**



VIJAY KUMAR GEHLOT

ADVOCATE
TREASURER

LABOUR LAWS PRACTITIONERS ASSOCIATION

I WOULD LIKE TO THANK AND APPRECIATE THE ASSOCIATION FOR CELEBRATING ITS GOLDEN JUBLEE YEAR (50TH ANNIVERSERY) AS IT WAS FORMED IN THE YEAR OF 1968.

THE ASSOCIATION HAS A GLORIOUS HISTORY OF HAVING THE MEMBERS WHO ARE NOW PRACTICING AS AN ADVOCATE BEFORE THE HON'BLE SUPREME COURTS AS WELL AS IN HIGH COURT AT BOMBAY. THE ASSOCIATION IS ALSO CREATOR OF FORMER CHIEF JUSTICE OF SUPREME COURT OF INDIA I.E. HON'BLE JUSTICE EMIRITYUS SHRI S.H. KAPADIA SAHEB AND HON'BLE JUSTICE EMIRITYUS SHRI HEMANT GHOKHALE SAHEB, HON'BLE JUSTICE EMIRITYUS SHRI SHRIKRISHNA SAHEB, HON'BLE JUSTICE SHRI RAJAN KOCHER SAHEB WHO WERE THE PART OF THIS EMINENT ASSOCIATION AND THEY HAVE STARTED THEIR PRACTICE FROM THIS BAR ONLY.

I BECAME THE PART OF THIS ASSOCIATION IN THE YEAR OF 2004 AND THEREAFTER I ALSO BECAME THE MANAGING COMMITTEE MEMBER SINCE MY MEMBERSHIP WITH THIS ASSOCIATION AND I HAVE SERVED ON VARIOUS POST OF THE MANAGING COMMITTEE AND I GOT THE OPPORTUNITY TO DEVELOP THE WORKING CONDITION OF THE ASSOCIATION UNDER THE LEADERSHIP OF OUR PRESIDENCE & GENERAL SECRETORY OTHER OFFICE OF THE ASSOCIATION.

I AM THANKFUL AND OBLIGED TO THIS AMINENT/OLDEST & LARGEST ASSOCIATION OF LABOUR LAWS PRACTITIONERS ASSOCIATION TO GIVE ME THE OPPORTUNITY TO SERVE AS A MANAGING COMMITTEE MEMBER.

THIS ASSOCIATION IS HAVING THE MEMBERSHIP OF LOT OF ADVOCATES WHO HAILS FROM DIFFERENT PARTS OF THE COUNTRY LIKE HIMACHAL PRADESH, RAJSTHAN, GUJRAT, KERALA, KARNATAKA, CHENNAI & UTTARPRADESH.

THIS ASSOCIATION HAS ALSO RESPECTED THE FELINGS AND SENTIMENTS OF ALL TYPE

RELIGION AND CELEBRATED AT LARGE THE DIWALI FESTIVAL , HOLI FESTIVAL, X-MAS FESTIVAL, ED-MILAN FESTVAL WITH ALL THE FRATERNITY OF ADVOCATE MEMBERS WHO HAD WHOLE HEARTEDELY PARTICIPEID IN ALL THESE FESTIVE CELEBRATION WITH LOT OF JOY AND HAPPINESS.

THIS ASSOCIATION HAS ALSO CONTRIBUTED FOR THE SOCIAL CAUSE OF THE PERSONS ARE IN DIFFICULT POSITION AFTER NATURAL COMITY LIKE KERALA STATE AND THE MEMBERS FROM THAT STATE S WELL AS FROM OUR ASSOCIATION HAS GIVEN THEIR CONTRIBUTION FOR THE SAME.

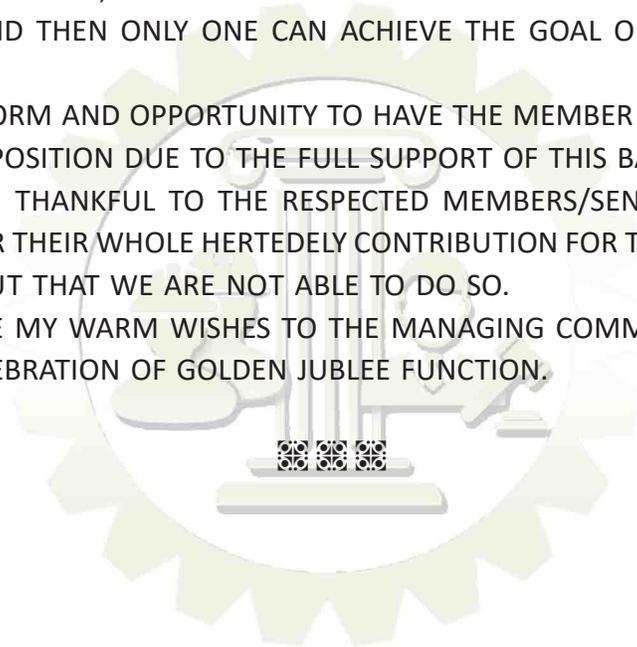
WHEN I STARTED MY PRACTICE HERE IN MUMBAI AT THAT TIME I FELT LOT OF DIFFICULTIES OF LANGUAGE BUT THE STAFF AND MEMBERS OF THIS ASSOCIATION HAS CO-OPERATE A LOT AND DUE TO THEIR HELP AND SUPPORT I GOT STRENGH TO SURVIVE AND FLOURISH.

I LEARNT FROM MY SENIOR LATE SHRI K.K.THAKKAR, SENIOR ADVOCATE OF THIS BAR, TO HAVE CONSISTANCY, DECENCY,HONESTY AND CONFIDENCE ABOUT DOING THE LEGAL PRACTICE HERE IN MUMBAI AND THEN ONLY ONE CAN ACHIEVE THE GOAL OF GETTING THE BETTER POSITION.

I GOT THIS PLATFORM AND OPPORTUNITY TO HAVE THE MEMBER OF THIS GLORIOUS BAR & TODAY I GOT THE POSITION DUE TO THE FULL SUPPORT OF THIS BAR INLY.

I AM VERY MUCH THANKFUL TO THE RESPECTED MEMBERS/SENIOR MEMBERS/ UNION REPRESENTATIVES FOR THEIR WHOLE HERTEDELY CONTRIBUTION FOR THE GRAND JUBLEE YEAR FUNCTION & WITHOUT THAT WE ARE NOT ABLE TO DO SO.

I THEREFORE GIVE MY WARM WISHES TO THE MANAGING COMMITTEE FOR THE GRAND SUCCESS OF THE CELEBRATION OF GOLDEN JUBLEE FUNCTION.



THE CONSUMER PROTECTION ACT, 1986



Advocate Kirti Shetty

The Consumer Protection Act, 1986 enacted in the 37th year of the Republic of India came into existence on 24th December, 1986. The makers of the Act, keeping the interests of the Consumers in their mind, enacted the following preamble:

“An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for matters connected therewith.”

A perusal of the Preamble of the Act, using the word ‘protection’ furnishes the key to the minds of the makers of the Act, which clearly shows the intention of the makers which is protection of the interests of the consumers. The Act meets the long felt necessity of protecting the common man from wrongs for which the remedy under the ordinary law for various reasons has become illusory. The importance of the Act lies in promoting the welfare of the society by enabling the consumer to fight against the malpractices of the producers, manufacturers, builders, insurance companies, banks, etc. The malady became so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, accepted the same as part and parcel of life. The Act in these circumstances appeared as a silver lining, which has succeeded over the years in cleaning out the rot and continue protecting the rights of the consumers.

The Secretary General, United Nations submitted draft guidelines for consumer protection to the Economic and Social Council (UNESCO) in 1983. The General Assembly of the United Nations upon extensive discussions and negotiations among Governments on this scope and content thereof adopted the guidelines which inter alia provide for the following :

“Taking into account the interests and needs of consumers in all countries, particularly those in developing countries, recognizing that consumers often face imbalances in economic terms, educational level and bargaining power, and bearing in mind that consumer should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives :

(a) To assist countries in achieving or maintaining adequate protection for their population as consumers;

(b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;

(c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

(d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

(e) To facilitate the development of independent consumer groups;

(f) To further international co-operation in the field of consumer protection;

(g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.”

The framework for the Consumer Act was provided by a Resolution, dated 9.4.1985 of the General Assembly of the United Nations Organisation, known as the ‘Consumer Protection Resolution No. 39/248’ to which India is a signatory. The said Act was enacted having regard to aforementioned resolution. It seeks to provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith, as would appear from the Statement of Objects and Reasons of the Act

It further seeks inter alia to promote and protect the rights of consumers such as—

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

The Apex Court in a number of decisions considered the purport and object of the said Act. The scope and object of the said legislation came up for consideration before the Apex Court in *Common Cause, A Registered Society v. Union of India*, reported in II (1997) CLT 147 (SC)=(1997) 10 SCC 729 where, it was held:

“The object of the legislation, as the Preamble of the Act proclaims, is ‘for better protection of the interests of consumers’. During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting

their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers."

The rights of the parties have adequately been safeguarded by reason of the provisions of the said Act inasmuch as although it provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Even when quantifying damages, they are required to make an attempt to serve the ends of justice aiming not only at recompensing the individual but also to bring about a qualitative change in the attitude of the service provider. Assignment of reasons excludes or at any rate minimises the chances of arbitrariness and the higher Forums created under the Act can test the correctness thereof.

In *Charan Singh v. Healing Touch Hospital and Others*, III (2000) CPJ 1 (SC)=VI (2000) SLT 867=(2000) 7 SCC 668, this Court observed :

"11. The Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever, brief in support of its conclusion by such a Forum, is too obvious to be reiterated and needs no emphasizing. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher Forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is "unrealistic" or "exaggerated" or "excessive". Loss of salary is not the sole factor which was required to be taken into consideration.

In *Lucknow Development Authority v. M.K. Gupta*, III (1993) CPJ 7 (SC)=(1994) 1 SCC 243, this Court held :

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into store house of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked."

It has further been held :

“The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchaser of goods and in the larger sense of user of services..... It is a milestone in history of socio-economic legislation and is directed towards achieving public benefit.”

By reason of the said statute quasi-judicial authorities have been created at the District, State and Central levels so as to enable a consumer to ventilate his grievances before a Forum where justice can be done without any procedural wrangles and hyper-technicalities. The Preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer’s disputes and matters connected therewith. In section 3 of the Act in clear and unambiguous terms it is stated that the provisions of 1986 Act shall be in addition to and not in derogation of the provisions of the any other law for the time being in force.

From the statement of objects and reasons and the scheme of 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi judicial Forums are set up at the District, State and National level with wide range of powers vested in them. These quasi judicial Forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance of their orders.

And most importantly, “the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the Forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate Forum for adjudication of the disputes would be otherwise those given in the Act.” The Act has made it easy for the consumers to get justice unlike the cumbersome process of other courts. The Consumers need not have lawyers to represent them; in fact, they can personally argue the matter.

The Consumer Movement is here to stay.....





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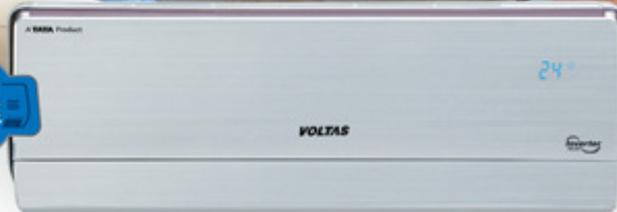


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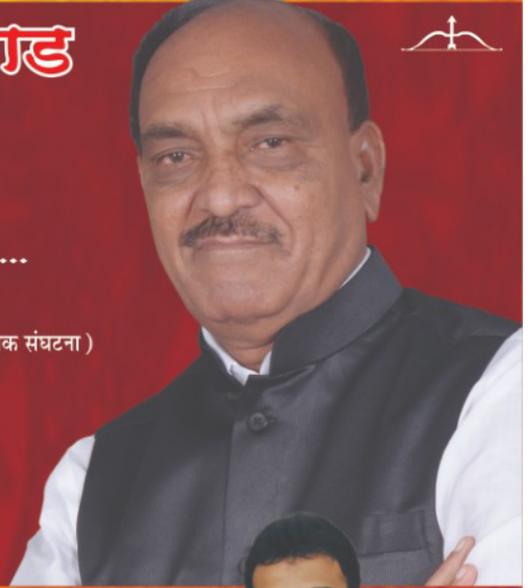
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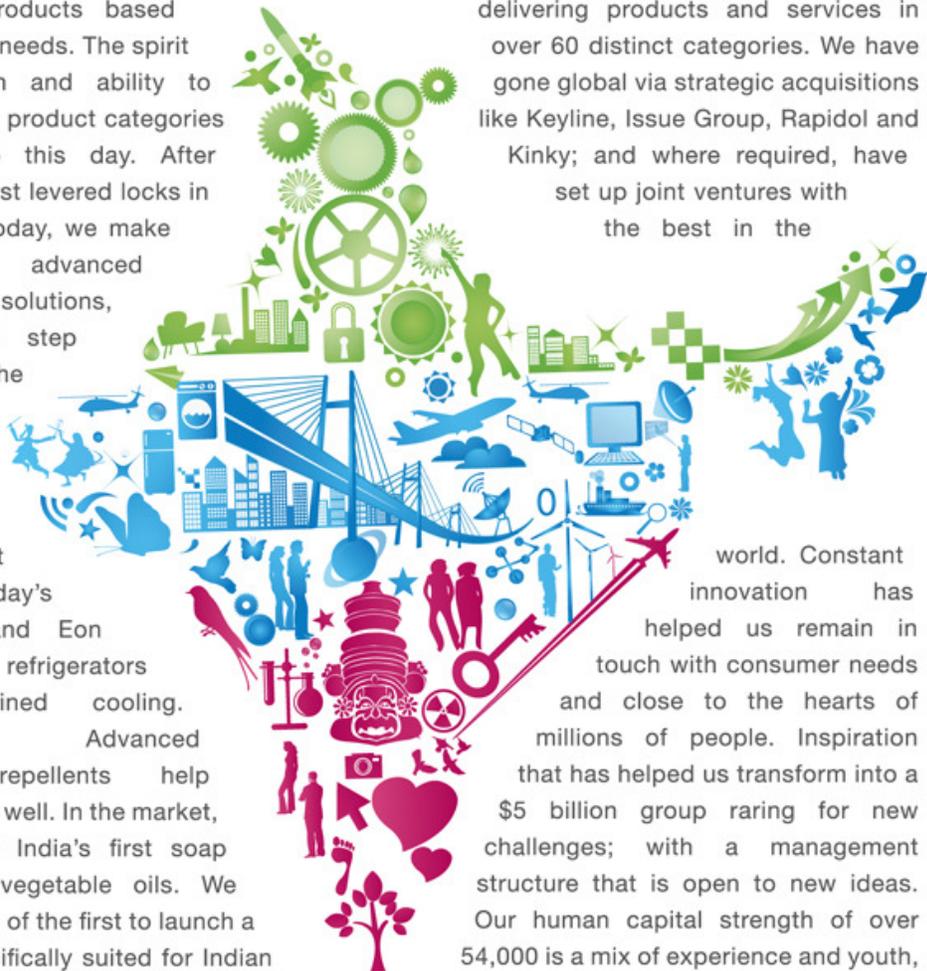
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3	Recurring Deposit A] Interest on Recurring Deposit will be paid on Maturity - . 01.07.2011 B] Minimum Contribution Rs.100/- p.m C] Period –Minimum 1 year & Maximum 5 years	01.08.2016	8.25% p.a.
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