

WORKERS' RIGHTS AND LABOUR LAWS

*A backgrounder
for the workshop on labour
to be held from 29–31 December 2000
at the
National Conference on Human Rights,
Social Movements,
Globalisation and the Law
at Panchgani, Maharashtra*

PUBLISHED BY THE
INDIA CENTRE FOR HUMAN RIGHTS & LAW
4TH FLOOR, CVOD JAIN SCHOOL
84, SAMUEL STREET
DONGRI, MUMBAI 400009
PHONE +91.22.2375.9657
E-MAIL huright@vsnl.com

About this Backgrounder

The following collection of articles, analyses and documentation is meant to serve as a backgrounder for the three-day workshop on labour held during the National Conference Human Rights, Social Movements, Globalisation and the Law held at Panchgani, Maharashtra, from 29–31 December 2000. Ranging from the abstract and academic to the documentary and polemical, these pieces are all drawn from Mumbai-based scholars and trade unionists involved in the labour movement, and most of them connected to the Trade Union Solidarity Committee (TUSC), whose documentation comprises a large part of this collection. While not making any claim to an exhaustive exploration of the dynamics of changing labour law and workers' rights — the limitations of this collection are obvious — it is hoped that it will serve as a useful handbook for this workshop and as a resource for activists, lawyers, scholars and journalists during the workshop and after it. This backgrounder is the first in a series of occasional papers on labour issues to be published by the India Centre for Human Rights & Law, Mumbai.

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Shekhar Krishnan and Mihir Desai
India Centre for Human Rights and Law
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TABLE OF CONTENTS

I. WORKERS' RIGHTS

<i>India: Workers' Rights in a New Economic Order</i> The First Arvind Das Memorial Lecture Jairus Banaji	1
<i>World Trade and Workers' Rights: To Link or Not to Link?</i> Rohini Hensman	8
<i>Industrial Relations Problems in the Matter of Supervisory and Management Staff: Law, Practices & Procedure</i> Bennet D'Costa	22
<i>Who Are We?</i>	36
<i>Note on Trade Union Unity</i>	40
<i>Charter of Workers Rights</i> Trade Union Solidarity Committee (TUSC), Mumbai	42

II. LABOUR LAWS

Rationalisation of Labour Laws: Amendments Proposed by the Government of Maharashtra	45
<i>Will Maharashtra Government Turn the Clock Back?</i> <i>Labour Law Amendments: Charter for New Slavery</i> Bennet D'Costa	47
<i>Second National Commission on Labour: Not up to the Task</i> K.R Shyam Sundar	52

III. SUBMISSIONS BY MUMBAI UNIONS TO THE SECOND NATIONAL COMMISSION ON LABOUR

<i>Hindustan Lever Employees Union</i>	62
<i>Trade Union Solidarity Committee</i>	85
<i>All-India Blue Star Employees Federation</i>	94
<i>Kamgar Aghadi</i>	100
<i>Trade Union Centre of India</i>	105
<i>Thekedari Paddhati Virodhi Manch</i>	112

I. WORKERS' RIGHTS

**INDIA: WORKERS' RIGHTS IN A NEW ECONOMIC ORDER:
THE FIRST ARVIND DAS MEMORIAL LECTURE¹**

JAIRUS BANAJI

With traditional forms of collective bargaining failing in the face of rapid corporate restructuring, what perspectives can the unions evolve to ensure their survival and growth? This paper argues that the labour movement has a powerful stake in shaping the agenda of corporate governance, both because implicit contracts are impossible to enforce without a role in strategic decision-making, and in the sense that public corporations can no longer be conceived merely as shareholder domains. However, in a country like India where the majority of wage earners are unorganised, the workers' rights clause has a major role to play.

Following the large-scale defeat of the Bombay textile strike in the early eighties, employers mounted a concerted offensive against organised labour which was sustained into the nineties. The system of industrial relations ran into trouble in the eighties as managements resisted collective bargaining and began first a gradual and then a large-scale restructuring of employment. It is possible to argue that after 1991, with increasing competitive pressure from product markets, deregulation was squeezing profits and forcing employers to cut internalised employment systems in a more dramatic and decisive way. For example, throughout the eighties large companies had been reducing workforces through natural wastage, but from the early 90s they began to structure so-called voluntary retirement schemes to induce large-scale exit from companies. This began in 1992 when the Swiss multinational Ciba-Geigy negotiated a mass retirement for 902 workers in its Bombay factory. That may have been prompted by a circular from the ministry of finance which suggested tax breaks to encourage companies to downsize. Since then there have been numerous and (for many firms) repeated voluntary retirement schemes with a very considerable loss of jobs in manufacturing. However, it is helpful to keep the two phases distinct. In the eighties lockouts were used to weaken union resistance to management demands and the gathering assault on workers' rights was not, therefore, the simple outcome of liberalisation, which came several years later. Secondly, outsourcing spread basically in the eighties, suggesting that crucial aspects of lean production had already been introduced by employers in India well before they became management orthodoxy on a world scale. The reasons why manufacturing firms subcontract are complex and vary from industry to industry, so there is no point in overstating the issue. Suffice it to say that without the extensive outsourcing networks created in the eighties, the voluntary retirement schemes of the 1990s would just not have been conceivable. Thirdly, if the resistance to bilateral settlements meant a gradual erosion of bargaining rights, other management moves in that period were more explicit. Bargainable jobs were redesignated to remove them from the union category, sales and supervisory staff were denied the right to join unions, union leaders were repeatedly chargesheeted, suspended or dismissed on various trumped up charges, federations representing workers in several establishments of the same company were fiercely resisted, etc. Judicial decisions, often the inevitable outcome of these moves,

¹ First given as the inaugural Arvind Das Memorial Lecture in New Delhi, 24 October 2000, this paper is forthcoming in *Biblio: A Review of Books*, and is reproduced here with the kind permission of Alice Albinia, Assistant Editor. Readers who would like to consult the full version of this paper, including footnotes, may do so at the Queen Elizabeth House web site, <http://www2.qeh.ox.ac.uk>. The body of the text is otherwise the same.

tended to reinforce the position of employers, legitimising the erosion of employees' rights though most of the eighties and into the following decade.

Standing back from all this and trying to gain some sense of the general trend, one might say that the industrial relations system broke down in the eighties and was never put back on its feet in the years that followed. Managements had recovered initiative in a decisive way after the union expansion of the sixties and seventies, and the labour movement entered the economic reforms era in a defensive mood and lacking any strategy for renewed growth. With the voluntary retirement schemes of the last few years, certain sectors of the union movement have seen major contraction, namely, the so-called employees' unions which are tied to a particular plant or company. If the plant closes down, the union disappears, unless it has members in other establishments. The downsizing of offices and factories has thus also been a downsizing of one of the more advanced and combative forms of trade unionism in India.

Let me turn, somewhat rapidly, from this background to 'Corporate governance'. This, as you know, refers firstly to the general drive in most markets in the industrialised world, including countries like India, to define rules which encourage companies to function in more professional, transparent, and socially accountable ways, insofar as they rely on some form of capital market financing. These rules have increasingly acquired a formal expression in the so-called 'codes of corporate governance' which spread rapidly in the late 90s, drawing their inspiration from the 1991 Report of the Cadbury Committee, which emphasised self-regulation and drafted recommendations for independent boards and more reliable corporate reporting practices. Cadbury was largely a reflection of the then prevailing state of opinion in the UK accountancy profession, which saw itself under mounting public pressure, and of course of the growing concerns of institutional shareholders, and the basis for its rapid diffusion as a model can likewise be explained by the spectacular growth of US and UK institutional investments in European and emerging markets in the 1990s. In a broader sense, of course, corporate governance gives us a way of discussing the whole set of issues related to corporate ownership, control, and accountability, including, most fundamentally, the question, 'Who should be regarded as having a valid interest in the company?' This is only in part an academic question since both union theory and union practice, at least among the more militant employees' unions that have successfully ridden the storm of the last ten years, revolves precisely around this issue, to various degrees of explicitness. I recall unions like the Philips Employees' Union arguing aggressively in the early eighties that a company was not its management but more than its management and substantively different from it. One recalls also that the legally savvy general secretary of the Hindustan Lever Employees' Union has repeatedly quoted Gower's *Principles of Modern Company Law* to the effect that 'In so far as there is any true association in the modern public company it is between management and workers rather than between the shareholders inter se or between them and the management'. That quote continues by saying, 'But the fact that the workers form an integral part of the company is largely ignored by the law'. Both of these are unions that have intervened legally in their management's business decisions, either the sale of assets by their company to other companies or mergers likely to impact employment. Employees' unions have also begun to use AGMs as forums for sometimes spectacular public interventions.

Now it is abundantly clear that till now much of the corporate governance movement, worldwide, has been driven by financial interests, namely, the drive of institutional investors to gain tighter leverage over corporate management and boost the returns to

portfolio capital, generally regardless of the price paid for this by other constituencies, notably labour. This has happened, of course, through so-called restructuring. The general issue I want to start from is that of the effectiveness of collective bargaining in the face of corporate restructuring and the implications of it being shown, for example, that *traditional forms of collective bargaining are in fact largely ineffective in a period of restructuring*. If this is true, as it certainly appears to be from the inability of the unions to halt the erosion of wages and conditions and of employees' rights throughout the last twenty years, then it would inevitably mean an *endemic* crisis of union perspectives. It is this crisis that the more far-sighted unions in India have sought to battle their way through by muscling into corporate investment decisions, which means legal challenges to those decisions and challenges to the law regulating decisions of that type. At a largely theoretical level, so to speak, I'd like to suggest that there are three interesting strands of the corporate governance literature which could help to reinforce the long term position of unions who are not willing to lie down and die quietly. I shall call these 'implicit contracts', 'legal architecture', and 'labour's capital' respectively. The paragraphs which follow are simply a mapping of possible union perspectives and of course they beg the question of why union densities have levelled off and run into what looks like an impassable plateau.

By 'implicit contracts' I mean the powerful argument developed since the late eighties by Katherine Stone that public policy choices shape the background legal rules which govern labour relations and determine whether employees can or cannot enforce their implicit contracts. Because some of the investment that employees make in their training is firm-specific, the employees' value to their employer increases over time as they acquire such firm-specific capital, while their value to other employers may not. The idea can be dressed as a model of life cycle earnings, during the middle periods of which workers have made an investment for which they have not yet been compensated, and for which they anticipate deferred compensation. If they suffer involuntary job loss during that period, their investment is lost. Workers' investments in firm-specific capital and deferred compensation are made not on the basis of some explicit contractual arrangement, but rather take the form of an implicit contract. The implicit contract in the internal labour market is that in the early phases of their career, employees will be paid less than the value of their marginal product and less than their opportunity wage in exchange for a promise of job security and a wage rate later in their working lives that is greater than the value of their marginal product and their opportunity wage. It follows that middle-period employees have made an investment which they need to protect. The model also shows that corporate restructuring has involved managements in the systematic violation of implicit contracts in the internal labour market. In other words, the employment relationship contains a built-in incentive for managers to breach their implicit promises of job security and deferred compensation, and appropriate that investment to the firm or themselves. This would explain why in the Bombay region, for example, the structuring of voluntary retirement schemes usually involves careful deliberation and calculated incentives to induce specific seniority groups to retire. Finally, Stone argues that the erosion of labour rights and the practicalities of labour relations make it next to impossible for unions to police or enforce the implicit contracts during times of restructuring. The upshot of much of this is that insofar as labour law rules make enforcement of employees' implicit contracts problematic, which is certainly the case in India and also in the US, for example, 'it is important to consider what other enforcement means are available'. Stone herself opts for what she calls a 'collectivist contractual approach' which envisages changes in the legal rules governing collective bargaining which emphasise union participation in strategic-level corporate decisions. This means, basically, a much stronger corporate governance role for unions. As she says, '>From

this perspective, we can imagine collective bargaining transposed to the boardroom, where unions can contend not only with management, but with all the other constituent groups that comprise the firm. This is already occurring in the United States in Chapter 11 bankruptcy reorganisation proceedings, where unions sit on creditor committees and negotiate with all the different classes of creditors about every aspect of the fate of the enterprise'. The boundaries between bargaining and governance have to be redefined to allow the board of directors to expand into a governance instrument of more than just the stockholders, since workers too have transaction-specific investments at risk for which conventional collective bargaining is simply not an adequate governance structure.

This takes us to strand two, which concerns the legal architecture of the modern public company. It does so because, if, axiomatically, the board is a 'means by which to safeguard the investments of those who face a diffuse but significant risk of expropriation', as Williamson writes, with *shareholders* in mind, then the issue this raises is whether a stronger governance role for unions is at least compatible with the underlying premises of modern company law. Here it is important to state at the outset that the whole corporate governance movement is crucially underpinned by the largely ideological (rather than legal) doctrine of 'shareholder primacy'. This is so deeply rooted in the Indian context, for example, that even unions who use corporate governance as a platform to launch public challenges to business decisions of management (notably, the Philips Employees' Union in a very recent struggle) will, in private, enunciate a view of corporate governance as something entirely and intrinsically shareholder-driven. The fact is, however, that there is a great deal of confusion in modern company laws about the precise status and rights of the shareholder. The shareholder-centred model of governance rests on the untenable assumption that shareholders actually 'own' the company or at least its 'capital'. But this is simply not the case in law. As Gavin Kelly and John Parkinson note, 'It is simply not the case, as a matter of law, that the shareholders are owners. They do not own the company itself, since the company, as a legal person, is incapable of being the subject of ownership rights. And, while they own their shares, shareholders do not own the assets used in the business, which belong to the company as a separate legal person'. And it follows of course that 'If it is untrue that shareholders own companies, then justifying their exclusive governance role by reference to their antecedent property rights must fail'. The share, of course, is a form of fictitious capital which entitles its owner to the firm's residual income, but the crucial rights of possession, use and management of the firm's assets lie with the directors. Secondly, 'As a matter of law [...] the directors' powers are original, not delegated powers, allocated to them by the company's constitution. They are not transferred to them by the shareholders'. 'In short, the contention that the shareholders are entitled to exclusive possession of governance rights because they are owners rests on a false premise'. There is of course a growing body of literature that supports this view in detail, and some of it is wonderfully trenchant. Yet it is true, all the same, that in jurisdictions like the UK, apparently, and India, company law continues to be obfuscated by the obsolete doctrine that 'ultimate control' resides with the 'owners of the company', in the sense, for example, that shareholders have the power to appoint and dismiss directors, and that directors are, ostensibly, accountable to them above all. (Margaret Blair has argued recently that American corporate law is much less obscure on these questions, since under American law, boards have no legal obligation to comply with shareholder resolutions, even when those are unanimous.) To cut a long story short, the centrepiece of the new legal architecture of the public corporation remains the modern doctrine of separate corporate personality, and working out the implications of *this* doctrine from a consistent corporate governance perspective, namely, that

directors owe their fiduciary duties to the firm (and not to any particular constituency), would certainly create more governance space for employees.

Finally, there is a strand of thinking which is in tension with both the above, which I have referred to as 'Labour's capital'. The idea here is that organised labour has the potential to influence the development of capital through the pension funds, insofar as the latter now own a considerable part of the domestic industrial sector in many economies. For example, by the mid 1990s the world-wide accumulated assets of pension funds were equal to the market value of all the companies quoted on the world's three largest stock markets! The problem, of course, is that by and large pension-scheme trustees do not manage their funds internally. Pension funds are under professional management by specialist fund managers who work for the fund or asset management subsidiaries of the world's largest insurance companies and investment banks. The majority of these institutional investors have been key drivers behind corporate restructuring. Thus the issue here is one of control; or rather lack of control by policy-holders, of a new and paradoxical form of alienation in which workers' savings are used to undermine their jobs and communities. The political idea is that organised labour has the potential to influence the development of capital by exerting its influence among institutional investors (as it has started to do in the US) or, more ambitiously, and in the longer term, by reappropriating control over the way pension funds are managed and deployed. Perhaps the most elaborate expression of this strategy were the employee investment funds proposed by Rudolf Meidner of the Swedish TUC, which the employers identified as a major threat in the early eighties. One wonders how Marx would have handled the idea that the 'socialisation of capital' which has reached such massive proportions through the dramatic expansion of the global asset management industry is in fact, to a large degree, a capitalisation of labour's deferred wages and a potential means of labour re-appropriating control of social ownership.

Let me try and pull together the three strands of argument into a more coherent perspective. Several decades of 'restructuring' have had a major impact on the strength of unions worldwide and pushed wage earners on the defensive. Each of the perspectives just outlined offers, potentially, a way out of this crisis. The first emphasises the need for the unions and the state to redefine the boundaries between bargaining and governance and for employees to assume a much stronger corporate governance role. The second creates legal and ideological space for the acquisition of corporate governance rights by constituencies other than shareholders. And finally, as Aglietta has noted, 'If the trade unions are to regain the power to influence the distribution of income, they must realise that the battle to be fought and won is the battle for control of company shareholdings...Companies are controlled..to an ever-increasing extent by pension funds'. The three perspectives converge in their general orientation, even if there is an obvious tension between the corporate law claims of the second, denying shareholder primacy, and the 'shareholder' premises of the third. In particular, 'Implicit contracts' and 'legal architecture' underline the centrality of legal reform to the renewal of the labour movement.

On the other hand, what happens if the majority of the labour force is not covered by unions, not covered by any form of provident fund, and totally excluded from the social democratic sector of capitalism? Indeed, what happens if the unions are being destroyed within the corporate sector itself? These questions take us back to Katherine Stone's emphasis on the crucial nature of the *legal* background against which markets operate. There are two points to be made here. First, 'Legal regulation shapes the markets in which contracts are made', that is, markets are legally constructed as much

as they are economically, they are a product of regulation as much as of economic activity. And second, the background legal rules that govern labour relations embody normative choices about the distribution of power and advantage in society. A society that condemns 90% of its labour force to a condition of slavery is a society that has made a public policy choice to base its political democracy on economic servitude. There is a powerful lobby today that seeks to reinforce this position by further deregulation of the labour market on the grounds that international investors find our labour laws too rigid. But interviews with the top management of UK international firms conducted in Britain some years ago suggested that confused policies and lack of infrastructure were more powerful deterrents to a substantial flow of inward investment into India. The same lobby is fiercely opposed to the incorporation of a workers' rights clause in international trade agreements, something for which there is strong support in the international trade unions affiliated to the ICFTU. That Indian big business should brook no interference in the internal management of its affairs is hardly surprising. On the other hand, it is disgraceful that some of the central trade unions should buy into their arguments. The organised labour movement has failed to stem the growth of the unorganised labour sector and is now being progressively pushed back because of this failure. So the question about background legal rules can be restated as follows — if the labour movement is too weak to make a substantial difference to the vast majority of wage-earners in this country, including millions of children, does it make any sense to continue to oppose international union pressure for the introduction and monitoring of core labour standards through the WTO's trade policy review mechanism? The propaganda opposing the workers' rights clause emphasises sanctions and their potential to be a covert mechanism of protectionism against the developing countries. This misses several points. In the first place, all WTO members made a commitment at the first WTO Ministerial Conference at Singapore in December 1996 to respect the internationally recognised core labour standards of the ILO. India is a signatory to the Singapore declaration and as such the government of India can hardly go back on the commitments India accepted along with other WTO members. This may seem like a formality but it underlines the point that the issue of labour standards is not strictly an open one. (Note that India has still not ratified Conventions 87 and 98 on the freedom of association, the right to organise, and the right to collective bargaining; and not ratified Convention 138 on child labour.) Secondly, it is developing countries trying to respect these rights and improve working and living conditions that are the most vulnerable to being undercut in world markets by countries seeking comparative advantage through suppression of workers' rights. A good example of this is the impact of Indian child labour on the Nepalese carpet weaving industry. Though the anti-protectionist argument seems to be directed against the advanced capitalist countries, it is actually an attempt to justify a race to the bottom among the developing ones. And third, it is worth clarifying that the international union pressure for a workers' rights clause has been much less emphatic on sanctions than it has on positive incentives and improved market access as well as assistance in implementing the labour standards.

The biggest myth of globalisation is to believe that a race to the bottom is somehow inherent in the logic of global capital. On the contrary, the global integration of capitalism renegotiates the value of labour power at the international level, and it is the early phases of this process that we seem to be witnessing. It was Marx who wrote that 'since capital is by its nature a leveller, since it insists upon equality in the conditions of exploitation of labour in every sphere of production as its own innate right, the limitation by law of children's labour in one branch of industry results in its limitation in others' (*Capital*, 1.520). Here Marx sees the regulation of labour as inherent in the accumulation of capital, and posits a tendency for levelling upwards.

At the political level, globalisation is producing a massive and powerful current of convergence, with a systematic collapsing and obliteration of the old political divisions and languages, a Europe-wide convergence of the parties of the Left, and continued intensification of the protean character of nationalism, which *par excellence* is now the terrain of the right. The challenge for theory is enormous. For the labour movement to retain a sense of perspective in these rapidly changing conditions, it is important for the unions to avoid capitulating to either the pessimism or the paranoia about 'globalisation'. The paranoia about globalisation has less to do with the actual extent and forms of global economic integration, even in today's world economy, which are far less than claimed or imagined both by globalists and by the opponents of internationalisation, than with the attempts of domestic economic élites to retain substantial control over government, markets, and regulations in their home jurisdictions. Globalisation has been primarily a financial process. The integration of financial markets is being driven by the accumulation of foreign assets by institutional investors. But there are limits to the international diversification of institutional investor portfolios. On the other hand, the pessimism about globalisation is mostly designed to reinforce a politics of national sovereignty, and the convergence I referred to is largely, in India, a convergence around the rhetoric of nationalism. It is this convergence that has sabotaged the prospect of India signing the Comprehensive Test Ban Treaty (CTBT), isolated the devastating conflict in Kashmir from international intervention, disowned international pressure for the elimination of child labour, and sustained the myth that the continuing degradation of labour conditions in India is primarily due to the multinationals. The left's strategy of blaming the ills of Indian capitalism on the global forces that impinge on it plays directly into the hands of those forces in Indian society that are working hard to reconfigure nationalism or the fantasized sense of national identity into the kind of nationalist disaster that we know as fascism. Both factors have been at work in the Indian situation (pessimism as well as paranoia) and their combined effect is to deflect the labour movement from any forms of intervention other than ritualised opposition to 'new' economic policies which are now almost a decade old. In this lecture I have suggested some of the lines along which a more dynamic labour perspective might be debated, focussing on the need for a stronger corporate governance role for employees, on the conception of the public corporation as a social enterprise, and finally on the potentially important role of funded pension schemes which are subject to the control of employee policyholders. Of course, none of these perspectives will make much sense outside the context of a younger and more qualified union leadership which is able to push the boundaries of collective bargaining both further into the labour force and deeper into the decision-making of the company. By working through the logic of the new economic order rather than outside it, it should be possible for the labour movement to finally challenge business's one-sided control over the economic and industrial policies which are currently shaping the agendas of liberalisation in ways that marginalise labour.

WORLD TRADE AND WORKERS' RIGHTS: TO LINK OR NOT TO LINK?¹

ROHINI HENSMAN

The saddest thing about the confrontation which took place at Seattle in November-December 1999 was the absence of any voice speaking for Third World workers, either among official delegates to the World Trade Organisation (WTO), or among the protesters outside. One reason could be that it would be difficult for workers or their representatives from developing countries to travel to Seattle. But at least a subsidiary reason is the failure of trade unions from our countries to articulate a clear and consistent standpoint which could be argued at such a forum. This is a lack we urgently need to remedy.

Before we look more closely at the issues raised by the meeting, I would like to make my basic standpoint clear. Very simply, as I see it, the present world system is a capitalist one, and capitalism is by its nature exploitative and oppressive. I would like to see it replaced by a more egalitarian, cooperative, compassionate and caring system. However, I do not think that this end can be achieved without the active and conscious participation of the vast majority of the world's working people. This is not possible in the immediate future since these protagonists have a long way to go before they can unite around such a common goal. We are therefore constrained at the moment to work *within* the capitalist system in order to create the conditions in which a revolutionary transformation of the world system can take place. So the question which confronts us is: given these constraints, what should our attitude be to the linking of trade agreements of the WTO with workers' rights?

Who are the Actors?

Who were the main protagonists in the Seattle drama, and what were their agendas? First and foremost, of course, were the various governments. The agenda of each, to put it simply, was to get the maximum advantage for domestic production; for example, to get maximum access to the markets of other countries while giving away the least possible rights to protect its own sectors which it saw as being vulnerable. They were representing *mainly* the interests of business groups in their own countries; the extent to which other interests figured in their calculations varied. At one extreme was the US, which was forced by powerful domestic trade union and environmental lobbies to put labour and environment on the agenda.² However much we may criticise Clinton's crude bid to win votes for the Democrats in the forthcoming US elections by threatening trade sanctions against countries violating minimum labour standards,³ we have to concede that at least he was treating labour as an important constituency. His proposal to involve 'civil society' in the form of NGOs in the WTO also represents a concession to mass movements in his country.⁴ In most of our countries, unfortunately, political parties may treat ethnic, religious, linguistic, caste, regional and business groups as well as rich farmers as vote banks, but *not* workers, despite the fact that the overwhelming majority of our people survive by means of

¹ This essay originally appeared in *Economic and Political Weekly* vol.35, no.15, 8 April 2000, pp.1247-1254, and is reproduced here with the kind permission of Padma Prakash, Senior Assistant Editor.

² "WTO: US wants working group on trade and labour," *Economic Times*, 1/11/99

³ "Clinton's labour view stuns ministers", *Economic Times*, 4/12/99

⁴ "NGOs lay siege to Seattle, delay inauguration", *Business Standard*, 2/12/99; "Clinton makes strong pitch for labour, environment"; "US, EU agree on major issues", *Business Standard*, 3/12/99

some form of wage labour, if we include the rural poor who cannot make a living from their tiny plots of land.

The other extreme was represented by India, which was representing *exclusively* business interests, and made no attempt to hide the fact. For example, in the period leading up to the WTO meeting at Seattle in November-December 1999, 'N.N.Khanna, special secretary in the commerce ministry,...said India's negotiations at the Seattle round of World Trade Organisation would be corporate-driven and would genuinely reflect the needs of industry. At a seminar on General Agreement on Trade in Services organised by Federation of Indian Chambers of Commerce and Industry..., Khanna told industry to come out with policy papers which were knowledge-based so as to give inputs to the negotiations.'⁵ Were workers and trade unions issued with any such invitation by the government? Of course not. Another headline says it all: "Industry spells out India's strategy for Seattle talks".⁶ One cannot accuse the Indian government of excluding civil society from the WTO negotiations: Indian business was very much involved, both before the Seattle meeting and even as part of the official delegation.⁷ The problem is that only the miniscule section of civil society constituted by the wealthy and powerful was involved. The Indian government was there not as the representative of its one billion people, but as the representative of Indian capital.

The other protagonists in the drama were the protesters outside. While many reports emphasise the rich variety of the protesting groups, they can be divided into two major groups: 1. those protesting against the WTO itself, and its agenda of globalisation and trade liberalisation; and 2. those calling for the incorporation of labour and environmental standards in WTO agreements. As one observer pointed out, there is an inherent contradiction between these two demands, although it was not apparent to many.⁸ What we are looking at in more detail here is the demand made by the labour activists.

What is the Proposal?

First we need to be clear what exactly is being proposed, since the terms that are being bandied about — i.e. 'social clause', 'labour standards' — don't tell us very much. What has in fact been demanded by developed country trade unions and NGOs is that a '*social clause*' embodying minimum labour and environmental standards should be part of WTO trade agreements. The minimum labour standards, demanded mainly by US trade unions (eg the AFL-CIO) and the International Confederation of Free Trade Unions (ICFTU), consist of the International Labour Organisation (ILO) Core Conventions.⁹ What are these, and why have they been given such importance?

They are called 'Core Conventions' because they have been identified as being *fundamental* to the rights of human beings at work and a *precondition* for all other rights. They are seen as rights of *all* workers, including those in the informal sector and Free Trade Zones. In fact, on 18 June 1998, the International Labour Conference (i.e. the annual conference of the ILO) adopted the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*. This declares that *all member states have an obligation to implement the Core Conventions even if they have not ratified*

⁵ "Industry inputs sought for WTO talks", *Business Standard*, 4/6/99

⁶ *Business Standard*, 17/9/99

⁷ "When the world's an oyster...", *Economic Times*, 12/12/99

⁸ Narendar Pani, in "When the world's an oyster..."

⁹ "Labor groups challenge WTO on trade round", *Daily News*, (Sri Lanka) 30/11/99

them. The ILO offers support and assistance to countries trying to ensure observance of these fundamental rights.

The Core Conventions deal with:

- the right to organise and bargain collectively;
- the elimination of all forms of forced or compulsory labour;
- the abolition of child labour; and
- the elimination of discrimination in employment and occupation.

The Right to Organise and Bargain Collectively

This is dealt with by Convention No.87, the *Freedom of Association and Protection of the Right to Organize Convention*, 1948, and Convention No.98, the *Right to Organize and Collective Bargaining Convention*, 1949.

Convention No.87 says that the right to organise will be granted to *all* workers and employers; only the armed forces and police may be exempted. Workers and employers are guaranteed the right to establish and join the organisation of their choice. The state cannot interfere with these organisations or suspend or dissolve them. These organisations have the right to establish and join federations and confederations, which have the same rights. All of these have the right to affiliate to international organisations of workers or employers.

Convention No.98 says that workers will be protected from anti-union discrimination and victimisation. For example, employers should not make employment conditional on not belonging to a union, nor should they dismiss or victimise workers in any way for joining a union or participating in its activities. Employers should not interfere with workers' organisations, for example by setting up employer-dominated unions or trying to control unions in any way. And the state is under an obligation to promote voluntary collective bargaining between employers and workers' organisations with a view to arriving at collective agreements regulating terms and conditions of employment.

These Conventions protect the more general fundamental right to freedom of association, but in the context of work and employment. The ILO considers them the most basic of the principles underlying its work. Therefore ILO members agreed in 1950 that even states which have not ratified these Conventions should be subjected to a special system of supervision, to make sure that they respect organisational and collective bargaining rights. In 1951, a tripartite *Committee on Freedom of Association* was established to examine complaints from workers' organisations, employers' organisations and governments that member states are not respecting the basic principles of freedom of association. It meets three times a year, and can examine complaints even against countries that have not ratified the Conventions.

It is easy to see why the ILO considers these Conventions to be fundamental; if workers are free to organise themselves and bargain collectively, they can win many other rights. If these conventions are implemented in India, they would abolish the non-bargainable category in the organised sector as well as rule out the systematic victimisation of workers who try to form or join unions in the unorganised sector.

The Elimination of Forced Labour

This is dealt with by Convention No.29, the *Forced Labour Convention*, 1930, and Convention No.105, the *Abolition of Forced Labour Convention*, 1957.

Convention No.29 bans the use of forced or compulsory labour in all its forms, except when it is exacted by the state in an emergency or for military or public service. In such cases, the workers must be granted normal wages, working hours and weekly off-days, compensation for sickness or accidents, and support for their families if they are disabled or die. It cannot be for more than 60 days in a year.

Convention No.105 refers to the abolition of debt bondage, where workers are advanced money by the employer, and then forced to continue working for the same employer on the excuse that they have not paid back the debt. In India, such bondage is sometimes even passed on to the worker's children. This Convention says that wages should be paid regularly. It rules out methods of payment which deprive the worker of a genuine possibility of ending or changing employment.

Forcing someone to work is obviously a violation of that person's human rights. What is less obvious is that it undermines workers' rights in general. If some people can be forced to work against their will, often for below-minimum wages or even no wages at all, this reduces the demand for free labour and exerts a downward pressure on everyone's wages and conditions.

The Abolition of Child Labour

This issue is covered by Convention No.138, the *Minimum Age Convention*, 1973. This calls for a national policy to ensure the effective abolition of child labour. It specifies that for most member states the minimum age for employment should not be less than 15 years, but less developed countries may initially specify a minimum age of 14 years. If the work is a risk to the health, safety or morals of a young person, the minimum age should be 18. But it may be lowered to 16, provided the health, safety and morals of these young workers are fully protected and they receive proper vocational training.

There has been a great deal of controversy about the abolition of child labour, with some people arguing that it is caused by poverty and can only be abolished if poverty is eliminated. But the following points should be kept in mind:

Anyone who has spent time with children will know how much cruelty is involved in making a child do the same task for hours on end. In this sense, *all child labour is forced labour, which makes child labour as such a violation of human rights*. In addition, much of the work children do has a long-term negative effect on their health, and may lead to premature death. Children are extremely vulnerable to physical and sexual abuse and have far less capacity to fight back. Some forms of child labour are really forms of slavery.

By denying the child's right to education, child labour condemns these children to unskilled and badly paid employment when they grow up.

Child labour results in adult unemployment and lower average wages, and is therefore a *cause* of poverty. Many countries with a large number of child workers have a high level of adult unemployment. Where children are working while adults sit at home jobless, we should ask ourselves, why aren't the adults being employed instead? Isn't

it because employers use children in preference to adults in order to reduce their wage costs?

Different countries or even different regions within the same country with similar poverty levels can have very different levels of child labour. This suggests that it is not poverty as such but social attitudes which perpetuate child labour. NGOs taking children out of employment have found that parents learn to manage without their children's earnings once they have been convinced that child labour is wrong.

In most countries, girls suffer more from child labour because there is less emphasis on educating them. In such cases, child labour (including domestic labour) reinforces gender discrimination.

Child labour is a gross violation of the human rights of child workers, and weakens the bargaining power of the labour force as a whole. It is also a violation of the *UN Convention on the Rights of the Child*, 1989, which deals with the human rights of children in a more general way. None of the arguments against its abolition have any validity.

However it is true that actually taking children out of employment requires a great deal of time, effort and resources. The children may have to be provided with food, education, and in some cases (street children, for example) accommodation. Without this, the children could end up in an even worse situation. International assistance from the ILO and other agencies may be necessary for a government and local NGOs to tackle high levels of child labour.

Eliminating Discrimination

From the beginning, equality of opportunity and treatment has been one of the fundamental objectives of the ILO. This issue is taken up in Convention No.100, the *Equal Remuneration Convention*, 1951, and Convention No.111, the *Discrimination (Employment and Occupation) Convention*, 1958.

Convention No.100 calls for equal pay for men and women for work of equal value. This applies to basic wages or salaries and all other payments, both direct and indirect. Deciding whether work is of equal value would require objective evaluation of jobs on the basis of the work to be performed, without any discrimination based on sex.

Convention No.111 calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction, social origin or anything else, and to promote equality of opportunity and treatment in employment or occupation. Governments are required to pass laws and organise educational programmes to promote acceptance of equality of opportunity and treatment, and to set up a national authority to implement the policy.

Equality between women and men is also dealt with by another UN Convention, namely the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*, 1979.

Discrimination against particular sections of the labour force is not only a violation of the rights of those individuals; it also undermines the strength of the labour force as a

whole. If some sections are paid less than others to do the same work, this undermines the job security of the better-paid sections, because employers will always be tempted to shift work to those who are paid less. If large numbers of workers are excluded from the formal sector on grounds of sex, ethnicity, religion, caste, national origin, etc., this creates a vast pool of informal sector workers who are so desperate that they will accept work on almost any terms. Employers can easily shift work to them at the expense of formal sector workers.

There is also a danger that discrimination converts differences within the labour force into sources of division and conflict between workers. Workers who are treated differently and denied equal opportunities have little or no motivation to join in the struggles of more privileged sections or to organise jointly with them. At best, this results in lack of solidarity; at worst, it can lead to bitter conflicts that tear the labour force apart.

These Conventions are especially important for women, who form the section most widely discriminated against throughout the world. But many other groups are also denied equal rights and opportunities as workers — dalits and Muslims, for example. The fragmentation and weakening of the workers' movement which results from discrimination can be avoided only by a thorough implementation of these two Core Conventions.

What has been suggested already, and was reiterated by Clinton during the Conference, was that WTO member states which violate these Core Conventions should be penalised by trade sanctions.

The attitude of Third World workers to this proposal is necessarily more complex than that of either our governments — most of which articulate the interests of business groups without being concerned about workers' rights — or developed country workers, who are not, on the whole, concerned about inequalities of power between nations. We have to be concerned about both issues. Hence we have to examine this question carefully, breaking it down into its constituent parts.

What Attitude Should We Take to the WTO?

The mandate of the WTO is to promote free trade, breaking down barriers to the movement of commodities and capital from country to country. Is this good or bad for developing countries?

For countries which adopted an import substitution strategy, this depends on their degree of industrialisation. China, Korea, India and various other countries would never have industrialised to the extent they have without some amount of protection — i.e., barriers to the free import of commodities, which would have ruined their nascent industries if it had been allowed. However, after a certain degree of industrialisation, trade barriers can become a fetter to further development. Barriers to imports can make local industry technologically backward, producing lower quality commodities at higher prices than they would if they were exposed to international competition and able to import technology. Barriers to exports (that is, import barriers erected by *other* countries) can prevent industries from expanding further. For countries which have adopted an export-oriented strategy, the process of industrialisation and the very survival of the economy *depends* on access to markets in other countries.

So if we look at the issue from the standpoint of the economies of most developing countries, access to global markets is crucial, and trade liberalisation — which removes barriers to such access — is actually in their interests. The complaint of most developing country governments is not that they are opposed to free trade (in which case, there is nothing to stop them from staying out of the WTO), but that they are not getting a fair deal: that developed countries are forcing them to remove barriers to imports even while they themselves retain or put up barriers against imports from developing countries. Thus, for example, Indian Minister for Commerce and Industry, Murasoli Maran, said that India ‘was committed to a strengthened, rule-based, non-discriminatory multilateral trading system that should be fair and equitable... He underlined that trade negotiations should concentrate on the core issues of market access ensuring smooth flow of trade...’¹⁰ Nor was this the concern only of the more industrialised developing countries. The United Nations Conference on Trade and Development (UNCTAD) did not issue a nearly 300-page handbook for trade negotiators from the Least Developed Countries (LDCs) simply in order to tell them to oppose globalisation and trade liberalisation;¹¹ clearly, the message is that *equitable* trade liberalisation is in their interests. And Clinton picked up this suggestion when he argued that developed countries should provide tariff concessions to LDCs without demanding similar concessions in return.¹²

It is not only domestic business in the Third World that would suffer if globalisation and trade liberalisation were reversed in favour of high levels of protectionism. Millions of workers who work in export production would at one blow become unemployed and destitute. The loss of their purchasing power could in some cases lead to other local industries closing down for lack of demand, creating more unemployment. There could be wholesale economic devastation in some developing countries. Indeed, many of the NGOs and political parties currently protesting against globalisation would be the first to cry foul if this were to happen as a result of developed countries acceding to their demands! So trade liberalisation as such cannot be the enemy of developing countries — provided it is equitable. But does the WTO ensure fair play?

Many observers have welcomed the WTO as being more fair than the former GATT regime. Such an opinion is reflected, for example, in a report hailing the WTO decision to uphold a complaint made by Venezuela and Brazil that US petrol norms discriminated against imports, maintaining that such an event could never have happened under the earlier GATT regime, and arguing that the WTO corrects some of the power imbalance between rich and poor countries that existed under GATT.¹³

A more recent case confirmed this view. India, Malaysia, Pakistan and Thailand won a case against the US, which had attempted to restrict imports of shrimps from these

¹⁰ “Maran opposes labour issues”, *Business Standard*, 2/12/99; also, “The Confederation of Indian Industry (CII) is urging for the government to forge an alliance with other developing countries...to present a common stand on issues of mutual benefit at the Seattle ministerial conference in November... CII is of the opinion that India should attempt to arrive at an understanding with eight to 10 important developing countries including Russia, Brazil, Mexico, Indonesia, Nigeria, Egypt, South Africa and Malaysia... Specifically, Indian industry wants the government to negotiate for greater access for Indian products and to eliminate non-tariff barriers.” (“Developing nations must unite at Seattle: CII”, *Economic Times*, 16/6/99)

¹¹ “Labor groups challenge WTO on trade round”, *Daily News*, (Sri Lanka) 30/11/99

¹² “Sops to poor nations: US wants quad support”, *Economic Times*, 3/12/99

¹³ “WTO ruling against US gives a ray of hope to Third World”, *Economic Times*, 21/1/96

countries on the grounds that the fishing equipment they used did not have Turtle Excluder Devices (TEDs).¹⁴ An editorial commented:

Xenophobes and anti-traders would do well to note the victory that has been won by the Indian fishery sector in a dispute at the WTO with the EU and the US. The triumph in these markets, two of the world's biggest, clearly shows that any suggestion of an international conspiracy against Indian exports is baseless. What it shows, too, is the utility of bodies like the WTO... it has acted just as an impartial regulatory body should... Another, earlier triumph for freer trade with the EU was that of unbleached cotton fabric exports to some member countries. Indian exports were allowed taking the interest of major consumers of the item into consideration.¹⁵

The consensus among those who have studied the way in which the WTO functions appears to be that it is a great improvement on the earlier GATT regime in terms of its impartiality between nations, and in no way comparable to the World Bank and IMF, which are quite openly dominated by rich countries. As Professor T.N.Srinivasan, chairman of the Department of Economics, Yale University, put it, 'Institutions like the WTO are rule-based and they are meant to protect the weak against the strong. Developing countries would be at a disadvantage against the developed countries in the absence of an organisation like the WTO.'¹⁶ According to another comment, 'WTO is an international body that functions on a "one country-one vote" principle. Indeed, there is a standard American complaint that Gatt and WTO have been hijacked by the developing countries.'¹⁷

If these assessments are correct, then WTO director general Mike Moore's charge that 'protesters demanding the body be destroyed were working against the poor people and countries they want to protect',¹⁸ an African delegate's complaint against the protesters that "You are behaving like racists,"¹⁹ and an Indian NGO's accusation that 'the rioters were targeting developing nations' and 'almost managed to subvert the legitimate concerns of the Third World'²⁰ are not entirely baseless, at least so far as the purely anti-WTO protesters are concerned. If the WTO is destroyed without a better alternative being set up, it would mean going back to a regime where developed countries could freely discriminate against developing countries (for example by demanding higher environmental standards from them than from domestic producers, as in the petrol and shrimp cases described above) without the latter being able to seek redress in any way.²¹

¹⁴ "Shrimp import law is not discriminatory: US", *Economic Times*, 15/10/98. The ruling was not that TEDs should not be used, but that the requirement had been used in a discriminatory manner against the complainants.

¹⁵ "It works", *Economic Times*, 15/10/98; see also, 'Ms Esserman pointed out that India had used the dispute settlement mechanisms of the WTO to win three cases on textiles, two against the US and one against the EU.' ("India used WTO to settle textile disputes", *Economic Times*, 29/10/99); "WTO rules against Turkey over QRs on Indian textiles", *Economic Times*, 3/6/99; and "US export subsidies are unfair, says WTO", *Economic Times*, 28/7/99

¹⁶ "Anti-dumping is not in India's interests", Q & A/T N Srinivasan, *Business Standard*, 1/1/99

¹⁷ "Turtle hawks", *Business Standard*, 16/10/98

¹⁸ "Protesters are acting against interests of the poor, says WTO chief Moore", *Economic Times*, 2/12/99

¹⁹ "WTO baiters harming poor, claims Moore", *Business Standard*, 2/12/99

²⁰ Center for Science and Environment,

www.oneworld.org/cse/html/dte/dte991231/dte

²¹ Perhaps we can conclude from this that NGOs can influence the WTO in a positive direction only if they are well-informed and clear about the issues; otherwise they could (unintentionally, perhaps) be upholding big-power domination within an unequal global order. According to one description, 'Demonstrators...in discussions with reporters displayed little or no idea of how the 135-member WTO works or what its role in administering globally-agreed trade rules is' ("WTO-baiters harming poor, claims Moore", *Business Standard*, 2/12/99). Such ignorance is an inadequate basis for intervention.

In India, the extreme right-wing Rashtriya Swayamsevak Sangh (RSS) and some of its affiliates, especially the Swadeshi Jagran Manch (SJM), have been in the forefront of the attack on the WTO, MNCs, and globalisation in general.²² Their sentiments are echoed by some NGOs and sections of the Left. The biggest irony is that all these opponents of the WTO mirror the demands of right-wing US politicians like Pat Buchanan, one-time presidential candidate for the Republican Party, who want the US to pull out of the WTO because it imposes too many restrictions on their freedom!²³

This does not mean that the WTO is perfect. There were many complaints from developing countries about undemocratic procedures,²⁴ and there is certainly room for improvement. But the developing countries — who, after all, constitute almost three-quarters of the WTO membership — *can* achieve this if they work together to press for greater democracy in decision-making and transparency in the functioning of the WTO.

Labour Standards and the WTO

We now look at the other section of protesters, who were demanding the inclusion of labour and environmental standards in WTO agreements. Diametrically opposed to them were some of the Third World delegates, especially the Indians, who reiterated again and again their opposition to any such link.²⁵ How valid are their respective arguments?

The basic argument of trade union bodies demanding a link between world trade and workers' rights is that without this link, trade liberalisation *undermines* workers' rights by removing all obstacles to companies shifting production to parts of the world or to

NGOs proclaiming 'The WTO Kills. Kill the WTO' ("WTO: opening up trade while under siege!" *Sunday Times*, (Sri Lanka) 5/12/99) seemed unaware that it is *capitalism*, not globalisation or the WTO as such, that kills, and unfettered capitalism kills more than capitalism regulated by bodies like the WTO; another NGO which thought that a law protecting turtles was ruled by the WTO as a barrier to trade ("WTO talks in Seattle", *The Island*, (Sri Lanka) 5/12/99) did not realise that it was not the law itself but its discriminatory application against developing countries that was ruled against. It was thus protesting against the very decision that was hailed by Third World countries!

²² See, for example, "RSS asks Left to join swadeshi stir", *Business Standard*, 21/11/94; "RSS to continue attack on globalisation, MNCs", *Business Standard*, 28/3/95. In December 1998, the RSS, BMS and SJM planned a massive stir to protest against what they called the BJP-led 'government's weak-kneed attitude to the WTO' ("RSS plans stir against govt today", *Business Standard*, 30/11/98); "RSS begins paper-work on conversions, WTO pact", *Economic Times*, 12/3/99; and the SJM and other RSS affiliates organised a protest against WTO director-general Mike Moore in January 2000 ("WTO DG faces protesters in India", report and open letter from the protesting organisations circulated by amittal@foodfirst.org and fianusa-news@igc.topica.com

²³ "US to appeal WTO ruling on gasoline import regulations", *Economic Times*, 20/1/96

²⁴ For example, 'The Organisation of African Unity...said there was no transparency in the process and the African countries were being marginalised' ("Members object to WTO's mode of decision-making", *Economic Times*, 4/12/99); 'The developing countries predictably focused on the lack of transparency in the negotiating process...Their objections took on an angry edge when on Thursday security personnel were used to keep delegates from developing countries out of the Green Room. The Dominican ambassador reflected this anger when he said the failure of the negotiations was "an important lesson in humility for a small group of countries that seem to think that the WTO is a club" ' (Seattle round of WTO talks hit by lack of transparency', *Economic Times*, 5/12/99); 'Developing country diplomats and their ministers at the five-year-old World Trade Organisation's first major test were insulted at the way they were brushed aside by the big powers.' "They have been treating us like animals, keeping us out in the cold and telling us nothing," said veteran Egyptian trade negotiator Munir Zahran' ("Bad planning hits WTO con", *Sunday Times*, (Sri Lanka) 5/12/99).

²⁵ For example, "Maran opposes labour issues" and "No secret deal with US, Atal assures Oppn" in *Business Standard*, 2/12/99; "Working group to study labour-trade link" and "India to sign pact to help China's entry into WTO", *Economic Times*, 4/12/99; and many more.

sectors where workers' rights are weakest, or importing products from them. This in turn puts pressure on countries or sectors which have stronger labour legislation to weaken it, so as to attract investment and avoid a flight of capital, and make their products competitive. The result is a 'race to the bottom', with the average level of workers' rights globally going further and further down. This thesis requires further investigation, but at first sight it is confirmed by our experience. In India and Sri Lanka, for example, globalisation has been accompanied by a relative decline in production in sectors where labour legislation is strong, and relative increase in sectors where it is much weaker such as the unorganised sector and Free Trade Zones. Subcontracting production to the unorganised sector has been used by many companies to weaken the bargaining power of their organised sector workforces, or to get rid of them altogether through Voluntary Retirement Schemes. The existence of workers without rights becomes a means of blackmailing workers who do have rights. Hence some trade unions have seen it as crucially important to fix a 'floor' or minimum level, below which workers' rights will not be allowed to sink.

Opposing this, some developing country governments, with the Indian government in the forefront, have put forward several arguments. Let us look at them one by one.

They say that labour rights are not a trade-related issue, and therefore should not be included in trade agreements.

This is not true: labour is certainly a trade-related issue. Firstly, it is labour that makes the products which are traded, and transports them to their destination: no labour, no trade. And secondly, there is evidence that trade liberalisation can have a powerful and often negative impact on workers' rights.

They say that it will wipe out labour cost differences between developed and developing countries, and thereby destroy any comparative advantages that poor countries have today.

This is not true either. There is no proposal for equalising wages between different countries. Even the issue of a minimum wage is absent from the Core Conventions. The proposal is only that *certain minimum workers' rights should be respected in all countries*. This argument of governments and employers amounts to saying that their competitive edge depends on violating such rights, which is totally unacceptable to workers and their organisations. If trade unions were to accept this argument, they would have to dissolve themselves, since every successful trade union struggle undermines the 'comparative advantage' of their own country!

They say that the imposition of global labour standards interferes with the national sovereignty of their countries.

The national sovereignty argument is a double-edged weapon. If developing countries use it to justify their violation of workers' rights, developed countries can equally well use it to say that it gives them the right to exclude imports from developing countries, and that forcing them to import any product from any country is a violation of *their* national sovereignty. They could (as the US in particular has done repeatedly) use it as an excuse for the arbitrary imposition of trade sanctions, which is precisely what developing countries fear! In fact, the whole point of trade agreements is to negotiate mutually acceptable rules governing trade *between* countries, and there is no logical reason why minimum labour rights should not be one of the rules, so long as it is applied equitably.

They say that this provision will be used in an unfair and biased manner, and as a protectionist measure — that is, an excuse to keep imports from developing countries out of developed countries.

This is a legitimate concern, and those who argue for a link between labour rights and trade agreements should be able to respond to it. What we need to do is to separate the question of principle — i.e., *should WTO membership be conditional on agreeing to abide by the ILO Core Conventions?* — from the practical question: *should the WTO be responsible for penalising countries which do not comply with these Conventions, and should it use trade sanctions to do so?*

No trade unionist or worker in his or her right mind would object to the principle that in all WTO member countries — indeed, in all countries of the world! — *at least* the ILO Core Conventions should be implemented. In fact, many worker activists would feel that these rights are too minimal! Trade unionists who are genuinely fighting for workers' rights as well as NGOs fighting for childrens' rights feel that the social clause proposal, even in its present form, can help in their struggles.²⁶ On the other hand, all the national trade union centres are opposed to any linkage, and reiterated this stand in the context of the Seattle meeting, repeating the arguments put forward by the employers' organisations. Some NGOs have done the same.²⁷ Such abject capitulation to the interests of employers, including multinationals who make use of unprotected labour by sourcing from or subcontracting to the informal sector, is shameful, to say the least.

The problem arises only when we ask: how will this requirement be implemented? Some trade unions have pointed out that the WTO is not qualified nor competent to investigate or rule on matters of workers' rights, and that its mandate of promoting free trade may conflict with the protection of such rights. They point out that a competent body — the ILO — already exists, and could more appropriately handle this task. But the same unions also recognise that the ILO, at present, is 'toothless' — i.e., unable to penalise governments that violate its Core Conventions.

There are also objections to the use of trade sanctions against countries where these rights are being violated. This is a bit like fighting a malaria epidemic by indiscriminately spraying the whole area with highly toxic pesticide! You might kill the patients along with the mosquitoes, and you won't be tackling the underlying causes of the epidemic like bad sanitation, open drains, etc. Perhaps trade sanctions could be effective in situations like apartheid South Africa, where the government itself was responsible for massive violations of ILO Core Conventions. But most situations are

²⁶ See Rohini Hensman, "Minimum Labour Standards and Trade Agreements — An Overview of the Debate", *Economic and Political Weekly*, 20-27 April, 1996

²⁷ It is not surprising that the right-wing BMS would rejoice 'over the government having kept the labour standards issue at bay'; it is more disturbing that Swadesh Dev Roye, secretary of CITU, should fear that the government might be too soft on this issue! ("No Trade in Labour. Yet", *Economic Times*, 12/12/99). These trade unions are toeing the line of a government which is openly allied with corporate interests, and echoing the sentiments of employers' organisations. Thus 'Associated Chambers of Commerce and Industry (Assocham)...president K.P.Singh... welcomed India's firm stand against the inclusion of non-trade issues such as labour standards...'("WTO talks breakdown a setback", *Business Standard*, 6/12/99), ' "India stood like a rock," said an admiring Dr Amit Mitra, secretary general of the Federation of Indian Chambers of Commerce and Industry (FICCI),' and ' "The cost of giving in to labour and environment standards would have been too high," says T.K.Bhaumik, senior advisor, policy, Confederation of Indian Industry (CII)' ("No Trade in Labour.Yet"), *Economic Times*, 12/12/99. No doubt Indian employers are fortunate to have such chamcha unions dancing to their tune, but what about their workers? Aren't they being cheated?

not so clear-cut, and the prime culprit may not always be the government. For example, there are countries where IMF and World Bank structural adjustment programmes, by cutting government spending on infrastructure, welfare benefits and education, have led to increases in unemployment, poverty and child labour. Would it be fair for the WTO to penalise these governments for carrying out measures imposed on them by the IMF and World Bank? Surely it would make more sense to ensure that all such programmes are cancelled! Or what about cases where, say, Third World suppliers of a US-based retailer are using child labour, or Third World subsidiaries of a European company are engaged in union-busting? It would hardly be fair to penalise the governments of the Third World countries alone. And in some circumstances, trade sanctions could make matters worse for the people they are supposed to be helping!

One possible solution is that the ILO should be the body responsible for investigating complaints as well as recommending action, and should be provided with WTO funding to do so. Thus, if a government alleges, for example, that child labour is being used in another country, the ILO would investigate this complaint, or refer to its own records. If the complaint is found to be false, it will be thrown out. If it is true, but the complaining country also has a child labour problem, this will be pointed out, and remedies suggested for both countries.

Action against countries that are violating Core Conventions need not take the form of trade sanctions. It could, for example, take the form of an embargo on arms sales to states which are repressing trade unionists and workers, or states and movements which are using child soldiers. Or it might mean cancelling all aid to such countries except humanitarian aid and assistance for eliminating that particular practice, as the ILO has decided in the case of Myanmar and forced labour.²⁸ It could make debt cancellation conditional on the benefits being used mainly to upgrade labour standards. If retailers or transnationals based in developed countries are involved in the violation of Core Conventions in developing countries, the governments of *all* the countries could be fined, perhaps in proportion to their GDP, and the proceeds used to fund the elimination of child labour and other violations of Core Conventions. It would be the task of the ILO to suggest action that puts pressure on governments to protect workers' rights *without* adversely affecting the workers. Additional funding from the WTO would help the ILO to assist in this process.

The advantages of this system would be that (a) it would give the ILO some 'teeth' — i.e. enable it to penalise persistent offenders as a last resort — as well as the resources needed for it to help governments to implement the Core Conventions; and (b) it would give the ILO and — through the ILO — trade unions, workers and NGOs concerned with labour rights, some say in the running of the WTO, instead of leaving it all to governments and employer lobbies. It would be even better if this could be combined with a move to make the labour section of the ILO more representative, and not just confined to national unions which are often linked to ruling parties. Trade unions could use their place in the WTO to raise questions such as: since the WTO is concerned with globalising commodity and capital markets, shouldn't it also globalise the labour market? Immigration controls do not stop labour migration, but instead create a mass of 'illegal' and therefore unorganisable and super-exploited workers, thus lowering labour standards in general. Open borders would give these workers legal status, and enable them to unionise and fight for their rights.

²⁸ "ILO bars Burma over forced labour", *Business Standard*, 19-20/6/99

It is indisputable that *all* workers in *all* countries would benefit from the worldwide implementation of the ILO Core Conventions. But what about governments and employers? Here the results would vary. It is likely that countries where governments have expressed a commitment to protecting workers' rights would benefit, because the competitiveness of their commodities would not be undermined by cheaper commodities from countries without workers' rights, nor would they be threatened by a flight of capital to such countries. Likewise, employers who are sympathetic to a recognition of workers' rights would benefit, because they would not be so easily undercut by those who are not. In India, there would be a reversal of the employer strategy of transferring production from the organised to the unorganised sector. And a government which is planning to spend up to Rs 700,000 crore (150 billion dollars!) on nuclear weaponisation cannot claim that the costs of implementation would be too high! A fraction of that amount would be sufficient to provide schools and a livelihood to child workers, the requisite number of inspectors to ensure that minimum labour standards are being respected, etc., etc.²⁹ It is only the inveterate anti-worker, anti-union governments and employers who would suffer, and it is certainly not the business of workers or trade unions to protect them!³⁰

In fact, proposals have already been made that the ILO and WTO should work together on labour rights.³¹ This idea should be discussed by trade unions in Third World countries, and we should put forward our own proposal for a system which *both* protects developing countries from domination by big powers, *and* protects workers from exploitative and oppressive employers and governments. We can then argue for this proposal with trade unions from developed countries as well as fight for our own governments to accept it, on the grounds that their role in the WTO is to represent *not* just the tiny corporate sector, but the majority of the population.

We should be warned, however, that it will be a tough fight to get the Indian government to accept a linkage between world trade and workers' rights in *any* form. According to one report from Seattle, 'India and other developing countries yesterday got a rude shock when the secretariat of the World Trade Organisation (WTO) without prior consent convened a ministerial group headed by Costa Rica on trade, globalisation and labour. To add insult to injury, the United States circulated a draft proposal conceived by Korea, Switzerland and Turkey to establish a joint ILO/WTO standing working forum on trade, globalisation and labour issues. Among other things, it will engage in dialogue to examine the relationship between trade policy, trade liberalisation, development and core labour standards, and *explicitly exclude any issue related to trade sanctions*. Enraged developing country representatives ranged themselves against the proposal and questioned the legitimacy of the committee...Briefing newsmen immediately after the incident, commerce and industry

²⁹ See the pamphlet "India's Draft Nuclear Doctrine", issued by the Movement in India for Nuclear Disarmament (MIND), email: mind123@angelfire.com Website: <http://www.angelfire.com/mi/MIND123>

³⁰ Our focus here is on labour rights, so we have not taken up the environmental issue, but we might just comment that there is no sense in the mindless opposition of developing countries to an environmental clause, if it is genuinely egalitarian. For example, Indian environmentalists have pointed out that even the existing WTO rules can be used to keep polluting second-hand cars out of the Indian market — provided the same rules are applied to domestic manufacturers, since the WTO does not allow discrimination ("Taking Indians for a ride", *Business Standard*, 5/10/99). This would come as a welcome reprieve for urban residents, especially children, whose lives and health are increasingly at risk from vehicular pollution. Developing countries could press for stronger controls on the emission of greenhouse gases by developed countries, which is causing global warming and imminent submersion of many islands and low-lying areas. The vast majority of Third World people have more to gain than to lose from environmental protection.

³¹ See, for example, Bill Brett, "The ILO and the WTO", *International Union Rights*, Volume 2, Issue 1

minister Murasoli Maran said, “We were taken by surprise. There is no question of us accepting it. But now, we have to be very careful and watchful.”³²

The fact that Maran and others were so categorically opposed to *studying* the relationship between trade and labour standards, *even* when the issue of trade sanctions is explicitly excluded, reveals that they are not the anti-imperialist champions of Third World rights they claim to be, but advocates of the fundamentally immoral position that the rich and powerful should have the freedom to violate the human rights of the poor and vulnerable. This patently unethical position has been argued by Deepak Lal, the James S. Coleman Professor of International Development Studies, UCLA, Los Angeles, who justifies it by saying that linking ILO Core Conventions to WTO trade agreements is an attempt to “force..western morality on the rest of the world”.³³ It does not seem to occur to Professor Lal that the rights embodied in the Core Conventions are also enshrined in the Indian Constitution, so he is in fact making the absurd allegation that the document which defines the identity of India as an independent nation was forced on it by western imperialism! In fact, all those who take constitutional rights seriously, as well as all trade unionists worthy of the name, should *already* be involved in a struggle to implement the Core Conventions, and should welcome any measure which genuinely helps them to achieve such a goal.

It has correctly been noted that the apparently negative outcome of the WTO meeting at Seattle masks positive developments — namely, the demand for greater transparency and accountability by developing countries as well as civil society groups, and a call by the latter for an ethical framework within which globalisation should take place.³⁴ What remains to be done is to add the protection of the fundamental rights of Third World workers to this ethical framework. The sooner this is done, the better.

³² “Ministerial group on labour, trade convened”, *Business Standard*, 4-5/12/99; my emphasis.

³³ “India urged to resist WTO’s social charter”, *Business Standard*, 6/4/99. See also “Towards the millennium trade round”, *Business Standard*, 29/7/99

³⁴ Miloon Kothari and Peter Prove, “Negative Impressions Mask Positive Developments in Seattle”, *Economic and Political Weekly*, 8-14/1/2000

**INDUSTRIAL RELATIONS PROBLEMS IN THE MATTER OF
SUPERVISORY & MANAGEMENT STAFF:
LAW, PRACTICE & PROCEDURE¹**

BENNET D'COSTA

This is not a paper about strictly legal aspects. It seeks to cover some ground which may be beyond legal definitions. There are two dimensions to this issue:

- The rights of supervisory and managerial staff who in fact are actually engaged in work of a fundamentally supervisory and managerial nature.
- The growing trend whereby employees doing work of a fundamentally clerical/technical/skilled/manual nature, are designated as supervisors/officers/executives/managers, thereby denying them rights and also weakening the collective bargaining strength and right to association of the trade unions of workers.

Part I deals with the issues in general, whilst Part II is a brief overview of the issue as regards Hindustan Lever Ltd., a multinational company and subsidiary of Unilever.

I.

Experience shows that what passes for supervisory and managerial work often keeps evolving. Persons having greater qualifications, experience and responsibility than what managers had earlier could by virtue of the nature of their work, be doing the work of a technical worker. With development of technology and changes in the organisation of work, the sole preserve of a manager is distributed among technical and working cadre. As a result such employees, who were earlier a privileged minority have become a substantial force, both in numbers as well as in terms of their responsibility in the work organisation. The increase in the number of such workers has been the result of the expansion of service activities and scientific research etc. Many such members, even in their consciousness, prefer to look upon themselves as professionals who are vertically and horizontally mobile within industry as a whole. They are not bound by a feudal loyalty to a particular employer as an office of trust. They do not have the direct authority to hire, dismiss, promote or transfer. As a result, this leads to disputes as to whether their designations really reflect the nature of their work. Such employees, also called managers or supervisors, are called 'professional workers' in many ILO working papers, etc. The term 'professional workers' does reflect the real status of these workers, and in the laws and practices of many countries they are covered by Trade Union Law.

The issue of the rights of supervisory and managerial staff has to be seen from the point of view of:

- A. The right to association;
- B. The right to collective bargaining with respect to service conditions, unfair dismissals, protection against discrimination etc.; and
- C. Statutory recognition for such rights. In such a debate especially at this juncture a brief look at international experience may be in order, because in India it is currently a fashion to argue for curtailment of rights from the point of view of the so-called "needs of globalisation".

¹ The original annexures to this paper, which contain data on representations to the Fifth Pay Commission and international comparisons, have been removed by the editor in the interest of space.

These points are taken up in separate sections below.

A. RIGHT TO ASSOCIATION

Indian Constitution

India, like many countries in the world, constitutionally guarantees the right to form associations and trade unions, more particularly in Article 19 (1) (c) of the Constitution of India. This right is included in the basic structure of the constitution and as such is not even amenable to amendment. Fortunately the Constitution does not make any classification as to whom these rights will be available. Hence at best there could be only reasonable restriction. With this, the debate as to whether or not supervisors and managers should form associations/unions, must rest here.

International Conventions

The right to association has even been approved by tripartite bodies of governments, unions and employers, and are enshrined in various ILO Conventions. The Convention concerning Freedom of Association and Protection of the Right to Organize, more particularly in Article 2, states that “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”

The issue of the right to association by managers and supervisors was covered by the “Freedom of Association Committee” of the Governing Board of the ILO, particularly Articles 230 and 231 which state:

Article 230. “As concerns persons exercising senior managerial or policy-making responsibilities, the Committee is of the opinion that while these public servants may be barred from joining trade unions which represent other workers, such restrictions should be strictly limited to this category of workers and they should be entitled to establish their own organizations.”

Article 231. “It is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met; first, that such workers have the right to form their own associations to defend their interest and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership.”

Legal, Equitable and Enlightened Approach

Thus the freedom of association for this section of supervisory and managerial staff (professional workers) is both constitutionally recognised, internationally accepted and a necessary phenomenon in practice. But more fundamentally it is an unfortunate fact that it is necessary to debate whether or not this section of professional workers should be allowed to exercise their freedom to associate and form unions unhindered by any interference. The Trade Union Act as early as 1926 allowed the formation of a registered trade union by employers and workmen. For the purposes of this Act ‘workmen’ would include all persons employed in trade or industry. Thus this would include supervisory and managerial staff.

The Mill Owners’ Association and many other employers associations are registered under the Trade Union Act. The data on the number of employers association available in India Statistical Abstracts showed a figure of 206 employer unions

registered under the Trade Union Act with a total membership of 3,00,000 and in the public sector membership of over 1 million. The right to association of even a powerful employer is not questioned. The workmen are also allowed to form associations and unions. It would be absolutely inequitable and unfair, besides being retrograde, to argue that the right of association for professional workers should be curtailed, or for any impediments to be put in the path of such organisations. Moreover, a large number of such professional workers have a collective interest and are also vulnerable to unfair dismissal, malafide transfers, redundancies etc. They look upon themselves more as professionals and it would be a more enlightened approach to accept graciously their rights rather than look for a subservience based on an insecurity which in itself would reduce their own self-worth and professionalism. On a legal, internationally accepted, equitable and enlightened/farsighted approach, the right to association of supervisory and managerial staff (professional workers) should be encouraged.

Right of Association: International Practice

India

Since the 60's, both internationally and in India's public sector, organisations of supervisory and managerial staffs have been showing an increasing trend. In India the public sector units, banks, insurance, and civil servants have shown a propensity to form associations. Even IAS officers and other civil servants of that category have their own associations. The management consultant E. A. Ramaswamy (1985) claimed that there are 200 professional associations with 3,00,000 membership in the private sector as against nearly million strong membership of the professional association in public sector (ex. SAIL, BEL, HAL, BHEL, AICOBOO, HP, ESIC, All India Power Engineers Federation, etc., private sector includes management associations of Guest Keen Williams, General Electric, Tata Electric, Gwalior Rayon, Kamani Industries, Metal Box, Indian Oxygen, Glaxo, Pfizer, ITC, etc.). Since then many associations in the private sector have ceased to exist. It is the private sector, which is the new holy cow, that has seen low levels of organisation, both because of lack of initiative and due to the serious repressive consequences. Though this association have all the possibilities for evolving into forum of consultations the employers have taken a very antagonistic position. Mr. Ramaswamy claims that "many private sector organisations have mercilessly sacked the activists to nip the movement in the bud. Multinationals and family owned firms alike have followed this practice, although the hostility of the latter is understandably more intense."

The All India Centre of Officers Association noted this reaction of employer but were emphatic that they would survive. Their General Secretary summed up: "Top managers in India have come to view the trade union as an adversary and such a frame of mind cannot but result in action aimed at liquidating the associations. The effect however would be just the opposite."

Europe

Internationally the private sector also has its fair share of this category of staff forming associations. In Belgium there are about 20,000 supervisors and managers organised under the CNC/NCK union, who are also represented in the works council. The Trade Union Federation of CSC and FGTB are competent to negotiate the issues of professional and managerial staff within the national labour council. Denmark has the LH which organises 77,000 managers and supervisors. In France, the CFE-CGC which primarily represents professional and managerial employees are considered representative at the national level. This gives them the right to negotiate with respect to professional and managerial staff. In Germany, except for the senior management,

all others are represented on the works council. In Ireland, the MSF organises managerial and scientific workers with a membership of around 30,000. In Luxembourg, the FEP-FIT organises managers and employees in the private sector. In the Netherlands, The Federation of Trade Unions of Middle and Senior Management Staff (MHP) has a membership of 1,64,000 in the staff and managerial grade who also have the right to elect their representatives in the works councils with a range of information and consultation rights. The SUO of Sweden, with 4 lakh members, has a large number of managerial and supervisory staff. The United Kingdom MSF has members amongst the managerial and scientific workers and is widespread among the health service, engineering, banks and other private sector companies.

Asia and South America

In Argentina, the Association of Managerial Staff in the metallurgical industry groups together more than 30,000 members. Israel has a separate organisation representing managerial staff. In Jamaica, after the case of “Reynolds Jamaica Mines v. BITV” in 1980, the National Workers’ Union of Jamaica (NWU) decided in 1975 to form a trade union for middle and senior managerial staff. In October 1975 the Union of Clerical, Administrative and Supervisory Employees (UCASE) was registered. In Japan, the very definition of workers includes supervisory and managerial staff, except for a small section who have the direct authority to hire, dismiss, promote or transfer. The Swiss Association of Managerial and Supervisory staff has given figures of 50,000 to 60,000 organised in various associations.

Thus, the practice of forming associations/unions is a fairly established practice. Though often frustrating, it is a realisation of the right to association, an internationally accepted public policy.

B. RIGHT TO COLLECTIVE BARGAINING

The right to collective bargaining is an extremely important right. It is the foundation of the Industrial Disputes Act 1947 and of other industrial laws in India. It is recognised that individuals as such have less bargaining power. The organisation for common good of a collective is part of the fabric of any civilised society. In fact even managements are reorganising work based on teams, because team work increases its effectivity, realises the potential of individuals, and makes up for individual limitations. The right to association and forming unions can be realised only when there is a commitment to collective bargaining. Whilst some employers may grudgingly accept the right of professional workers to form their own associations, they would often very aggressively oppose their right to collective bargaining and the other rights which protect them against unfair dismissal or termination, in the event of transfer of undertakings etc.

Collective Bargaining: Practice & Principle

Collective bargaining does take place for supervisory and managerial staff, even though legislation, more particularly the Industrial Disputes Act, BIR Act and so on, does not protect these managerial and supervisory staff. As regards this category of employees, collective bargaining for determining their conditions of service takes place in banks, insurance, public sector undertakings, the civil service, mines and a few (very few) private sector undertakings. In Mumbai such organisations in the private sector are restricted to a few companies like German Remedies and C. P. Tools.

In fact, the practice of wage fixation for the government, police, judiciary, is through Expert Bodies and Pay Commissions. Collective bargaining takes the form of various Associations representing employees, from the peon to the IAS officers, and of such Associations being heard in a collective and representative capacity. In the case of officers, supervisors and managerial levels, well over a hundred associations all over the country represented the employees before the 5th Pay Commission. (See Annexure 1). . In many of these representations comparisons were made between the public and private sectors.

What then can be the logic of denying these categories the right to collective bargaining in the private sector? *The fixation of wages and the principles of adjudication do not depend on the nature of the employer* .This is settled law in India, at least between the public sector and private sector, as ruled by the Constitution Bench of the Apex court in 1967 (1) LLJ 114, in the Hindustan Antibiotics case. Also in the Unichem case, the nature of the employer, i.e. whether multinational or Indian, was considered irrelevant. If the Public Sector does allow its officers and managerial staff the rights of collective bargaining in practice, though not by operation of law, professional workers in private sectors should certainly also enjoy the same rights.

Period of 1950 to 1970

Indeed, the private sector in the 1960s and early 1970s used to allow collective bargaining in many establishments, even when there was no legal obligation to do so. In that sense it was quite accepted. Of course, such arrangements used to mainly cover supervisory staff, officers and junior executives. No indiscipline resulted, nor did it affect profitability.

Statutory protection

The Trade Union Act 1926 included the categories of supervisory staff under the definition of 'worker'. The Industrial Disputes Act squarely covered supervisory staff drawing a salary of upto Rs 500/-, whose real value would be Rs 26,700/- as of June 1999 at index 10,600 (1934 = 100). Thus the object of the I.D. Act, with regard to protection of supervisors, was to grant such protection to all of them including those in the most highly paid industries. To take an example it covered all supervisors at Hindustan Levers Ltd and also Assit. Managers who were admittedly doing primarily supervisory work. The Bonus Act of 1965 also consciously defined 'employee' in terms of a monetary ceiling of Rs 1600 at an average Index of CPI 420 (1934 = 100), which would correspond in real wage terms to Rs 40,761 at the CPI of June 1999. Whilst so defining the term employee the Bonus Commission had specifically intended it to cover supervisory and junior management levels. Sec. 22, by fiction made disputes of bonus though covering supervisor and managers into Industrial disputes and applied the machinery provided under Industrial Disputes Act and other corresponding laws for resolution of such disputes.

Thus it can be said that during the 1940s, 1950s and 1960s, both law and practice sought to give protection to the rights of supervisory and junior managerial staff. This must have been due to the fact that the Trade Union movement was closely associated with the freedom struggle. Many leaders of the freedom movement had close associations with the Trade Unions. Also, it was a period of economic growth and of ideals in the trade union movement, and in society as a whole.

The seventies and thereafter saw the destruction of the law and practice of the organisation of this section of professional workers, though not in the public sector. The employer class has been successful in pressuring the state and policy makers, through various means, not only not to expand such rights, but to weaken what already existed. Hence in spite of a rise in the cost of living index from 420 to around

10,600, the bonus ceiling has risen from Rs 1600/- to just Rs 3500/-, thereby not only going against the very object of the Act of being broad enough to cover supervisory and managerial level staff but also becoming irrelevant for the unskilled worker in industry. So also the Rs 500/- ceiling under the Industrial Disputes Act was raised to Rs 1,600/-, which is less than the minimum wage rate for unskilled workers in some occupations.

Need for amendment of Industrial Disputes Act

The Industrial Disputes Act, 1947, provides very few rights — i.e. with regard to lay offs, retrenchment, closures etc. Essentially it provides machinery for investigating and settling disputes arising from employment and non-employment, promotes collective bargaining and protects the right to association. What then is the logic of not having supervisors and managers (professional workers) covered?

An Industrial Dispute can also be between an employer and employer or a workman and workman. An employer too has a right to raise a dispute against a 'lowly' and 'weak' worker just as much as a worker has this right. If an employer too requires the protection of the law and the machinery thereunder, how can supervisory and managerial staff be excluded? It is argued and often decided that the legislature decides what levels of workers may be protected and hence a classification excluding some on a monetary basis is within its competence and not arbitrary.

But such an argument will not hold in this case, because it concerns not just protection of the lower categories in the industrial employment hierarchy but also the highest i.e. the employer. Disputes between employer and employer are Industrial Disputes and can be adjudicated!! Hence this classification, which eliminates a section of managerial and supervisory staff is inequitable, unjustified and arbitrary. The legal fraternity may dismiss such a proposition through intricate reasoning, precedents etc, yet it appeals to common sense.

The practice of collective bargaining for professional workers persists in the public sector, and in view of the parity in fixation of wages and principles of adjudication between these two sectors, there should be an enlightened practice of collective bargaining for the private sector too. The fact that there are fewer organisations should not come in the way.

The Industrial Disputes Act has been evolving, and there has been inclusion of workers of operational and technical categories in the definition and Sec. 2(s). It is time that the definition is expanded to use the term 'professional worker' under 2(s) to include managerial staff. The exceptions under 2(s)(ii) could be qualified, in the same manner as in the Trade Union Law of Japan (1-4-1949), to Manager as 'Managerial staff in supervisory posts having direct authority to hire, dismiss, promote or transfer' and 'Administrative' to mean 'Administrative capacity having direct access to confidential information relating to the employers industrial relations plans and policies, so that their official duties and obligations directly conflict with their loyalties and obligations of a Trade Union'.

This will remove the anomaly wherein all those who are covered by the Trade Union Act are covered by the I.D. Act except supervisory and managerial staff, and also protect them against unfair dismissals and the like.

International Experiences

Europe

In Denmark, professional workers have rights to collective bargaining under provisions of Notification 413 and are covered under the term 'salaried employee' along with other clerical, technical, sales and office employees

In Netherlands centralised negotiations at Industry & company level take place and practice is more important than the law. The Federation of Trade Unions of Middle & Senior Management Staff (MHP) with 1,64,000 members have enjoyed a number of collective bargaining agreements. The same is the case in Switzerland which has around 33% of all managerial staff as union members. In France the CFE-CGC is considered as “representative” at the national level and signs agreements with the employers federation, and once signed its terms are binding on all employers who are members of the Federation and must be made applicable to all employees. In Germany too negotiations are at the industry and regional levels, primarily the former.

In the U.K., the employment law does not make any distinction between types of workers and hence supervisors and managers have same rights as other workers. It covers rights to be a member of Trade union, the right to strike following a secret ballot, protection against unfair dismissal, redundancy payments, protection against discrimination, representation through European works councils, etc.

Supervisors and managers are organised in industry unions, e.g. Engineering, AEEU, TGWU etc. In the Commercial sector they are represented by the Management and Finance unions (MSF). Collective agreements are signed in the public and private sector. In fact they function in premier organisations like Unilever Research. Mr. Richard Clark of MSF is also a representative on the European works council for Unilever. See Annexure 2 which is a list of collective bargaining agreements compiled by The Labour Research Department, London.

An employees who feel that they have not been treated fairly can seek redressal in Tribunals.

South America & Asia

In Argentina the definition of workers includes professional workers. Sec 1 of Act No. 23551 defines: “Worker means any person who engages in a lawful activity on behalf of another person who is entitled to direct such activity”, and grants collective bargaining rights to such a person.

In Jamaica, managerial staff are included in the category of workers under Sec. 2 of the Trade Union Act of 1919. In the case of “Reynolds Jamaica Mines v. ITO” in 1980 the Supreme Court considered that managerial and executive staff were free to join trade unions of their own choosing and to participate in the activities of these trade unions, in the same way as other workers. Henceforth, managerial and executive staff are included in the bargaining units which group together ordinary workers. Provision is made in collective agreements for specific conditions applicable to this category of staff.

In Japan a large section of supervisors and managers are covered. The definition under this section of the Trade Union Law, 1949, is:

“Workers under the present law shall be those persons who live by wages, salaries or other remuneration assimilation thereto, regardless of the occupation.”

Those excluded under Sec. 2 as shown earlier can form their own associations and may bargain and conclude collective agreements under provisions of article 28 of the constitution.

In Mexico workers collective agreements cover supervisory and managerial staff unless they are specifically excluded in the agreement itself.

The only conclusion one can draw is that there is a widespread practice in all sectors, nationally and internationally, for collective bargaining rights for supervisory and managerial staff. It has not caused industry to suffer and has been felt necessary for this section of employees. Non-inclusion discriminates arbitrarily between the professional workers on the one hand, and employers and workmen on the other who are covered under the Industrial Disputes Act.

C. STATUTORY RECOGNITION OF RIGHTS TO ASSOCIATION AND COLLECTIVE BARGAINING

Unfair Dismissal, Malafide Transfer and Discrimination, Etc.

Today even a General in the Army, an Admiral in the Navy can file a writ petition against arbitrary dismissal, transfer, discrimination etc. In fact there has been a recommendation which is being actively pursued towards the formation of Tribunals which would have powers to review orders of Court Martial. Pursuant to the Administrative Tribunals Act, civil servants from sweepers/peons up to the secretary have access to the Administrative Tribunal both at state level (Maharashtra Administrative Tribunal) and at the central level (Central Administrative Tribunal). They are governed by Civil Servants Rule or the Fundamental Rules and Service Rules, whereby rights analogous to the Standing Orders are given. In the case of industries carried on by the state such as MSEB/MTDC, all rules which are certified by the certifying officer under the Employment and Standing Orders Act apply. The managers in this case still have a remedy, namely, the High Court in writ jurisdiction. This is because the I.D. Act does not apply, and not being a government servant the Administrative Tribunals do not have jurisdiction. Yet he has an efficacious remedy.

It is only in the private sector High Court and in co-operative banks that grievances would not have any efficacious remedy for redressal. As a result of this managers and supervisory staff have recourse only to filing of civil suits, which can at best give damages after a decade. In the case of Binny vs Sadasivan, the Madras High Court ruled that the officers, notwithstanding their designations are entitled the rules of the natural justice again it is only a matter of damages and not reinstatement.

Today more and more it is accepted that arbitrary decision be it of the Prime Minister, the Election Commissioner, the Chief of the Army Staff and other such senior and sensitive positions *are* subject to judicial review. The idea being that all citizens of the country should have a remedy against any arbitrary, unfair and discriminatory action of authorities that affect them. On what grounds then should the arbitrary decision of private sector employers be beyond the question? And without remedy? This is incompatible with a democratic society and places unquestioned, arbitrary powers in the hands of certain individuals, while denying any efficacious remedy to the victims of such arbitrary action. Today even juristic persons like a company file writ petitions against the Reserve Bank and other authorities under Article 14 of the Constitution, when they have perceived discrimination at the hands of such authorities. Yet the same juristic persons will resist granting similar rights and machinery for rectifying any arbitrary discriminatory actions which they themselves might commit.

Suggestion for Remedial Machinery

In view of this position it would be proper to view the supervisory and managerial staff as professional workers. This term could be an addition to the definition of workmen under the Industrial Dispute Act, 1947.

In fact this category of workers come neither under workmen nor under the employer. It is worth noting that even if they were put in the category of employer, they would have a remedy in that the Industrial Disputes Act, 1947 which provides a machinery for adjudicating disputes between the employer and employer.

Alternatively, one might suggest that there should be Tribunals corresponding to the Administrative Tribunal which are applicable for civil servants.

There need be no alarm. Recommendations for setting up a Tribunal for the Armed forces to review court martial have justified the same with a view to providing a mechanism for removing the frustration due to unjust, arbitrary and discriminatory acts against them which may adversely affect the morale of the armed forces. Moreover, many countries in the world like United Kingdom, Japan, etc., cover all or a large section of managerial and supervisory staff in the category of workers and give them similar rights. In the UK when such employees feel they have been treated unfairly by their employer, they can seek redressal in an Industrial Tribunal which carries the full authority of law, such as any other court may have.

Designation Versus Reality

Whilst the earlier part of this paper dealt with genuinely managerial and supervisory staff, a few points are necessary on the question of the action of many employers in designating clerical, technical or skilled manual employees as 'supervisor', 'officer', 'executive' or 'manager'.

In some cases there may be a genuine mistake in designation. But unfortunately, there is a growing trend whereby *these designations are deliberately given with a view to denying such workmen their rights of collective bargaining*, right to associations, protection against arbitrary and discriminatory action of the employer, or to undermine the unions of workers unions. Apparently this urge of the employers is not a purely Indian phenomenon. It exists in many other countries, especially where the change in designation would remove them out of the pale of industrial laws.

Objects of Industrial Disputes Act, 1947

Some checks on these actions have been the result of judicial decisions whereby it has been held that it is not the designation but the actual predominant work performed by an employee that would determine the status. One of the tests to determine whether the person genuinely came within the managerial category was whether decisions taken by such persons are binding on the management. In fact, at the time of the enactment of the legislation, the term 'supervisory staff earning a salary of Rs 500 per month' was meant to cover almost all of supervisory staff and also many managers by designation but supervisory staff by content. In fact it covered all supervisors and Asst. Managers doing essentially supervisory work of Hindustan Lever Ltd., the largest multinational in India. The real value of that Rs 500 per month would approximate to Rs 26,750 per month now, which is a salary hardly any supervisors draw above today. It would therefore stand to reason, that the term 'managerial and administrative' which was put as an exception in the Industrial Disputes Act definition of Section 2(s) in the year 1947, was intended to cover only those managers who were of a middle and senior level and administrative persons who were genuinely in a senior position in administration. In this sense, a judicial interpretation of managers in the Industrial Disputes Act 1947 should be one who has the direct authority to hire, terminate, transfer and promote an employee.

ILO Covenants

Such actions of the employer have been considered by the Freedom of Association Committee of the governing board of ILO, from the point of view of the Freedom of Association and the rights of Trade Unions which get affected by such actions.

Reproduced below are extracts from the Digest of Decision of 1985, 295th Report, Case No. 1751, and 278th Report, Case No. 1534 which were published by the committee.

Section 232. As regards provisions which prohibit supervisory employees from joining workers' organizations, the Committee has taken the view that the expression "supervisors" should be limited to cover only those persons who genuinely represent the interests of employees.

Section 233. An excessively broad interpretation of the concept of "workers of confidence", which denies such workers their right of association, may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association.

Section 234. Legal provisions which permit employers to undermine workers' organizations through artificial promotions of workers constitute a violation of the principles of freedom of association.

Question of Fact

Alarm bells ring when a person with a glorious or sensitive designation is declared a workman. Indeed such designations of often coined with the purpose of concealing the real nature of job. But it is actually a 'Question of Fact' and depends on the facts regarding the nature of work and those of which facts are brought on record at the time of trial.

There is thus nothing wrong when a person designated as Chief Analytical Chemist, or an Internal Auditor are held to be workman as defined under the law, in fact the organisation of work is undergoing a transformation and industry as far as possible does not employ persons for a predominantly supervisory nature of work. It is being found as unnecessary to pay a person to primarily tell others, how to do their work. Such jobs are only ancillary to a job of technical nature. This happens wherever an issue is a question of fact. For example Pakistan which has a definition of workers based on the exclusion of categories more particularly managerial, supervisory drawing Rs 800 and Administrative has similar instances. In *Swissair Transport Co. Ltd., Karachi V. Malik Ghulam Hussain and 2 others* quoted in *Labour Code of Pakistan* p. 419, the High Court ruled that the nature of the tasks carried out is of the highest importance. Status did not depend on designation of the post or the amount of salary. A transport director with no authority over the drivers as regards attendance, hours of work, holidays or other matters must be considered as a "worker."

In some companies, even multinational companies, the entire clerical staff has been redesignated as officers. This is done with a view to deny them the right of collective bargaining and due process of the law in case of termination, transfer, promotions etc. Since it is meant to weaken the Trade Union membership of workers and also adversely affects promotional opportunities within the bargaining categories the workers have an immediate community of interest, besides being themselves affected. This is an industrial dispute. Also this cannot be done without a notice of change under Section 9A of the Industrial Disputes Act.

With the change in the nature of work organisation, this can be a potential area of Industrial Disputes and one hopes that judicial interpretation may be more in terms of the objects at the time of framing of the Act and the expansion of the rights of this section of workers.

II.

Supervisory and Managerial Staff in Hindustan Lever: A Brief Overview

Statutory rights and practice

Around the year 1947 when the Industrial Dispute Act was enacted the salary of supervisors in Hindustan Lever at the maximum was not more than around Rs 350. The Assistant Managers who were called as Managerial assistants, in the submission of the company itself, before the Industrial Tribunal of Shri I. G. Thakore, were junior managers whose primary duty was to supervise the work of any section. Their salary was around Rs 375 per month and a Dearness Allowance of Rs 40. Thus they came well within the definition of supervisory staff below a salary of Rs 500. Hindustan Lever was then amongst the better paying company. It was thus clear that the Industrial Dispute Act whilst enacting the amount of Rs 500, per month devised the amount in such a manner so as to cover all supervisors and also managers who were essentially doing the work of supervisors. Around this time all these supervisors and assistant managers (who reported to senior managers) were covered by collective bargaining more particularly the Shri I. G. Thakore Award and subsequent settlements.

But it appears that it was not merely the statutory provision. There was also willingness to give this section of supervisors and managers a collective bargaining right. The I. G. Thakur Award also covered Salesman, Marketing Research Investigator and Sales Supervisors. Further there was an agreement of 1957 between the Hindustan Lever Mazdoor Sabha and the Company. The company agreed by way of settlement that they would consider the entire Field Force comprising of Salesman, Sales Supervisors, Market Research Investigators, as workmen and that they would not dispute their status under Sec. 2(s) of the Industrial Dispute Act. It also conferred the sole bargaining right on the union. *In short collective bargaining for the supervisor staff and junior managerial staff was accepted both by way of statutory rights as also by enlightened practice.* Settlements were reached covering these staffs up till the year 1971.

As regards the Bonus Act in the year 1975 the salary of the highest supervisor was around Rs 880 in Hindustan Lever. Junior managers would draw a salary much less than Rs 1600. They were all eligible for bonus under the Bonus Act. The Bonus Commission report recommended the figure of Rs 1,600 to cover not only all workmen under Sec. 2(s) of the I. D. Act but also to cover supervisory and junior management staff. It is only because of the irrelevance of the amount of Rs 3,500 in total disregard of the object of the Act that the supervisor and managers today are not covered under the Act. In fact even an unskilled worker is not covered under the Act.

The 1970s and the Emergency

The attitude of the company saw a dramatic change in the early seventies and the emergency in the country found a meeting of minds with the company. As soon as the emergency was declared the attitude of the company crystallised in to a series of actions. The leading office bearers of the Sabha were dismissed. The company gave a go by to the settlement of 1957. They said it was not an agreement at all. That was for the sales staff.

Around the same time the company contested the status of many employees who were earlier covered by the agreements from 1947. These included Charge-hands, Foreman etc. The company now embarked upon creating a group of supervisors without collective bargaining and other rights. The Industrial Dispute Act ceiling of Rs 500 continued to remain the same.

Supervisors as 'pawns' 1977 to 1995

Around the year 1977 the company wanted to seal the Dearness Allowance of the factory and the head office staff. In order to do so one of its major arguments would be that the salary of this staff would be more than the managerial staff. But that would affect the managerial staff itself, if the company were to keep their salary in a stagnant position to prove their point. The supervisors were to be made the 'pawns' in establishing a category of workers whose salary would be low. Thus the salary of the supervisory staff were kept artificially low, so that the company could argue that the clerical and technical staff were drawing more salary, thereby it would cause indiscipline and hence the Dearness Allowance of the clerical and technical staff should be sealed. Apparently they were trying to manipulate the situation whereby the Killick Nixon case could be partially applied. Thus whenever the salary of the workmen went up due to the increase in Dearness Allowance the company would make some increase in the supervisory staff salary whose D.A. was sealed. For a long period of time from 1977 to 1995 the supervisory staff lost tremendous amount of their D.A., their Provident Fund and Gratuity.

Victory for workers save supervisors

The supervisors had no say by way of their collective bargaining power, as this was not recognised. Even if two supervisors uttered the word union privately and it was known to the company that they were interested, they would be immediately summoned and that itself would send shivers down their spine as they waited outside the factory manager's cabin. The threat of transfer, etc would settle the issue. But great news was to come by the supervisor's way by way of two judgements of the Supreme Court. The first one being Hindustan Lever Ltd., v/s B. N. Dongre (1994 II CLR page 673 at 690) wherein the Supreme Court rejected the company's contention seeking to enforce a sealing on D.A on the ground that it distorts vertical relativity, in that clerk received more emoluments than the junior executive. The apex court ruled that: "*We think the better way to overcome the difficulty is make the junior executive grade more attractive rather than deny to the workers what they are receiving since long.*" With this one of the main reason for keeping the supervisor wages low ended. Many supervisors unable to bear the situation started leaving the company on an all India level. This also made the company reconsider. But in this period in 1977 to 1995 a large number of supervisors had retired and lost large amounts of money in terms of salary and retirement benefits. From 1996 to 1999 the salary of the supervisors have been now rising and will perhaps reach its realistic level.

Judgement regarding Field Force

The action of the company to disown the agreement of 1957 was depreciated by the Supreme Court, which in the year 1984 noted: "*1.If solemn agreements proposed by the employer and readily acceded to by the workmen and holding the forte for over a quarter of a century are crudely disowned compelling the workmen to knock at the door of the apex Court for removing the road-block in the access to justice set up by preliminary objection of technical nature, industrial peace and harmony chanted by the employer would be not merely an empty mantra but a futile exercise of chasing a mirage and unfortunately that is the situation here.*" The court held that the company was bound by the agreement and it was estopped from challenging the status of the Field Force as workmen under 2(s) of the Industrial Dispute Act. As a result the action of the company forcibly sealing the Dearness Allowance of the sales force including the officers became a subject matter of complaint which the union succeeded both at Industrial Court and Supreme Court and as a result the old Dearness Allowance had to be restored. This would result in an increase of 60% to 100% of their salary even if they were placed in the year 1995 according to the settlement of 1971. In order to overcome this position the company bypassing the union and denying the present

workers the arrears individually got settlements signed and thereby increased the wages to the level of 1971 and little more. Those disputes remain pending.

As a result of this sudden increase which was more due to the struggle of the workers under the machinery of the Industrial Dispute Act and MRTU & PULP Act, 1971, the supervisors/officers have become indirect beneficiaries. This will be seen from the case of a senior technical person Mr. S. T. Kulkarni who was unionised and retired with a salary of Rs 19,065 per month in 1996. The same Mr. G. R. Pai an officer with almost corresponding years of service drew a salary of Rs 13,350. The supervisors were in an even worse position prior to the year 1995. It is only because of the two judgements of the Supreme Court flowing out of labour legislation that Mr. G. R. Pai in the year 1999 retired with the salary of Rs 20,000 plus. This increase of around Rs 8,000 to 10,000 he received almost from the year 1995 onwards.

Thus the condition of the supervisory and managerial staff in terms of collective bargaining has been precarious and their interest are sacrificed to achieve collateral objects. But not having the rights to organisation and collective bargaining they are unable to defend their interest.

Summary

The conditions of the supervisory and officers staff has thus come full circle. In the first little than three decades the supervisory and managerial staff had their fundamental rights of forming association and collective bargaining protected by statute and/or by practice. Thereafter came the erosion of their statutory rights and the enlightened practice of collective bargaining. It has been followed by further erosion of the rights of other workers by the conversion of some of the staff in to officers designation though the nature of the job remain the same. In the case of the Research Centre where the workmen who were doing the work of a technical nature were classified as skilled manual, a dispute pending. A similar dispute for factory staff ended in the workmen succeeding. In view of the legal position being against them the company has started re-designating the technical staff as officers. This has resulted in an industrial dispute. But the point here is that for no worthwhile reason and the despite the rights to organisation being a fundamental right, there has been a total change ,since 1947 to 1970 from the enlightened policy of accepting the rights of association/collective bargaining of these workmen to the period of 1999 wherein it has become an era of absolute denial.

The perception of the supervisory and managerial class as one inimical to trade unionism as such has been proven to be wrong. On the other hand the management view that the very formation of a union by the supervisory and managerial workers is tantamount to militant workers like attitudes affecting industrial peace is extremely simplistic.

The growth of the markets, the increase in automation requiring high-tech management as also the growth of new technology and a large service sector have created a large number of professional managers and supervisors whose status and consciousness is derived from their possession of knowledge. They are 'salaried mental workers' and are not directly performing the employer's function. Their status and consciousness is derived from their possession of knowledge, they are professional and can be properly categorised as 'Professional Workers'.

Their awareness as knowledge workers creates a collectivity in itself. Their values and professionalism create and urge for forming association, though of course they may not like the label of 'unionism' and would prefer to be called association. In fact a

research showed that majority of engineers who were given choices one of which was UPSEB Engineers Union rejected the word union on grounds of 'dignity and decency'. They prefer the word association. The consciousness of this group of professional worker is not the same as perhaps blue and white colour workers, yet they have community of interest and often associate with blue and white colour workers within the same union or by way of associating. Forming of an association is an international phenomena and practice shown that it has not been adverse to industrial progress.

The right to association of these professional workers cannot be questioned as it is a fundamental right. This right of association for this section of workers is recognised in international covenants. It is practiced on a wide scale all over the world. On legal, internationally accepted, equitable and enlightened approach, their right to association must be recognised. Coercive measures have only increased not decreased trade union formation.

Collective bargaining, which is allowed for the employees in government, police and judiciary through the pay commission, as also to the public sector employee should be extended to the private sector employee also. The Industrial Dispute Act of 1947 covered virtually all supervisory staff and those managers who in fact were doing mainly supervisory work. The ceiling of Rs 500 in 1947 is equivalent to Rs 26,700 in real terms as of date. It covered all supervisors in 1947. That was the object of the Act. The Rs 1,600 ceiling is arbitrary and against the object of the Act. The Industrial Dispute Act provides mainly a machinery for resolving the industrial disputes. The very inclusion of other workers as well as the employer and the non inclusion of this section of workers is without any rationale and such classification in the act itself is arbitrary. Internationally a large section of professional workmen are covered by the industrial laws and have a remedy in statute and practice against unfair dismissals, transfers, promotions and also have the rights to collective bargaining. Hence the Industrial Dispute Act should be modified to include the 'Professional Workers' within the ambit of Section 2(s).

Every citizen is entitled to due process and protection against arbitrary action. All civil servants, managers in public sector undertaking even the armed forces have efficacious remedies through some machinery of judicial review. Either the definition of 2(s) should include professional workers or in the alternative a Tribunals should form to give redressal against arbitrary action of the employer in terms of dismissal, transfer, promotion, discrimination etc.

Finally it must be realised that as a young industry both statutorily as well as in practice, Unionisation of supervisory and junior managerial staff were accepted. The statutory as well as practical experience were not such as to lead to one conclude that these rights which were able to be accommodated by young industry will create serious industrial relation problem with a mature and grown industry. Whilst all other sections of employed persons and even an employer have certain rights of organisation and with regard to protecting their interest within the industrial sphere, one cannot understand as to why only this category of supervisory and managerial staff should be denied these rights. It can only be justified on the reasoning that this section of employed people are unable to judiciously exercise their rights without creating an industrial disaster. On that score, I have serious reservations with such reasoning.

TRADE UNION SOLIDARITY COMMITTEE: WHO ARE WE?

This note was prepared for the benefit of Working Committee members of TUSC attending a debate on July 7, 2000, at Bhupesh Gupta Bhavan where senior trade union leaders were present.

Trade Union Solidarity Committee (TUSC) is a platform of independently functioning omnibus company/plant wise unaffiliated trade unions in Mumbai-Thane area. TUSC has been in existence since 1989. Through consistent actions we have demonstrated that we are not independent of working class movement and politics.

In order to express solidarity with TELCO workers in Pune, Trade Union Solidarity Committee was formed in September 1989 at "Shramik", Dadar, Mumbai. Representatives from Sarva Shramik Sangh, Hindustan Lever Employees Union, Blue Star Workers Union, Kamani Employees Union, Federation of Mercantile Employees Union, HOMECEC Union, Contract Laghu Udyog Kamgar Union, Diamond Workers Union attended the meeting. Apart from Unions, individuals with working class perspective particularly labour researchers have been associated with TUSC from its inception.

Comrades B.V. Bapat (Sarva Shramik Sangh) and D. Thankappan (Kamani Employees Union) were the Joint Convenors in 1989. TUSC organised a one day Dharna at Churchgate on October 12, 1989, in support of the mass hunger strike undertaken by the workers of TELCO, Pune.

TUSC unions met again but infrequently.

The employers' offensive was growing in 1990. Many unions were facing new types of attacks on collective bargaining and organisational rights, litigation was mounting. To discuss the common problems faced by the workers, a meeting of a small group of TU activists was held in Blue Star Union office at Dadar in September 1990 when it was decided to revive TUSC. A wider meeting of union representatives was called soon and in this meeting N. Vasudevan (Blue Star Union) and Franklyn D'Souza (Hindustan Lever Union) were elected as Joint Convenors.

During the last ten years TUSC has undertaken several campaigns and agitations to uphold labour rights, to fight collectively employers' and government's attacks on workers.

Some of the major TUSC activities:

1. In 1992 December in the aftermath of Babri Masjid demolition TUSC met and decided to campaign against communalism dividing workers in work places.
2. TUSC organised *shibirs* to discuss various aspects of communalism.
3. TUSC approached Bombay High Court against Maharashtra Government's notification to take away workers' right to 5% HRA and won the case.
4. TUSC organised a *dharna* in front of the Industrial Court at Tardeo demanding filling up of vacancies in courts.
5. TUSC sent fact finding teams to enquire:
 - a. into police firing in a Nagpur Steel Company
 - b. into police firing in Dalla Cement factory in UP

- c. into police firing in Bhilai (Chhatisgarh) workers in MP
- d. on earthquake in Latur
- e. into firing on workers in Nashik

Fact finding reports were published and press conferences were held.

6. TUSC unions won before a Single Bench in the Bombay High Court that Section 9(A) notice is mandatory for offering VRS to workers. However, Division Bench of the High Court set aside this order.

TUSC believes that in this era when powerful corporations inside and outside the country work overtime to make work places free of unions, in the face of high pitched government-employer offensive aimed at deregulation of labour rights and when corporate power has assumed gigantic proportions, unity of workers cutting across political affiliations alone has the chance of resisting capitalist onslaughts, launch a move to counter and beat back the enemy offensive aimed at ensuring victory for the working class.

Unions were facing a crisis situation. Several ideas came up in meetings to cope up with the situation. A perspective for TUSC was also mooted. It was the unanimous view of the unions namely — Blue Star Workers Union, Hindustan Lever Employees Union, Boehringer Mannheim Employees Union, Nicholas Employees Union, Bombay Union of Journalists, Contract Laghu Udyog Kamgar Union, Hindustan Lever Research Centre Employees Union — that TUSC must expand its area of activity and more unions must be brought together. Discussions to decide TUSC perspective went on for years and when it was found that a consensus was not feasible the idea was shelved. However, to manage the affairs of TUSC and with a view to increase its strength and widen its depth of activities an Organising Committee comprising N. Vasudevan, Franklyn D'Souza, C.G. Chavan, Sanjay Singhvi and K. Murlidharan, was elected at a meeting held at BUJ, Mumbai on December 11, 1994.

This committee could function only for a short while due to practical difficulties. Thereafter once again TUSC started functioning under two joint convenors — N. Vasudevan and Franklyn D'Souza.

By 1998-99 employers' intensity of attacks on organised sector workers surpassed all limits. Many of the TUSC constituents were fully immersed in defensive battles. Considerable amount of time and money went into litigation. VRS reduced the strength of unions and considerably affected vitality and militancy of several TUSC unions. Hindustan Lever, Kamani, Blue Star, Siemens, Otis, Mukand all faced the brunt of capitalist offensive. Latest to fall victim of VRS was Nicholas Union. Resistance from individual union was losing its punch. Even defensive strategy became difficult. New types of attacks started appearing like the one in Hindustan Lever where workers were kept out of work by the management on annual advance payment made to them. These attacks needed a collective resistance. In Mukand, the non-implementation of wage award and costly litigation was the issue. In the case of Modistone, GKW and Oswal it was prolonged lockout and refusal on the part of employers to obey High Court orders. Mounting job losses everywhere, in textile, pharma, engineering, big and small. Contract system was replacing permanent jobs. Workers have been groping in the dark for a solution.

It was in this background that TUSC held several meetings and decided to bring more unions together with the objective of collective thinking and action to fight the question of job losses, lock outs, closures, VRS, contract labour system.

It is necessary to mention here that in this effort we were influenced by the deliberations that took place in a meeting organised by Shramik Pratishtan in Mumbai (September 1998) where trade union leaders belonging to all national federations confessed that trade union division and the resultant disunity have been a major factor which have emboldened the government and employers to implement their anti-labour agenda and TUs came to the conclusion that a united movement is a must in the fight back strategy. A consensus emerged in the meeting for unity, a tone for which was set by veteran trade union leader Com. Indrajit Gupta stating unequivocally that trade unions must be firmly rooted in class politics and should be independent of employers, government and political parties. Everyone present from INTUC, AITUC, CITU, HMS unanimously resolved to work towards creation of trade union unity.

At this meeting Com. Indrajit Gupta had exhorted unions to work towards international unity and also mentioned about the efforts he heard of some US unions' move to organise an Open World Conference of Trade Unions in San Francisco. He wanted unions to associate with such moves.

Taking a cue from what Com. Indrajit Gupta spoke at Shramik Pratishtan meeting, TUSC took initiative in organising several meetings in Mumbai, Thane and also in Calcutta, Delhi and Bangalore in connection with the Open World Conference in San Francisco. Response of Unions and workers to the efforts of the TUSC was overwhelming. Workers heard trade union leaders from U.S. and France and found similarity of labour situation prevailing even in advanced countries. These meetings with leaders from France and US gave a further impetus to several unions to forge unity with TUSC and the need to develop working class unity at wider level to fight the attacks on workers by multinational corporations and domestic employers. Many felt multinational corporations cannot be fought only in one country. TUSC has therefore combined its fight against the forces of exploitation inside and outside India. In this effort TUSC holds the view that unity of all unions and workers is the key to success.

Workers in our constituent unions inspite of their different political orientations, have been steadfast to remain united in their fight against exploitation and join the mainstream struggle of the working class movement.

Currently, TUSC has an ad-hoc Working Committee comprising D. Thankappan, N. Vasudevan, Franklyn D'Souza, C.G. Chavan, Harish Poojary, M.A. Patil, Anant More, Gayatri Singh, Uday Mahale and Arvind Tapole.

TUSC is not a federation, it has no claim or agenda to be a rival to any of the existing federations.

**TRADE UNION SOLIDARITY COMMITTEE:
A NOTE ON TRADE UNION UNITY**

July 20, 2000, Some of the Trustees of Shramik Pratishthan — Comrades G.V. Chitnis, Dada Samant, Dr. Shanti Patel, Yeshwant Chavan, S.D. Dhopeshwarkar, Nachane, V.G. Karnik had an informal exchange of views with activists of the Trade Union Solidarity Committee — N. Vasudevan, D.Thankappan, Arvind Tapole, C.G. Chavan, FranklynD'Souza, Bennet D'Costa, Ravindran Nair, M.A. Patil and Anant More on July 7 at Bhupesh Gupta Bhavan, Prabhadevi, Mumbai. A free and frank discussion took place. There was appreciation of the unity efforts of independent/unaffiliated unions and their eagerness to join the mainstream movement.

Despite total unanimity that there is a dire need to have unity among unions and workers to fightback employers' and government's offensive, the question as to how to evolve unity remained unresolved.

Comrade Nachane mentioned about the consensus emerged recently among LIC Federation, AIBEA and State Government Employees Federation that there should be a change in the outlook of unions and workers regarding work, work culture, productivity, customer needs and he said this understanding among them would go a long way in strengthening the unions and workers in public sector establishments on the one hand and on the other create a feeling in the minds of the common man that public sector unions and workers are concerned about the society at large. Com. Nachane said the recent call for a one-day Industrial Strike given by the National Platform of Mass Organisations was successful in public sector and government establishments. He said the most important issue before them is privatisation. The introspection-cum-self critical analysis of the situation by Com. Nachane was received well. Com. Yeshwant Chavan wanted Com. Nachane to add in his new task Tus role in organising the unorganised.

Those present in the meeting felt that the present need is a pro-active TU strategy looking at the direction in which government is moving at the instance of investors' interests and free-trade, free-market forces. First phase of reforms from 1991 have already affected working class adversely. Government's globalisation of economy and liberalisation of trade policy enriched only the wealthy few. Such has been the experience the world over. Enough signals are available from the Asian financial crisis and crisis that took place in Mexico and Brazil apart from the calamities of social consequences that followed in African countries which were compelled to follow IMF/World Bank model of economic reforms.

The meeting felt that TUs failed in offering an alternative to governmental reform package. Since the central government is now embarking upon the Second phase of economic reforms and labour appears in it very prominently for further attack it is still not too late for TUs to wake up to meet the challenge.

To begin with, the labouring masses must feel that their problems are common and for the redressal of their problems they should be prepared to stand in solidarity with their class brethren. They should chalk out a common remedy for the common problems and the vehicle to achieve the remedy should be a platform of trade union coalition.

Trade Unions' response to reforms have been a convergence of confusion, conflict of opinion, difference in approach to solutions and alternatives, angry outbursts, irregular and sporadic resistance. And the enemy taking advantage of this situation penetrates deep into areas occupied by unions and is bent upon capturing union fortresses one by one.

To be successful in trade union resistance there must be a dynamic, vigorous group of people working on a regular basis completely capable of comprehending the changes rapidly taking place and this group should be able to provide input to the unions to combat the enemy offensive on the one hand and prepare the TUs to grasp the changes and make quick moves to block the enemy in its own tracks by developing suitable networks in different parts of the city, state and the whole country on the other. Trade Unions should translate the decisions into action quickly.

In short, in this respect it will be necessary for TUs to work on the pattern similar to those of the employers' organisations like FICCI, ASSOCHAM, CII, etc. These bodies of employers have systematic net work, lobbying, public relations, media coverage to push forward their agenda against labour for:

- a. free hand in employing labour, reduction of employees in all sectors including government service, right to fix wages by the employer.
- b. unfettered right to do or not to do business without hindrance from labour unions and intervention from government.
- c. removal of Sec. 9-A and Chapter V-A & B from The Industrial Dispute Act, 1947, changes in Trade Union Act, Factories Act, Companies Act as per their needs.
- d. right to have free trade zones, free trade zones to be free from all labour legislations.
- e. right to employ contract labour for all jobs.
- f. privatisation of all profit making public sector units, disinvestment by government as they wish.
- g. withdrawal of subsidy from public distribution system.

Clearly, they want laissez-faire system to be re-established.

We should be able to blunt capitalists' propaganda that free market and economic reforms will emancipate the masses. They indulge in this falsity to cheat workpeople. Their aim is to break workers' resistance to reforms.

Trade Union Coalition

This is an era of coalition in politics. Trade unions should also consider the possibility of coalition of unions whose strength lie in 100% unity of workers. Our unity efforts should aim at developing a coalition of unions without compromising the interests of the working class; coalition among unions who agree to fight the agenda of the employers as employers are going on scoring in several areas. Since there can be unions mouthing slogans similar to us as and when it suits them, we must avoid such strange bedfellows who might agree to join the coalition but act as mere time servers as they would not subscribe to fight against exploitation and work towards emancipation of labour from the wage slavery. Unions must draw up their agenda for the democratic unification of the masses not led by one party, one union or an autocratic leader. While drawing up this agenda we should keep in mind that we are now surrounded by an economy totally controlled by TNCs, central government

follows IMF/World Bank/WTO dictates, we are on the brink of disaster as a consequence of these policies.

1. We must build up unity to fight our common enemy to eliminate the prospect of imminent danger of defeat, loss of sovereignty and independence of unions. Our aim should be unity based on resistance, genuine unity for progress, not any sham kind of unity.
2. As an experiment, atleast for one year, all unions in the coalition should mobilise workers under a common banner for common cause keeping aside separate identities.
3. Establish mechanism to prevent mutual bickerings and regulate relations.
4. Prepare workers for one union in one industry and a single TU Centre.

Clearly aware of the present crisis and realising that there is no other way to overcome it and achieve both unity against the enemy and unity for the working class to accomplish its goal, unity of TUs must collectively establish a resource centre, a research unit and bring out leaflets, pamphlets in different languages on different subjects and aspects concerning labour for educating members and work towards bringing out a working class weekly newsletter around which TU movement should be able to consolidate its organisational influence and power. We should aim at a daily newsletter as a medium of communication. Such activity on a regular basis would lift up the morale of workers, they would feel relieved from the brutal degradation, would feel a sense of achievement. The deep demoralisation that has already sunk into the minds of the workers would be slowly replaced by a strong feeling of collective will to combat and overcome enemy challenges and forge ahead to occupy the rightful place of the working class in society.

TRADE UNION SOLIDARITY COMMITTEE: CHARTER OF WORKERS' RIGHTS

A broad agenda for consideration of the trade unions was drawn up at the TUSC convention on Job Losses/Lock-outs/Closures/VRS held at Raja Shivaji Vidyalaya Hall, Mumbai on 4 June 2000. This charter is reproduced the charter here.

1. Lift all lockouts and ban all VRS Schemes. Reopen all the closed industrial units.
2. Seize the assets of illegally locked out/closed/abandoned industrial units and hand over to workers to run the units under workers co-operatives.
3. Drastic changes in the labour laws to ensure job security to all workers.
4. To fight for reduction of working hours to generate additional employment in technologically advance modern industry. Strict implementation of 8-hour working day in all industries/establishments.
5. Stop all moves to legalise the contract system of employment and ensure strict measures to abolish contract system and absorption of workers in regular employment in respective establishment.
6. Amend the corporate laws :
 - a. to recognise workers' rights to take over and run the industrial units when the employers abandon the units or continue with the illegal lock-out/closure.
 - b. to treat the accumulated wage arrears and dues of the workers as equity of the company for the purpose of exercising their right of ownership over the means of production.
7. Legal expenses of the workers/unions in pursuing their cases against the employers must be reimbursed by the employers treating it as legitimate legal expenses of the establishments.
8. Stop immediately the move to permit the sale of mill land. Before finalising any policy in this respect, the government must appoint a high level enquiry committee to enquire into the deeds of mill owners in the cases such land sales were permitted by the government in the past. Further, such land sale can be considered only for the purpose of rehabilitation/ revival of mills and that too under worker co-operatives or sales in which atleast 50% of the sale proceeds are earmarked for the benefits of workers. In order to ensure these, elected representatives of the workers must also be involved in such sales committee, exclusively to supervise the sales.
9. A new Textile Policy should be evolved with the involvement of all stake holders for :
 - a. protection of employment in Mill Sector and
 - b. 8 hours working shifts, minimum wages, social service-measures like PF, Pension, ESI, Health and Safety at workplace in the decentralised sector.
10. Surplus fund available with ESIC, EGS and PF should earmarked for extending social security means to the unorganised and also for revival of industrial units and providing benefits to the unemployed.
11. Initiate penal actions against the employers who violate the provisions of law or not implementing the orders of various courts and forcing the labour to continue with frighteningly horrible conditions.
12. No amendments in existing labour laws to give exemption to the industrial units in small, medium or large sectors. Especially no changes in the provisions giving protection to the workers in respect of the conditions of employment, benefits in social security including minimum wages, health and safety, canteen and other facilities etc. The government notification for such exemption should be withdrawn in cases where such exemptions are granted by the government.

13. Evolve a uniform minimum wage and implement the same in urban, rural areas to all categories of employment, including agricultural workers. Extend Dearness Allowance to all such categories to prevent the erosion of real wage.
14. Appoint a Commission of Enquiry to enquire into the plight of workers especially after the introduction of New Economic Policy and Structural Adjustment Plans.
15. No exemption should be granted to employers in Export Zones or the proposed Special Economic Zone from Labour Laws.
16. Ensure immediately workers participation in management at all level in companies with the equity capital of Rs 5 crores and above.
17. Financial Institutions and Banks must ensure that the financial monitoring of companies are strictly adhered to by involving the elected representatives of the workers precisely to prevent any misapplication/ mismanagement of funds and ensuring proper and transparent working of the companies. Ensure that a system is developed to include workers' representatives also for consultation while sanctioning facilities to companies.

Immediate Demands

1. Improve labour administration, system involving TUs.
2. Set up an Enquiry Commission on labour law violations and non-implementation of court orders.
3. Oppose reduction in PF interest rate.
4. Strict implementation of 8-hour working day in all industries/establishments.

To sum up we need unity...

1. To protect trade union independence from employers and government.
2. For strategic defence of our collective past gains.
3. To fight back enemy offensive.
4. To launch strategic struggle to expand labour rights.

II. LABOUR LAWS

**RATIONALISATION OF LABOUR LAWS:
AMENDMENTS PROPOSED BY THE
GOVERNMENT OF MAHARASHTRA¹**

Factories Act, 1948

- This is a Central Government Act. It is proposed to amend definition of Factories under Section 2(m) (1), (2), and 2(g), so as to enhance the minimum number of workers in establishments covered under the Factories Act from 10 to 25 with power and from 20 to 50 without power. Such amendments will not be applicable to hazardous industries.

Trade Unions Act, 1926

- For registration of a Trade Union, at least 30% of the members should belong to that industrial unit. This ratio should be maintained throughout.
- No registration be granted to a union where the total labour force is less than 25.
- No registered Union should have more than 1/3rd or 2 (whichever is less) office bearers from outside.
- For above changes in Sections 4 and 22 of the Act will need amendment.

Minimum Wages Act, 1948

- Amendment is proposed to reduce the number of schedules and also to stipulate lowest scale of minimum wages.

**Maharashtra Recognition of Trade Unions &
Prevention of Unfair Labour Practices Act, 1971**

- This is a State Act. It is proposed to constitute a Committee to review this Act.

Industrial Disputes Act, 1947

- This is a Central Government Act. It is proposed to amend Section 2(s) of the Industrial Disputes Act, so as to exclude workmen and Supervisor above Rs 6500 p.m. total emoluments.
- Section 25(k): this section deals with applicability of special provisions of Chapter 5(B) dealing with layoffs, retrenchment and closure. It is proposed to amend this Section so as to increase the minimum number of workers from 100 to 300.
- Section 25(m): this Section relates to layoffs for which prior permission is needed when the workers are more than 100. It is proposed to amend this Section, so as to delete this provision.
- Section 25 (n) deals with retrenchment. Today, for less than 100 workers no prior permission of Government is necessary. It is proposed that the number of 100 workers be increased to 300. Also in respect of industry with more than 300 workers, it is suggested to add proviso to obviate the need for prior Government permission if 3 times the compensation is paid in normal cases and 4 times if LIFO was not followed.
- Amendment to Section 9A which deals with Notice of Change. Basically Notice of Change should be needed only where the emoluments, hours or holidays are affected and not for modernisation, computerization and measures to raise productivity. For this purpose Section is to be amended.

Contract Labour (Regulation & Abolition) Act, 1970

¹ The editor gratefully acknowledges the work of Dr Jairus Banaji in transcribing these notes from a Maharashtra Government circular. They have been reformatted slightly. For further reading, see *Labour Law: Highlights of Important Labour Enactments in India*, Mumbai: Maniben Kara Institute, 1997.

- This is a Central Government Act. To reduce the coverage of the Act by increase in the minimum number of workers from 20 to 50/100 in developed/backward (B, C, D and D+) areas.
- It is proposed to amend the law so as to exclude the following items:
 - Auxiliary services for the establishment such as security, maintenance of machinery, canteen, garden, dusting and cleaning, transport etc.
 - Non perennial jobs, temporary or part time jobs
 - Export order related jobs
 - Seasonal jobs
 - Specific projects for erection of new services, or quality improvement of current services, emergency works, annual maintenance works
 - Random fixed period works such as surveys, evaluations, loading, unloading, raw material exchange etc.

WILL MAHARASHTRA GOVERNMENT TURN THE CLOCK BACK? LABOUR LAW AMENDMENTS: CHARTER FOR NEW SLAVERY¹

BENNET D'COSTA

15 November 2000. Trade unions are protesting against amendments to labour legislation which the government is proposing to make at the behest of employers. The proposals will convert workers into slaves.

The unions argue that slaves can only yield blood, sweat and tears, not commitment, skill, and creativity. Education, skill and creativity result in quality products, new ideas and efficiency in the use of new technology. These factors make an economy competitive. Will this truth dawn on the Maharashtra Government? Or will it continue to pay obeisance to those industrialists whose short-term greed requires slaves and not workers to drive their industries?

The proposals are reckless. For instance, the proposal that workers drawing a salary of Rs 6500 and above would not be covered by any law. Employers can dismiss them if they form a union, which is a right guaranteed under the constitution and protected through the Trade Union Act 1926, Industrial Disputes Act 1947, the Industrial Employment Standing Orders Act, etc. The employer would not conduct any enquiry, yet the worker will not be reinstated. Workers, and this includes unskilled workers, will not be able to raise demands and collectively bargain to increase their wages.

They will be virtual slaves. What is the logic? It was explained by the Secretary to the Government of Maharashtra that this is what was needed to invite industry into Maharashtra and that countries like China did not have any labour laws. Both these arguments are ironic and false.

The same Secretary and all other secretaries, commissioners of income tax, and other senior officers drawing salaries of Rs 30,000 and Rs 40,000 are covered by a law whereby all their service matters, irrespective of which post they are in or the salary that they draw, go to the Central or State Administrative Tribunal (Court). There is no ceiling of Rs 6500 in their case. These IAS officers also have their association and no one can punish them for being members, unlike workers in the private sector.

They collectively bargain for increase in their wages and have secured 100% neutralisation of the cost of living by way of the Fifth Pay Commission. In fact, all Courts had earlier ruled that 100% neutralisation of the cost of living should only be there for the lower category of workers. But in spite of this, these highest paid officers were able to achieve these gains through collective bargaining.

If senior officers drawing huge salaries have special protection in law then what is the basis for depriving an unskilled worker drawing a salary of above Rs 6500 of the benefits of the Industrial Disputes Act and other laws?

The International Scenario

¹ From *Angdai*, published by the Trade Union Solidarity Committee, Mumbai, 15 November 2000

The argument that international norms require the removal of all rights for workers of above Rs 6500 is bogus. Almost no country in the world has such a provision. In the case of the United Kingdom, a worker means any individual who works under a contract of employment. Even a supervisor or Manager comes under the definition of worker. There is no salary limit. In the U.S.A. a worker is any employee who is not a supervisor. In Japan any person who works in any occupation and earns wages is covered by the law. Only those supervisors who have direct power to appoint, dismiss, promote or transfer other workers are not covered under the trade union law. In China too, trade union law covers all labourers. In fact, in most countries of the world persons working in managerial categories are also covered by the law. They sign settlements, form unions, etc. The employers' lobby is succeeding in removing workers drawing above Rs 6500 wages out of the protection of all industrial laws.

The Maharashtra Government's proposals have nothing to do with what is happening in other countries. These are aimed at removing the rights of all workers which are guaranteed by the Constitution and mandated by the Directive Principles of State Policy. These intend to make workers into slaves and satisfy a corporate greed which will take the workers back into the 19th century.

Working Hours and the Factories Act	
<i>In the name of globalisation, the Government wants to increase working hours beyond 48. But what is actually happening globally?</i>	
Country	Weekly Working Hours
U.S.A.	40 (since 1938)
France	38.6
Europe	40
China	44 (since 1994)
South Korea	44
ILO Standard (Convention no.47)	40

In fact, if one were to go by global experience, then not only all workers irrespective of their salary limit should be covered by the law but also supervisors and managers should be allowed to form associations, collectively bargain, and have tribunals for redressal of their grievances in the case of unfair dismissals, etc.

The most heinous changes are sought to be made in the **Contract Labour (Regulation and Abolition Act), 1970**. It now applies whenever 20 or more contract workers are employed. It is shameful enough that our law provides no protection to contract workers whenever less than 20 are employed. Now the state government is going to raise this limit to 50 in urban areas and 100 in rural areas.

Further, the Central government wants contract workers to be employed in so called "non-core" activities, the sweeping, cleaning, security, canteens etc be removed from the ambit of this act. The conditions of contract labour today are the closest that we have to slavery. The central and state governments want this slavery to multiply and proliferate.

The **Factories Act** brought us the eight-hour working day. It got us the weekly off, limits on overtime, restrictions on shift working, annual leave and other such rights. It also provides for welfare facilities like bathrooms, drinking water, first-aid, protection in hazardous work, etc. Today the Factories Act applies to all manufacturing processes where 10 workers are employed, with the use of power or 20 workers otherwise. Now the state government is going to change this limit to 25 workers and 50 workers respectively. The conditions of workers in small scale units are hardly different from those of contract workers. Now, they will deteriorate.

Retrenchment of Workers

Presently, when a management wishes to retrench workers or close down establishments with more than 100 workers, it has to give the workmen notice and provide reasons for such retrenchment. Given the nature of the government this protection was skimpy at most! Now even the formal concession to fairness is to be removed and the right of the slave-masters to liquidate his slave will be reasserted.

The right to livelihood is considered to be part of the right to life and the right to life can only be taken away through due process of law. This is true of any civilised society. Even a criminal's life is taken away by the State only after due process of law and in the rarest of rare cases.

When workers are to be deprived of their livelihood, due process of law should be followed and both parties should be heard.

India is steeped in poverty. Loss of a job means pauperisation and has driven thousands of workers to suicide, loss of education for their children and the deterioration in their health and misery. The objective situation requires that this law must cover more workers, i.e. workers in establishments employing less than hundred also. Instead, the government is seeking to dilute the law by making this process applicable to factories with 300 or more workers.

Further, the proposal aims at doing away with notice and hearing, if the employer pays three to four months wages for every completed year of service. Thus if a worker is drawing a salary of around Rs 3000 per month and has put in 20 years of service, he would lose his job at the age of 45 with Rs 3 lakh.

Today, in larger multinationals, voluntary retirement schemes give workers Rs 5 lakh and more. Yet, for most of the workers, the loss of a job is permanent as there are hardly any new jobs. The amount of Rs 3 lakh will generate at best a monthly income of Rs 2800. This value would remain the same and every year the capital would lose value at the rate of 10 to 12% compounded due to the fall in the value of the rupee.

Need for Social Security System

Within 2 or 3 years the worker, and his family, would be destroyed. Prosperous companies can and must pay much higher wages and also pay a pension linked with the cost of living. In countries like Germany, there is a social security system. Even there, according to the law, an employer cannot retrench his workmen without a settlement with the works council on a social plan. If there is no settlement, the court is empowered to decide on the social compensation plan which would compensate in full or part the financial loss suffered by the employee and the capacity of the company to pay.

How much countries spend on social security (% of GDP)

India	44%
South Korea	2.18
China	2.55
Brazil	4.49
U.S.A.	15.2
Japan	17.88
U.K.	21.6
Germany	26.33
Sweden	40.05

India does not have a social security system worth the name. Hence, the law to protect jobs whenever possible is of great importance. When employers criticise this law, they conveniently *avail the* fact that India desperately needs a social security system. In the U.S.A., the Social Security Act was enacted in 1935. It gave benefits for

old age, death, dependency of children, disability, medical care for the aged, and unemployment benefits.

Yet, in the U.S.A., unemployment is a problem. The unions negotiate with their employers to protect jobs through collective bargaining. In the U.K. the Social Security system was set up much earlier and exists along with the National Health Service. The social security system amounts for 30% of all planned public expenditure there.

In Japan, there was a system of lifetime employment for many years, besides a social security system. In Malaysia, there was a labour shortage and loss of jobs meant loss of jobs of immigrant Indonesian workers. In Singapore, too, the unions resisted retrenchments. It is unfair to compare the Indian experience with European countries because the capitalist countries could not work without social security.

Social security as a percentage to the Gross Domestic Product of different countries shows how poor social security is in India. The only alternative is to at least continue the provisions of the law if not to prevent retrenchment even more stringently (see box).

The proposals in the **Trade Union Act** are the most shocking. Here, units with less than 25 workers are to be denied the right to unionise altogether! The Maharaashtra government is following the Bangladesh example wherein a minimum of 30% members should belong to that Industrial Unit for the purpose of registration. The International Labour Organisation has already ruled that the Bangladesh Government is violating its convention numbers 87 and 98.

The government is seeking to restrict **Section 9A** so as to require a notice only when an employer wants to change the wages, hours and holidays etc. The government wants to remove the clause where notices have to be given if any rationalisation is likely to lead to retrenchment. Now, if a worker is likely to lose some part of his wages, a notice should be given but if he is likely to lose his job and all his wages no notice is required.

The type of changes which are being sought by the employers will only lead to industrial unrest. The conditions of workers will deteriorate and without any livelihood, workers will not have much more to lose and this will lead to militant actions of the working class as is the case in South Korea. Even a military dictatorship has not been able to stop the militant actions of the employers. Occupation of the factories, said down strikes, and other militant forms of action even in the face of arrests have not been able to stop the South Korean working class.

The choice before the employers and the government of Maharashtra is not between slavery of the workers and the present Industrial law. The workers will just refuse to be slaves and give up their precious rights which have come through struggle. Even the colonial British government could not stop the struggle of the working class.

The employers and the government should realise that only respect for the rights of the working class, their education, increased skills and commitment could raise the competitiveness of Indian industry. This has been the experience of the software industry. If slavery were to make countries profitable and competitive, then Africa would be a competitive place. The gap between the unorganised and organised working-class must end by the unorganised workers being given their rights and not by denying the rights of organised workers.

The workers of India struggled to obtain their rights. Through struggle alone will they retain them. If the law has to change, it is towards greater rights and protection for the working class who have to bear the brunt of liberalisation.

To quote from the the New Economic Policy:

The Government will fully protect the interest of labour, ensure their welfare and equip them in all respects to deal with the inevitability of technological change. The Govt believes that no small section of society can, corner the gains of growth leaving workers to bear its pains. Labour will be made an equal partner in progress and prosperity, workers participation in management will be promoted...

The Government does not respect its own commitment in the New Industrial Policy of 1991, which brought liberalisation. We will have to make them, or we will have to make the government! The struggle will win at last!

SECOND NATIONAL COMMISSION ON LABOUR: NOT UP TO THE TASK¹

K R SHYAM SUNDAR

Upendra Baxi when asked to be a member of Second Labour Law Review Committee, Gujarat in 1982 queried Sanat Mehta, “what happened to the recommendations made in the first one”; Sanat Mehta replied: “That was ten years ago. Now, we have to have the second one”.² Gajendragadkar jocularly (perhaps painfully) remarks: “if ‘Bullock’ (report on Industrial Democracy) can be shelved in the United Kingdom, why should an ‘Elephant’ (Gajendra) in India not get the same treatment?”³

The NDA Government constituted the Second National Commission on Labour (SNCL)⁴ under the chairmanship of Ravindra Varma, Labour Minister in the brief Janata rule in the post-Emergency years. This is the fourth in line in this century. The colonial government to placate and incorporate the moderates in the labour movement and to counter the left-induced militancy constituted the Royal Commission on Labour (Whitley Commission) in 1929⁵, which submitted its Report in 1931. As a follow-up of the Royal Commission, the government appointed a Labour Investigation Committee in 1944 under the chairmanship of D.V. Rege (Rege Committee). About two decades after Independence, the crisis in Industrial Relations System (IRS) and the efforts to define its relation with and the role in economic system (planned economic model), and the political ideals (socialistic society), prompted the government to set up the NCL under the chairmanship of the eminent jurist P.B. Gajendragadkar in 1967, which submitted after elaborate investigations its Report in 1969.

The proposal for SNCL was mooted by the ILC in 1992, followed by a number of such requests by employers and union organizations to the Labour Ministry. The instability in the political system was one factor delaying⁶ the constitution of the Commission. The ‘official’ reasons for constituting SNCL are as follows. Three decades have passed since the submission of the Report of FNCL and in this period “there has been an increase in number of labour force, etc., because of the pace of industrialisation and urbanization”. Secondly, the changes in the economic system introduced in 1991 and thereafter have brought about ‘radical changes in the domestic industrial climate and labour market’. Thirdly, changes have taken place in various spheres of IR and labour market, which have introduced ‘uncertainties’ requiring a ‘new look to the labour law’. The SNCL is expected to ‘dispassionately look into these aspects’ and recommend suitable changes in ‘labour legislations/labour policy’. This high powered body comprises two full time members and seven part time members representing government, industry, workers and NGOs. The Commission is required to submit its

¹ The author wishes to thank Maharashtra Institute of Labour Studies, Maniben Kara Institute, Friedrich Ebert Stiftung, Employers’ Federation of India and the ILO, the organisers of deliberations on the SNCL held on 9–10 and 28–29 July in Mumbai, and Dr L.K. Deshpande for a discussion on the same topic. This essay originally appeared in *Economic and Political Weekly* vol.35, no.30, 22 July 2000, pp.2607–2611, and is reproduced here with the kind permission of Padma Prakash, Senior Assistant Editor.

² Upendra Baxi, “Industrial justice dispensation: the dynamics of delay”, in D.S. Saini, ed., *Labour Judiciary Adjudication and Industrial Justice*, New Delhi: Oxford & IBH, 1994.

³ P.B. Gajendragadkar, *To the Best of my Memory*, Bombay: Bharatiya Vidya Bhavan, 1983, p.309

⁴ Whether to call the Ravindra Varma Commission Second or Third or Fourth NCL has been another minor debate; since the predominant usage is SNCL, I use it here for reasons of familiarity.

⁵ Sukomal Sen, *Working Class of India*, Calcutta: K.P. Bagchi & Co., 1997.

⁶ The Labour Ministry, it seems, was pulled up by a Parliamentary Standing Committee for “not showing promptness” in setting up the Labour Commission mooted in the previous year and it urged the Ministry to “accord priority to it”. See EFI Bulletin, 16–31 May 1999.

final report in 24 months from the date of its constitution; though it may submit, if required, interim reports.⁷

The terms of reference of the SNCL are:

- i. To suggest rationalization of existing laws relating to labour in the organized sector; and
- ii. to suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganized sector.

In developing the framework for its recommendations the Commission will take into account the following:

- i. Follow up implications of the recommendations made by the Commission set up in May 1998 for review of various administrative laws governing industry;
- ii. the emerging economic environment involving rapid technological changes, requiring response in terms of change in methods, timings and conditions of work in industry, trade and services, globalisation of economy, liberalisation of trade and industry and emphasis on international competitiveness, and the need for bringing the existing laws in tune with the future labour market needs and demands;
- iii. the minimum level of labour protection and welfare measures and the basic institutional framework for ensuring the same, in a manner which is conducive to a flexible labour market and adjustments necessary for furthering technological change and economic growth; and
- iv. improving the effectiveness of measures relating to social security, occupational health and safety, minimum wages and linkage of wages with productivity and in particular the safeguards and facilities required for women and handicapped persons in employment.”

The Commission held its first meeting in November 1999. It is reported to have constituted six study groups. It has begun the process of recording evidence in Mumbai in July 2000.

Is SNCL Necessary?

Several (union leaders and academics like E.A. Ramaswamy) have questioned the need for another commission on labour matter. Reasons are several. Since the time of FNCL, several committees — e.g., Tripartite Committee on Industrial Relations Law (1977), Sanat Mehta Committee (1983), Bipartite Committee or Ramanujam Committee (1990), National Commission on Labour Standards (which dwelt on labour code) (1995), 12-members Bipartite Committee (1996), apart from the regular Law Committees (which go into the aspects of labour legislation) – have gone into the main and contentious issues of IRS. Thus there are sufficient ‘inputs’ on these issues – if one could also include the ‘unimplemented’ recommendations of FNCL⁸, the inputs are plenty. Despite the plethora of committees/commissions, the IRS has not been reframed. These lead, even academics, to observe that “problems are known, and so are the solutions”, and so the caustic conclusion that “commissions are set up merely to avoid the problems” In fact, Upendra Baxi⁹ regrettably notes that a scholar, Virendra Kumar, has over four decades painstakingly compiled a digest of all committees/commissions which has predictably run into six volumes! Also, the poor

⁷ Ravindra Varma quoted in *Industrial Worker*, 16–30 November 1999.

⁸ There are many who think that FNCL’s recommendations have relevance even now – at least at the time of writing his autobiography. Gajendragadkar felt that they had relevance (Gajendragadkar, p.309; see also Manohar Kotwal’s remarks given in *Times of India*, 7 July 2000).

⁹ Baxi, p.48

record of implementation of recommendations of commissions/committees especially those of FNCL has greatly disillusioned many — the Government keeps parroting in its official publications that by mid-1970s ‘final decision’ had been taken in the case of 219 of 300 recommendations of FNCL.¹⁰ But this impressive quantitative statistics is, as everybody knows, of no value; the ‘major and important’ recommendations of FNCL have *not* been implemented. The government has pointed out that though some of the major recommendations (like recognition of unions, settlement machinery) were endorsed by the Standing Labour Committee (SLC), they could not be implemented “because of the lack of consensus of opinion amongst the trade unions on these matters”.¹¹ In utter contrast to the enthusiastic and lively response, that the constitution of FNCL elicited, this Commission has been received with little interest, indifference, even boycott; there are reasons for these responses.

Trade Unions’ Response

The opposition of unions to SNCL relates to four issues: (a) process of constitution of SNCL; (b) composition; (c) terms of reference and the framework they suggest, and (d) questionnaire.

The basic grievance of the unions is that the government has constituted the SNCL “without any consultation” with them, despite the understanding in the SLC to do so. The unions further point out they have not been consulted in deciding on the Chairman and composition of the Commission, its terms of reference and its questionnaire. The government’s approach is accused to be ‘unilateral’,¹² ‘arbitrary’ and ‘biased’ against unions.

This brings to the fore the basic issue of the role and place of tripartism and the values (consultation, concensus) that it stands for. The government though officially committed to the policy of tripartism — it ratified the ILO Convention on Tripartism (No.144) — has not been giving importance it did give in the classic IR era of the past. The unions point out that the Labour Minister (who is the Chairman of tripartite forums) does not find time to attend or listen to the proceedings, and that there is no proper representation from the employing Ministries at the meetings. The Labour Secretary L. Mishra points out that the number of tripartite committees has reduced from seventy to thirty-six. The Committees neither meet regularly nor are their recommendations implemented — the SNCL process is an outstanding evidence of this defect. The decline of tripartism has been noted in present times also by many — it has been called as ‘talking shop exercise’ by leftists.¹³ Though it appeared to play an useful role in the initial years of the reform period.¹⁴

The four trade unions AITUC, CITU, HMS and INTUC, in their joint communication¹⁵ suggested the names of four eminent jurists for the chairmanship of the Commission — Justices D.A. Desai, P. Jeevan Reddy, Rajender Sachar and V.R. Krishna Iyer. But the government appointed Ravindra Varma, whose “only qualification” is that he was a Labour Minister during the Janata Party rule and because he had ‘friends’ in the NDA

¹⁰ See *Indian Labour Year Book* 1975 and 1976, p.108.

¹¹ *ibid.*, p.107

¹² The BMS accused the left labour organizations for taking “a ‘U’ turn” owing to political considerations and terming the decision to constitute SNCL as ‘unilateral’ (*Vishwakarma Sankeet*, February 1999).

¹³ Varada Rajan, “35th Session, ILC: workers side protests talking shop exercise”, *People’s Democracy*, 25 April 1999 and C.S. Venkata Ratnam. *Indian Industrial Relations System*, Geneva: ILO, 1997.

¹⁴ A.M. Mathur, “The experience of consultation during structural adjustment in India, 1990-92”, *International Labour Review*, Vol.132, 1993, pp.331-45.

¹⁵ AITUC, “TUs joint communication to labour minister”, *Trade Union Record*, 5 May 1999.

– it seems, BJP has kept itself away from SNCL business. The union opposition is more to do with the non-appointment of a jurist reputed to be impartial than to do with Ravindra Varma ‘personally’ – his dispassionate and consultative nature is affirmed by unionists. As union leaders put it “By appointing Ravindra Varma, a non-BJP veteran, the government is merely creating an impression of objectivity”.¹⁶

Secondly, the Commission is seen to comprise those “who have identical views on economic reforms” and thus the composition does not instill confidence in workers. The inclusion of leaders only from BMS (Mr. Dave) and INTUC (Mr. Sanjeeva Reddy) has angered the working class; also, comparisons are made with the FNCL – four members (see Table A.1) from union movement plus two holding views similar to INTUC.¹⁷ The basic fear is that the members with a world-view similar to the government expectations¹⁸, would merely ‘endorse’ the Liberalisation, Privatisation and Globalisation (LPG) model, which would be detrimental to the interests of the working class. But the basic point to note is that no commission is free from criticism regarding its composition – the composition of FNCL was also criticized. The AITUC Working Committee therefore demanded that the government ‘reconstitute’ the Commission giving proper representation to labour.¹⁹

But the bitterness was more on the ‘terms of reference’. The trade unions accuse that they were not consulted before framing the terms of reference of the commission and more sadly, their complaints were ignored – the Labour Ministry merely asked them to communicate their views in writing.

The four trade unions mentioned before in their joint communication to the Labour Minister suggested *their* terms of reference which included 7 items. The main ones are: review of implementation of recommendations of FNCL, of changes in economy since 1991; evaluation of existing labour legislation, study the conditions of unorganized labour and suggest an ‘umbrella’ legislation, study of problems of women labour, industrial sickness, declining unionisation, ILO conventions, child labour, social safety net and so on. Most of the suggestions were spurned; in fact, the ‘official’ stand was that terms of reference had been notified and the Commission has started functioning as per notification.²⁰ The demand of the unions to include their criticisms on SNCL in the conclusions of the SLC was not heeded.²¹ The ‘official’ conclusion on SNCL ‘burying’ unions’ criticisms read like this: “Welcoming the constitution of the second National Commission on Labour. The Committee recommended that representatives of the Central Trade Union Organisations and Employers Organisations should be given adequate representation in the Working Groups/Task Forces to be set up by the Commission and they should be fully associated in the consultation process of the Commission”.²²

¹⁶ Vidyadhar Date. “Labour laws need to be amended”, *Times of India*, 4 July 2000.

¹⁷ If we consider that “Two other members, R.K. Malaviya and Ramananda Das also represented INTUC point of view” (Karnik 1978: 366), then union presence becomes 6.

¹⁸ It is contended that BJP and Congress have similar views on economic reforms and their labour representatives have been nominated as the members of the Commission and that is disturbing.

¹⁹ AITUC, “Second National Commission on Labour, a fruitless exercise”, *Trade Union Record*, 5 November 1999.

²⁰ HMS, “SLC: HMS takes Govt. to task — disregard to tripartism deplored”, *HMS Bulletin*, February 2000.

²¹ CPI (M), “36th Session — SLC: futile debate on issues confronting working class”, *People’s Democracy*, 20 February 2000.

²² *Indian Worker*, 1–15 March 2000.

The union stand is that the terms of reference of the SNCL are “in conformity of employers’ demand for deregulation” of the labour market.²³ The ‘factors’ suggested to be taken into account while developing a framework for recommendations clearly indicate the line the government wants the Commission to take; the unions see a ‘hidden pro-employer agenda’ – another ‘hidden agenda’ of the BJP rule unraveled!²⁴ The purpose of the government is seen to be to “subordinate the labour legislation to the economic reforms” and unions fear that the burden of reforms would be pushed on the workers. In short, the unions fear that the SNCL would dilute the labour law, aid the flexible labour market practices, weaken the union movement and hurt labour welfare. And the government can project the Commission’s recommendations as emanating from an ‘independent body’, which would lend legitimacy to the flexible labour market system. The unions, seeing ‘World Bank-IMF hand’ in various Commissions constituted in their 1990s, unfailingly detected the ‘same hands’ behind this whole exercise also.

The unions contrast the terms of reference of the two Commissions — the FNCL was asked *inter alia* to review the legislative and other provisions protecting the labour interests and to “advise how far these provisions serve the Directive Principles of State Policy in the Constitution and the national objectives of establishing a socialist society and achieving planned economic development”.²⁵ The terms of reference of SNCL do not contain any such query. Have those ideals become irrelevant now? Or have they been achieved, so as not to make a mention of them in the SNCL?

Though the union movement unanimously condemn the SNCL proceedings and share the ‘disillusionment’ regarding the entire exercise, some unions, CITU, AITUC, AICCTU, UTUC, UTUC (L-S) and TUCC chose to boycott, while others BMC, INTUC, HMS decided to cooperate with the Commission. Boycotting a Commission is not new — leftists and hard Congressman (including Nehru) boycotted the Whitley Commission, though on differing grounds; in fact, the differences in the union movement on this issue led to the ‘first split’ in the AITUC.²⁶ Dange resigned his membership from the FNCL on the issue of government handling the demand of the striking government employees for need based minimum wage (NBMW)²⁷ in 1968. The boycotting obviously has become a debatable issue.

The fears and alarm of the unions — boycott is its extreme form — are not unfounded. The happenings in the IRS such as privatization and marketisation of public sector, slimming of public sector, announcement of exempting EPZ/SEZ from labour law coverage (EX-IM Policy), increasing incidence of closures and sickness, anti-work schemes floated by some MNCs like paid long leave (‘enforced idleness’), government’s keenness in attracting FDI, competition between states (irrespective of party in power) to attract capital and the consequent ‘race to the bottom’ of labour standards, all these have already unnerved the working class and created a strong insecurity in them.²⁸ Added to these, are the discouraging ‘signals’ from policy arena. The Prime Minister fraternizes with industry leaders frequently, does not find time to

²³ AITUC, “Joint letter to labour minister: CTUs boycott National Commission on Labour”, *Trade Union Record*, 5 June 2000.

²⁴ HMS, *Declaration by HMS Golden Jubilee Convention*, Mumbai, 24–26 December 1999.

²⁵ See National Commission on Labour (NCL), *The Report*, New Delhi: Government of India, 1969.

²⁶ CITU, *B.T. Ranadive on Trade Union Movement*, Volume III, CITU: New Delhi, 1991.

²⁷ Though Gajendragadkar and others in the Commission felt Dange resigned for reasons “not quite connected with the work of the Commission”, see Gajendragadkar 1983: 296).

²⁸ Even as I write this piece, I read reports that radical amendments of labour law to pave way for introduction of exit policy, freedom to hire contract labour etc. See Jayanthi Iyengar, “Govt. clearing the way for exit policy” and “Nod to contracts to hit union power”, *Economic Times*, 3 July 2000.

attend the tripartite forums — the deep displeasure expressed in the tripartite meeting in 1999, brought the Prime Minister to address the ILC this year — appoints Task Forces involving industry leaders only on issues having a bearing on labour welfare, and assures industry leaders that their market reform demands would get ‘top priority’ from his government; secondly news is on that the Labour Ministry is busy framing IR laws or contemplating radical changes in labour laws and repealing the Contract Labour (Abolition and Regulation) Act, 1970, without involving unions in that process.²⁹ These surely intensify the fears of the working class. The Labour Minister’s assurances that the workers’ rights would be protected while taking care of the need for maintaining the pace of industrial growth,³⁰ and the assurances by SNCL chairman Ravindra Varma that the Commission “would not act as mouth piece of multinationals or other interest groups”³¹, are expected to allay the fears of working class.

The unions’ agenda for reform would cover following issues. Unions want the labour protective provisions in the labour legislation to be retained; better implementation of the labour laws is urged; eligibility of workers under and coverage of labour laws needs to be broadened (e.g., salary ceiling for bonus); measures to prevent sickness should be taken and welfare of labourers in these sick units be protected by the state (e.g., payment of salaries by these units); ratification of core labour convention of the ILO; demand for right to work; meaningful social safety net for workers affected by reforms; legislation for agricultural and unorganized workers along with social security; brake on privatization; restrict and regulate the entry of MNCs especially in core activities; extend labour law coverage to EPZ/SEZ units also and modify EXIM policy accordingly; bipartism with the unfettered right to strike and determination of bargaining agent (by secret ballot to most of them, membership verification to some) and so on.³²

Employers’ Response

Employers, who have been shouting hoarse for the need to reform IRS should be only too happy with the terms of reference of the Commission. But, they point out that the changes in labour policy and law need *not* wait for the outcome of the Commission.³³ They justifiably feel that the Commission process may take a long time and in the meanwhile necessary and well known changes could be made. They are too happy to cooperate with the government efforts to draft changes in law (discussed before). But recent reports show that employers are unhappy as they have been given ‘little-voice’ in the working of the Commission — contrast this with unions’ cry! — and no employers’ representative has been appointed to head the Task Force Groups constituted by the Commission. Their basic contention is that, high labour cost, unions’ reform obstructing role, rigid labour laws, absence of positive work culture (for e.g., non-readiness (of workers, to be sure!) to work for more hours unlike Western counterparts, frequent resort to go slow) have adversely affected competitiveness of industry. Deregulation of labour market affording them freedom and flexibility in business operations would enhance industry’s competitiveness (so important in the present context of globalisation), generate employment and promote economic growth.

²⁹ Tapan Sen, “Offensive ahead on labour rights”, *People’s Democracy*, 17 October 1999.

³⁰ P.N. Samant, “Need for changes in labour law in 21st Century”, *Current Labour Law Reports*, Vol.16, No.5, 13-15 May 2000

³¹ “Labour Panel chief’s assurance to union leaders”, *Times of India*, 7 July 2000.

³² H. Mahadevan, “Labour law for the new millennium”, *Trade Union Record*, 20 March 1999 and 5 April 1999.

³³ EFI, “36th Session of the Indian Labour Conference”, *EFI Bulletin*, 16–30 April 2000.

Employers' important demands would include: delete Chapter V-B, remove item Nos.9 and 10 of the Fourth Schedule (appended to Section 9-A), amendment of definition of 'workers' to exclude high salaried workers from coverage, amend Section 17-B, and narrow the definition of 'industry', to exclude education, health, etc., all of ID Act, 1947; uniform definition of 'workers' in all labour laws; probation period to be 365 days extendable by further 166 days, intensify punishments for misconducts, principle of 'no work no pay' in Industrial Employment (Standing Orders) Act, 1946; prevent multiplicity of unions; freedom to hire contract labour and repeal of 'abolition' clause of the Contract Labour Act (the bait here is that government being a large employer of contract labour would benefit as much, if not more from this measure!), and so on.

Questionnaire

As Table A.1 (Appendix) shows that the questionnaire circulated by SNCL has two parts – Part I for 'organised sector' and part II for 'unorganised sector'. The separation of unorganised sector and framing a large number of questions is a reflection of the growing importance of this sector (leaving aside issues such as the causes of its growth) and of a shift in the labour policy of the government.³⁴ The merits of the questionnaire ends here; it suffers from a number of shortcomings, few of them I discuss below.

This questionnaire virtually retains the structure of the questionnaire of the FNCL³⁵ - same main topics, same sub-headings excepting in case of unorganized sector (see Table A.1). Not only that, shockingly, many of the questions in the questions in the FNCL's questionnaire have been repeated *verbatim* or reconstructed slightly in Part I of this questionnaire! But, SNCL has erred in reconstruction and copying. For example, take Q.No.19 of Trade Unions and Employers' Organisations (TU & EO) section: "What should be the responsibility of all-India organizations of employers and workers towards (i) promoting the interests of their constituents...; (ii) implementation of laws...; (vi) improving the efficiency of the industry? *How should they be equipped for discharging these responsibilities?*; (vii) promoting industrialization; (viii) fostering research...; (ix) strengthening socio-economic justice in society". (emphasis mine). Now, the question in FNCL ends with sub-query (vi). The common query 'how should they be equipped...?' has been unthinkingly inserted after (vi) (as was the correct practice in case of FNCL), instead of being tagged to (ix)!

The questions on 'tripartism' correctly formed a part of 'Industrial Relations' (IR) section in FNCL's questionnaire — though related questions could be and are posed under appropriate sections. In this questionnaire, a series of question (Q.Nos.7,9,10,13,14) are wrongly included under TU & EO section, this affecting the consistency and free flow enabling features of the questionnaire — right questions in wrong place! The related defect is improper ordering of questions on the same theme – note the gaps between the questions above.

The moral Codes of Conduct and of Discipline (Codes) — wrongly called as part of 'voluntarism' by many — were one of the important institutions evolved in the late 1950s; hence the FNCL's questionnaire had a separate sub-heading for this institution,

³⁴ See C.R. Venkata Ratnam, "Voluntarism in Indian industrial relations: an obituary of the code of discipline", in J.S. Sodhi and S.P.S. Ahluwalia, eds., *Industrial Relations in India: the Coming Decade*, New Delhi: SIRC, 1992.

³⁵ The FNCL, in fact, inaugurated its enquiry process by organizing a seminar on its questionnaire in Tata Institute of Social Sciences, Mumbai (see NCL, 1969). It speaks of its seriousness, its quest for being systematic and its academic thrust.

with related questions strewn about suitably. The relevance and legitimacy of Codes have weakened over time (see Venkata Ratnam 1992). Perhaps, due to this, SNCL did not want to have a separate sub-heading on codes, but included it under 'adjudication', its very anti-thesis! (see Q.No.65, IR Section).

That the economic times have changed needs no special mention. The terms of reference, as noted earlier, of the two Commissions differ markedly. Perhaps owing to this, question on the relevance of institutions and on issues relating to planned economic development (except Q.No.23, 'Wages' section), socialist society, Directive Principles of State Policy, NBMW or Fair Wages are conspicuous by their absence.

Several questions are introduced, as it should be, with a perspective; but, inexplicably, questions on wage boards on which FNCL had deliberated at length are repeated *verbatim* in this. The vast 'inputs' on this institution should have provided a 'focus' for *further* questioning, which is not attempted here. This brings me to the related criticism: this questionnaire should have attempted to provide links with FNCL (see for example, Q.no.15, 'Labour Research and Information' (LRI) Section).

Some queries in this questionnaire do not have contemporary flavour. For example, it is well known, that in recent times, the State Labour Departments (SLDs) have been mainly responsible for provision of incomplete and unreliable data on trade unions.³⁶ But this aspect, non-compliance by the SLDs, is not mentioned as one of the causes of limitations of labour statistics in the introductory part of the question on labour statistics. This is due to the blind repetition of FNCL question! (Q.No.212 in FNCL repeated as Q.No.1 in 'LRI' section).

The unions find some questions to be 'laughable' (e.g., Does the worker find job satisfaction? Q.No.4 in 'Conditions of work' section), some to be 'managerialist', some 'controversial' and some clearly 'anti-labour'. And 'to whom', this questionnaire is addressed: employers, workers, unions? One does not know how useful is this to elicit response from SLDs.³⁷

In short, this questionnaire, to put it mildly, should be an 'embarrassment' for the bureaucracy, who would have drafted it, as Bagaram Tulpule remarked.

Concluding Observations

Mired in controversies, greeted with indifference and boycotts, the SNCL started its process of recording evidence in Mumbai in July; it has the toughest task of finding a 'middle ground' by designing an institutional framework that would at once enhance the competitive efficiency of industry and afford adequate social and economic protection to workers. But, it is more fortunately placed than the FNCL in that there is no 'dominant' political or labour organizational view to influence the working of SNCL as was in the case of FNCL.³⁸

³⁶ K.R. Shyam Sundar, "Official data on trade unions: some comments", *Economic and Political Weekly*, 2 October 1999, pp.2839-41.

³⁷ Vidyadhar Date, "Trade union leaders oppose labour panel's approach", *Times of India*, 13 June 2000.

³⁸ See S. Sherlock, "The National Commission on Labour and its quest for industrial harmony, 1967-69", in J. Masselos, ed., *India: Creating a Modern Nation*, New Delhi: Sterling, 1990.

Table A.1:
A Comparison Between First and Second National Labour Commissions³⁹

Particulars	FNCL	SNCL
Date of appointment	14 December 1966	15 October 1999
Chairman (Profession)	P.B. Gajendragadkar <i>Ex-Chief Justice</i>	Ravindra Varma <i>Ex-Labour Minister</i>
Number of Members	12	8
Number of Members Belonging to Unions	4+2	2
Union Identity (original)	INTUC = 2+2 ^a AITUC = 1 ^b HMS = 1	BMS = 1 INTUC = 1
Original Tenure/Tenure Given	2 years	2 years
Time Taken	About 33 months ^c	—
Budget ^d	Rs 35 lakhs	Rs 4–8 crores
Number of questions in the questionnaire (organised & unorganised sectors)	223+7	323+90
a. Recruitment & Induction	11	24
b. Conditions of work	14	31
c. TU & EO	40	61
d. IR	64	85
e. Wages	35	33
f. Incentive Schemes & Productivity	13	11
g. Social Security	15	18
h. Labour Legislation	12	19
i. LRI	19	25
j. Economic Reforms & Social Security	Not relevant	16
Net	7	Part II
k. Unorganised sector		(unorganised) 90
Number of Study Groups	37	6 (so far)

- a. If we consider that “two other members, R.K. Malaviya and Ramananda Das also represented INTUC point of view”, then union presence becomes 6. See V.B. Karnik, *Indian Trade Unions*, Bombay, Popular Prakashan, 1978.
- b. Dange resigned from the FNCL in 1968.
- c. FNCL submitted its *Report* in August 1969.
- d. At constant prices, the amounts for two commissions would be more or less same.

³⁹ See NCL, 1969; *Indian Worker*, 16–30 November 1999; Questionnaire of SNCL, 2000.

III.
SUBMISSIONS TO THE
SECOND NATIONAL COMMISSION
ON LABOUR

SUBMISSION OF THE
HINDUSTAN LEVER EMPLOYEES UNION
BEFORE THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000¹

Hindustan Lever Employees Union
7/17, B.D.D. Chawl, Sewri Cross Road
Sewri, Mumbai 400015
Phone 4163804
E-Mail *bleu@bom3.vsnl.net.in*

4 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Sirs,

Amid controversy the Government has declared the constitution of the second Labour Commission. The very formulation of the terms of reference have not been the result of democratic and transparent discussions, and the report of the Commission set up in May 1998 for review of various administrative laws governing Industry have been unavailable to unions. The AITUC and the CITU have boycotted the commission on extremely valid grounds which we support but since there are retrograde steps to destroy the rights and livelihood of the workers and seriously impact millions of workers livelihood, this Federation is making its presentation.

I.

The terms of reference of the Commission are twofold:

- a. to suggest rationalisation of existing laws relating to labour in the organised sector, and
- b. to suggest umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sector.

The terms of reference seem innocuous. But they are the suggested framework which makes one feel that this Commission is primarily designed to seek a justification for a hire and fire policy. The framework need not be followed as it is specifically suggested that the commission “may” take in to account...but we have received a circular substituting the word “may” to “will”. In any case the framework suggest taking into account, *firstly* the recommendation of the Commission of May 1998 for review of various administrative laws governing industry; *secondly* the emerging economic environment involving technological changes, changes in methods, timings & conditions of work, liberalisation of the economy and bringing existing laws in tune with the future market needs; *thirdly* minimum level of labour protection and welfare measures and the basic institutional framework for ensuring the same; *fourthly*,

¹ This paper was originally presented by Bennet D’Costa as “Issues Before the Second Labour Commission” to the 41st Annual Conference of the Indian Society of Labour Economics, held at the Indira Gandhi Institute of Development Research, Mumbai, 18–20 November 1999.

improving the effectiveness relating to social security, occupational health and safety, minimum wages.

The “suggested” framework has two striking omissions. Firstly the Indian Constitution, more particularly the Directive Principles and secondly, International Conventions, more particularly those that India is a signatory to. Whilst squarely dealing with the suggested framework, I may be pardoned for seeking guidance from the Indian Constitution and International Covenants.

Models

There are currently two models for discussion and debate around these issues, which I would like to characterise as the *Musharraf model*, and the *co-determination and workers' participation model*.

1. The Musharraf Model

This model views technological changes, liberalisation of trade and industry, and increasing competitiveness in terms of a need for flexible labour markets. In order to cope with such a situation, it seeks to dismantle the substantive rights of workers and to vest near-dictatorial powers in management. It seeks the unfettered right to “Hire & Fire”. In short it seeks the right to dispossess the livelihood of workers without any due process, just as in the political sphere a dictatorship dispossess life without any due process. Just as in the political sphere a dictatorship derives its legitimacy from slogans like ‘lack of efficiency’, ‘confusion’, ‘increased time for consensus’ etc. of a democracy, and seeks a solution by divesting the citizens of their citizenship rights, this approach seeks “efficiency”, “flexibility” of the labour market in terms of elimination of valuable rights of workers.

2. The Co-Determination and Workers' Participation Model

This approach recognises the increasing needs of a society responding to technological changes but it seeks to respond to this situation by creating institutions of productive co-operation as opposed to authoritively enforced unity of purpose. It seeks the effective and speedy reconciliation of different interests as opposed to monolithic unity. It seeks to exploit the “productivity of democracy” not only as a desirable option but also a conviction based on empirical experience that a guaranteed voice for workers is more effective than enlightened managerial unilateralism in the long run. Through participation in management workers can persuade/force management to consider decision in the light of the interest of employees and explore various alternatives. In short, it argues for a management style that looks closely for solutions compatible with employees' interests and exerts a force for restructuring along the path of upgrading Labour.

The Musharraf Model is not new. It existed in the early stages of capitalism in the very countries that have discarded the same. It brought misery to millions of workers and is guaranteed to repeat this process if followed. Millions of workers will be pauperised and demoralised and Labour degraded. This dictatorship in the economic sphere could not but find its resonance in other “dictatorships of the proletariat.” Both these dictatorships in their historic forms failed, yet it must be realised that one could only be the effect of the other. Of course votaries of liberalisation are seen arguing for this model.

In the U.S.A. the very formations of Unions was held to Restrict Trade and Commerce and was held to be violative of the Sherman Act. That was in the early 20th century. Society corrected this situation. This is only being stated to remind the Commission that the rights of workers are being sought to be denied on the similar grounds of Liberalisation and Globalisation.

We shall test the models from the view point of: i. the New Industrial Policy of 1991; ii. the Constitution of India; iii. the modern definition of the company; iv. speed in dealing with change; v. international experiences in workers' participation in collective decision making.

i. Liberal reforms and new industrial policy of 1991

Let us therefore turn to the "New Industrial Policy" which unveiled the first phase of 'Reforms'. Whilst it dealt with and specifically formulated policies relating to Industrial Licencing, Foreign Investment, Foreign Technology Agreements, Public Sector Policy, MRTP Act, let us see what it had to say regarding Labour. Para 16 ad verbatim reads as follows: "Government will fully protect the interests of labour, enhance their welfare and equip them in all respects to deal with the inevitability of technological change, Government believes that no small section of society can corner the gains of growth, leaving workers to bear its pains. Labour will be made an equal partner in progress and prosperity, workers participation in management will be promoted. Workers' co-operatives will be encouraged to participate in packages designed to turn around sick companies. Intensive training, skill development and upgradation programmes will be launched."

Thus even from the standpoint of the "New Economic Policy", the Musharraf Model should be untenable. Specifically 'workers participation in management' was designed to be the vehicle of these reforms.

ii. The Constitution of India

This should be a conclusive argument in this debate. The Directive Principles, though not legally enforceable, are nevertheless an unfailing guide of Public Policy, and Courts, Tribunals and all institutions are required to decide issues in the light of these principles. The 2nd Labour Commission is therefore bound to decide issues from the touchstone of the Indian Constitution. Article 43a states: "The states shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishment in any industry." The fact that the Commission should seek solutions in such a manner as to give effect to the Directive Principles of the Constitution is desirable, expedient and unassailable.

iii. The modern definition of the company

The Supreme Court has repeatedly confirmed that the modern company is not the property of shareholders. In the case of National Textile Workers Union V/s P. R Ramakrishna, the Apex Court said: Para 5. "It is now accepted on all hands, even in predominately capitalist countries, that a company is not property. The traditional view that the company is the property of the shareholders is now an exploded myth...There is another equally, if not more, important factor of production and that is labour..."

Professor Gower in his treatise on Principles of Modern Company Law stated: "In so far as there is any true association in the modern public company it is between management and workers rather than between shareholders inter se or between them and the management, but the fact that workers form an integral part of the company is ignored by the law."

iv. Speed and change

An argument that is used is that consultation takes time which can be ill afforded, in view of rapid changes. But international experience has shown that while decisions may be delayed, the quality of decisions has substantially improved. Codetermination in Germany “which gives works councils a temporary veto power over decisions, may protect managements from short term responses to market signals, helping them avoid costly mistakes arising from lack of reflection.”

The argument of time is very often a guise for an ideological propensity to deny workers rights of participation. Take the case of Amalgamation and Reconstruction under Company Law. There is also a procedure for approvals by shareholders and creditors, yet this “delay” is not sought to be removed.

In fact, re-organisation and many types of changes are not decided overnight. Various options are considered before implementation and these take time for evaluation by management. If workers are continuously involved in the process of considering various options they would have sufficient knowledge, expertise and time to decide and management would have the benefit of workers’ interactions so that options could be considered reconciling workers’ interests.

v. International experience: workers’ participation in collective decision making

It is often argued that the Musharraf Model is necessary on account of the globalisation of the economy. It is also argued that the developed countries are suggesting labour standards in order to adversely affect the country’s competitiveness. The argument betrays an idea that child labour and other forms of cheap and unorganised labour are essential parts of India’s competitiveness, which we should seek to preserve. If that were true, then the African continent would be highly competitive. The African experience shows that what a competitive economy needs is a self-confident, reassured and skilled workforce rather than merely a workforce that can easily be taken advantage of by virtue of its poverty, low levels of education and powerlessness. In this context let us look at International experience of countries which have been home to many of the worlds most competitive industries.

All countries in Western Europe have institutions that give workers (including supervisors and managers) a right to participate in decision making. On the threshold of the new millenium the United States stands effectively alone among the developed nations in having no effective system of worker representation and consultation. Yet surely data indicate that some 30 to 40 million workers in the US without union representation desire such representation, and some 80 million workers, even those who do not approve of unions, desire some independent collective voice in their workplace.

The predominant form of worker representation besides collective bargaining is through **works councils**, and through **board-level workers’ representation**. These are in addition to the collective bargaining mechanisms between Unions and Management.

1. Works Councils

These are either elected workers’ representatives as in Germany, Netherlands etc. or union and management committees, as in Sweden. Germany has the most developed system. German works councils are elected by the entire workforce. The terms of office are about 3–4 years, while the size of the council depends on the size of the organisation. All council expenses are paid by the employer.

Right to Information

Works Council laws invariably obligate employers to disclose information about major new investment plans, acquisition and product market strategies, and planned reorganisation of production.

Right to Consultation

Laws mandate that employers must seek councils' advice with respect to decisions concerning transfer of ownership of firms, mergers, takeovers, closures, major reduction, changes in location of production, major investments, capital loans, and assignments given to outside consultants. Moreover, advice is to be sought on proposals concerning dismissal and appointment of members of executive boards, introduction of entirely new work methods and production process etc.

Veto Powers of Works Councils

The works council agreement is a must in some countries like Germany on issues like disciplinary rules; starting and finishing time and breaks; holiday assignments, bonus and targets; date and method of payments; the type of personal data of individual employees; and the development of a social plan where changes in the workplace, including closure, produce major disadvantage for workforce are set forth.

Contributions to Regulatory Performance

This Commission has specifically asked as to what are the statutory benefits/provisions in the implementation of which trade unions and employers can jointly play an important role (see conditions of work, query 11).

Regulation of the market and of workers' welfare is beset with the problem that bureaucratic capacity is limited as compared to the innumerable sites which need to be regulated.

Works Councils are often enlisted as on site enforcement agents to supplement government inspectorates. The practice of workers committees as "deputy" inspectors for health and safety regulation is nearly universal in Europe. In Germany Councils are charged by Law to monitor employers' observance of labour regulation, which includes legislation on employment protection and equal employment opportunities. Works councillors who allow the employer to circumvent the law may be taken to court by individual employees or by the union, and councillors may be removed from office. In North America, Canada is an example where joint committees of workers and management are empowered to undertake regulatory functions.

Findings of a nine country comparative research project on Works Councils concluded that workers participation made an important net contribution to democracy and economic welfare. They facilitate representation and achievement of public regulatory goals, disseminate advanced practices with regard to training, technology, compensation, and lead to greater social consensus. They were mistrusted by managements and unions at first. Managements feared loss of management prerogatives, whilst unions were apprehensive of being made to assume responsibility for co-management of a capitalist economy. Studies have shown that the economic effects of worker involvement are likely to be positive when workers have real power in decision making and receive concrete pay-offs for cooperation. The greatest gains from cooperation are seen in unionised settings, where worker power exists independent of management.

The system served both the unions and the employers well. The German employers believe that their interests are best met by strong self-confident unions and works councils.

2. Board-Level Representation

In India the issue of workers participation was discussed after the liberalisation process was launched. The “Participation of Workers in Management Bill” was introduced in the Rajya Sabha on 30 May 1990. There was a consensus that there must be Board level participation. The only difference was in the number (see Minutes of the 29th Session of the Indian Labour Conference, the relevant part is annexed here).

In Germany the day to day management of a joint stock company rests with a managerial board which has the status of employer. However the selection and supervision of this managerial board, as well as authorisation of major initiatives, is the responsibility of a supervisory board. Thus Germany has a two-tier board system, unlike that followed in countries like India and the UK, where companies are governed by unitary boards. The German pattern of co-determination or worker participation in management is enshrined in Company Law.

The proportion of worker representatives varies from one third, in companies with between 500 to 2,000 employees, to a half, in companies with more than 2,000 workers. In these large companies the chair in effect represents the shareholders and has the casting vote. The one exception is the large coal or iron and steel companies where the chair is independent.

The supervisory board can normally appoint and dismiss the main management, reviews its performance and is provided with financial and other information. In the coal, iron and steel industries, the employee representatives can also appoint the labour (personnel) director. The employee representatives in general have the same rights and duties as other supervisory board members.

In companies with 500 to 2,000 employees, the employee representatives, who are elected by the workforce, are also normally company employees. In large companies, above 2,000, some of the employee representatives come directly from the unions, and are usually union officials. These larger companies must also give at least one place on the supervisory board to a senior management representative.

Though Germany has a developed form of Board Representation, other countries like Austria, Denmark, Finland, Luxemburg, the Netherlands and Sweden have employee representatives who sit on company boards or supervisory boards. In Belgium, Greece, Ireland, Spain and, in practice, if not in law, France, board level representation is limited to parts of the public sector. In Italy, Portugal and United Kingdom such rights do not exist.

II.

So far I have been at pains to show that the Musharraf Model for coping with technological change and liberalisation of the economy or the competitiveness of industry is not a desirable one, and certainly not the only option for India. It must be rejected.

On the other hand, the ‘co-determination/workers’ participation in management’ model is eminently valid. The 1991 New Industrial Policy Statement when dealing with the new environment specifically enunciates the principle of workers’ participation in management. The Directive Principles of the Constitution mandates that the state should take all steps to secure the participation of workers in management. The nature of the modern company and the workers’ role in it as expounded by the Supreme Court of India and learned Professors of Company Law see this principle as necessary and laudable. Finally the very capitalist countries which have been and are still coping with technological change and have companies which are globally

competitive have shown that formal institutionalisation of workers' participation rights are only helpful and not inimical to growth. Also studies show that "industrial citizenship of this kind can benefit democracy in society at large as well as firms, and can improve national economic performance. It can also enlist industrial citizenship in the service of general public goals in workplace regulation."

Institutionalising Workers' Participation

The Second Labour Conference should consider the institutionalisation of workers' participation in management as a method of coping with the emerging economic environment, and this should be legally mandated. Workers collectively should have the right to information in an ongoing manner, and consultations should be undertaken so that workers can be educated and can acquire the technical competence to deal with technological changes. Hence:

- i. Statutorily empowered Councils of workers, including supervisors and managers in proportion to their number, should be set up in every undertaking of a size of 20 workers. These could be elected or nominated by those unions functioning in an undertaking. A provision for works committees exists. What is suggested is to amend the provisions to make such committees a vehicle of workers participation in management and also to give it powers to assist the regulatory authorities in implementing various labour laws in units spread out over the country. Provisions of section 3 of the I.D. Act, 1947 and Rule 39 to 61 of the I.D. Rules could be suitably amended.
- ii. Quarterly meetings will be had wherein the company/undertaking shall inform and consult employees in an ongoing manner with respect to the company's financial and economic position, long term plans, social and personnel policies, major changes in work organisation, shifting and contracting of production, subcontracting of production, rationalisation, standardisation etc.
- iii. The Council will be empowered by law to assist the Labour Department in ensuring that the Minimum Wages Act, Contract Labour Regulation and Abolition Act and other laws are implemented, with respect to all permanent, temporary or contract workers or subcontracted workers working in the undertaking both at the shop floor and the Company level having a community of interest with the undertaking. They would have the power to investigate and report any violation and will be given the resources to carry out their duties.
- iv. The failure of the Works Councils in the making a report of violations could be challenged by workers or unions and penalties including disqualification would be imposed for dereliction of duties. Any lapse or fraud would be also punishable.
- v. There would be workers representative on the boards of the company in equal number to those appointed by shareholders in their meetings. In this regard the basis would be more or less like the German Joint Stock Act.

Section 9A of the Industrial Disputes Act

This will be in addition to the provision of Sec. 9A of the Industrial Disputes Act, 1947. In the event of any reorganisation likely to lead to retrenchment of workers, the company will give notice to the union, and union and management shall devise means to have such alternatives to protect the employment of workers, and a plan for redeploying and retraining workers and, if that is not possible, a social security package to adequately protect the workers as a last resort. If no agreement is possible, only then would the Industrial Tribunal adjudicate expeditiously the proposed rationalisation and/or the social security plan. The employer as in the present law

shall not unilaterally act either with respect to the rationalisation and or the social security plan.

The principle is that workers would lose their livelihood only if all other alternatives have been exhausted and only by due process of law where retrenchment or closures of undertakings are to take place. The loss of livelihood would also be subject to reasonable restrictions which are already enshrined in the Industrial Disputes Act 1947. This is a special feature of Indian Law which must not be discarded, especially since it is a feature that workers all over the world desire. It is a “Best Practice” to be emulated by other countries and can be a ‘Social Clause’ that India should emphatically support in its response to the ‘Social Clause’ advocated by many other Industrialised Nations. This protection of workers’ livelihood and taking away their livelihood only by due process is consistent with the ‘New Industrial Policy, 1991, which specifically stated that “the interests of labour would be protected and no small section of society shall gain leaving workers to bear its pains”. and also the Presidents’ speech in Parliament declaring that the policy was to protect workers.

Further the entire purpose of Sec. 9A is to stimulate a joint interest of management and workmen in industrial progress and increased productivity, this object and purpose was succinctly expressed by the Supreme Court in the case of M/s Tata Iron and Steel v/s Its Workmen. “The real object and purpose of enacting Sec. 9-A seems to be to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and workmen in the industrial progress and increased productivity. This approach on the part of the industrial employer would reflect his harmonious and sympathetic cooperation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away from the tradition of labour’s subservience to capital”.

This is even more necessary given the benefit of hindsight as regards the promise and practice of liberalisation and the New Industrial Policy. We shall end this part with a quote of the Finance Minister to the Federation of Indian Chambers of Commerce and Industry, where he stated that “the results of the first generation reforms, which began in 1991, showed that employment creation had not increased. Instead, more people were jobless as a result of voluntary retirement schemes.”

III.

Query no.17 of the Commission, under Labour Legislation, asks “Can there be generally accepted “exit policy”, protecting the interest of both management and labour? If so, suggest changes required in existing legislation and outline the suggested policy”.

The validity of existing laws relating to re-organisation, retrenchment and closure, have to be considered viewing the difference in our situation from that of the European countries. We shall deal with an important aspect which substantially differentiates the two situations.

Social Security

The industrial relations laws in the European countries have to be seen in the context of a social security system which makes the adverse consequences of rationalisation and job losses, etc., somewhat tolerable. In spite of this, unemployment remains intolerable enough to change voters’ preferences for political parties.

In the U.K., even under the Tories, Social Security was the largest single expenditure programme. Thirty-one per cent of planned public expenditure in 1991-92 was spent on Social Security Benefits. Of this 95% were on benefits and 5% on administration. These included financial support for Unemployment Allowance, Sick Pay, Incapacity Benefits, Benefits for Disabled People, Child Benefit, Widow Benefit, Retirement Pension, Housing Benefit, Family Credit, Disability Working Allowance etc. There are public and private long-term Care Insurance Schemes which cover 99.8% of the population. Employers and employees from 1.6.96 pay 0.85% of gross wages. Pensioners pay 0.85% of pensions and Pension Funds pay 0.85%. The UK also has a National Health System.

Table 1 below presents a chart of government expenditure on social security presented to Parliament by the Secretary of State for Social Security of United Kingdom

	1985-86	1993-94
Total contributory Benefit Fund Expenditure	£ 22,901	£ 38,800
Expenditure net from National Insurance Fund	23,711	40,000
Non-Contributory Benefits	14,275	24,400
Total Non-Contributory Benefits Expenditure	14,206	24,600
Total Central Government Expenditure	38,741	66,700
Total Central Government Grants to Local Administration	4,496	5,500
<i>Total Department of Social Security =</i>		
Benefits +	£ 43,237	£ 72,200
Administration	£ 41,502	£ 68,800
	£ 1,734	£ 3,420

Table 1: Expenditure on Social Security in the U.K., in millions of pounds (these figures include Government's own expenditure and contributory benefits which are those paid from the National Insurance Fund)

In Sweden, according to the Ministry of Labour, unemployment itself would cost SEK 100 billion during the fiscal year ending June 30, 1993. Labour market policy has been an integral part of National Economic Policy whose main goal has been full employment. The country has an Unemployment Commission entitled to make decisions on the creation of emergency jobs, approve applications for cash allowances etc. There is a difference between Sweden's labour market policy as compared with other European countries. Whilst Swedish labour market policy has been an integral part of economic policy, in many other countries labour market policies are regarded as part of Social Welfare policy. The goals of the Swedish economic policy are full employment, economic growth, greater economic and social equality, stable prices, fair distribution, regional balance, etc. Of these full employment was the primary goal for decades.

Notwithstanding these differences, the basic continuity of labour market policies in Europe has been a Social Security System.

Table 2 below lists the expenditure on labour market policy in different countries.

Countries	Expenditure on Labour Market (% of GDP)	Standardised Unemployment Rate
Australia	1.39	9.5
Austria	1.44	—
Belgium	3.78	7.7
Canada	2.44	10.2
Denmark	6.12	—
Finland	3.44	7.5
France	2.68	9.4
Germany	2.73	4.3
Great Britain	1.56	8.9
Ireland	4.31	15.8
Netherlands	3.28	7.0
New Zealand	2.73	10.3
Norway	2.26	5.5
Portugal	0.80	4.1
Spain	3.53	16.0
Sweden	2.60	2.7
Switzerland	0.61	—
U.S.A.	0.74	6.6

Table 2: Public expenditure on labour market programmes as a percentage of GDP in eighteen countries, 1991 and the standardised unemployment rates in 1991 (Source: OECD Employment Outlook, July 1992 and OECD Quarterly Labour Force Statistics, no. 2, 1992).

India does not have a social security system. Her way of dealing with the situation was to create jobs by public spending and expenditure, which are now being cut, and by attempting to restrict the job losses and unemployment by placing certain reasonable restrictions on retrenchment and closures. Even a 5% of GDP expenditure on Labour Market Policy would involve an outlay of around Rs 70,297 crores at 1997-98 prices per year. This would hardly make a dent in relieving the misery of the unemployed. It is therefore sound policy to allow retrenchment only in cases where it cannot be avoided.

IV.

The right to work, I had assumed was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property... To work means to eat. It also means to live.

— J. Douglas in *Barsky v Board of Regents of New York*

Unemployment has been a bane of Indian society. The Finance Minister's statement that employment creation has not increased even with the first generation reforms of 1991 and more people were jobless as a result of Voluntary Retirement Scheme does not surprise any one. Even earlier in 1969 the National Commission on Labour in its report submitted in 1969 observed: "The development effort so far has not been adequate to contain within limits the volume of unemployment in the country. And

what is more, if a view of the future is taken on the basis of past experience, the economy does not seem to hold out a brighter prospect in this regard.” (para 6.20, p.50)

The right to life, has now been recognised by a catena of judgements of the Supreme Court of India, to include the right to livelihood. The Directive Principles of State Policy more particularly Articles 39, requires the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood. Article 41 directs that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and other cases of undeserved want. Article 43 lays down that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring decent standard of living and full enjoyment and leisure and social and cultural opportunities. In view of all this the Supreme Court has held: “If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compelled to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21” (ibid, p.80).

Reasonable Restrictions on the Right to Retrench or Close Down an Undertaking

What then does the Industrial Disputes Act seek to do? It mandates that an employer seeking to retrench or close down an undertaking wherein a larger number of workmen will lose their livelihood would require prior scrutiny of the reasons for such retrenchment or closure. The appropriate government after hearing all parties and complying with natural justice make an enquiry of the relevant facts and circumstances and the employer’s bonafides in making such retrenchment and whether such loss of livelihood was avoidable. The enquiry would also explore the steps that may have to be taken to remove the causes necessitating the proposed retrenchment. It is only after having regard to the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors that the loss of livelihood would be allowed or not. Thus what it seeks to do is to prevent the loss of livelihood wherever possible and if it has to do so then it would be by due process of the law i.e., affording all parties to be heard.

The present system gives:

1. Natural Justice, or the right to be heard
2. Disclosure, or transparency
3. Due process, or that loss of livelihood, just like loss of life, would not take place without due process of the law
4. And loss of livelihood would take place where it cannot be avoided

What then could be the objection? If it is the manner in which it is implemented, then it calls for improving the implementation. It cannot and should not be dealt with by abolishing the substantive right to livelihood which is public policy. The very object of this legislation was because retrenchment and closure were having a demoralising

effect on workmen. It is in order to prevent avoidable hardship. The Supreme Court whilst dealing with these provisions considered whether these provisions would amount to reasonable restrictions and were in tune with public policy. The Supreme Court remarked: "By requiring prior scrutiny of the reasons for the proposed retrenchment... Section 25-N seeks to prevent the hardship that may be caused to the affected workmen as a result of retrenchment because, at the commencement of his employment, a workman naturally expects and looks forward to security of service spread over a long period and retrenchment destroys his hopes and expectations. The retrenched workman is, suddenly and without his fault thrown on the street and has to face the grim problem of unemployment. (See: *The Indian Hume Pipe Co. Ltd., v The Workmen*, 1960 (2) SCR 3, at pp. 36-37). Often the workman is retrenched when he is advanced in age and his energies are declining and it becomes difficult for him to compete in the employment market with younger people in securing employment. Retrenchment compensation payable under S.25-F may be of some assistance but it cannot go far to help him tide over the hardship especially when the proceedings before the Industrial Tribunal/Labour Court get prolonged. The plight of the retrenched workman has to be considered in the light of the prevailing conditions of unemployment and underemployment in the country. Absymal poverty has been the bane of Indian Society and the root cause is large scale unemployment and underemployment."

The Supreme Court while considering the provisions in the light of public policy stated that: "In that sense, S.25-N seeks to give effect to the mandate contained in the Directive Principles of the Constitution referred to above. The restrictions imposed by S.25-N on the right of the employer to retrench the workmen must, therefore, be regarded as having been imposed in the interests of general public. The learned counsel appearing for the employers have also not contended to the contrary."

What then can be the reason for the clamour from the employers to abolish these sections from the statute book? The reforms was supposed to bring in more jobs. Eight years have passed and the people of India are still waiting to see its promise. India does not have a social security system. Infact it is seeking to remove the subsidies which act as a cushion for the poor and the middle class, whilst maintaining subsidies applicable to the employers and the rich. In such a circumstances this attempt to remove such reasonable protection and due process of the law before loss of livelihood, is merely an employers class offensive rather than a fair and conscionable objection. One is aware that there is a pressure from the institutions like the World Bank and the IMF etc. But merely going by such dictates is hardly helpful for this country, as indeed was the case with many African and Latin American countries. Today the government is defensive, yet refuses to abolish the morally and socially unjustifiable practice of child labour. If it can resist an issue which is morally and socially untenable it surely should resist the pressure for removing a fair, just, equitable and necessary protection of the right to livelihood. Infact, at the cost of repetition these clauses for protection of avoidable loss of livelihood has been welcomed and desired by the workers in many other countries. It is a thing that the country should be proud of and with self respect enjoin other countries to follow.

Even though the liberalisation process has been put in place in 1991 the basic condition as explained by the Supreme Court of India of poverty, unemployment and the deprivation caused to the workmen who loses his job has not changed. Hence there should not be any fundamental departure from the existing laws. Further as stated earlier India does not have a social security system. In all liberalised economies in Europe, America etc., there is an extensive social security system.

V.

The Case of Hindustan Lever

- This is the biggest company in the fast moving consumer group.
- Its profits have been doubling every three years and the turnover has been doubling every four years.
- It is covered by Chapter V(b) of the Industrial Disputes Act in most of its factories yet it has made a profit of around Rs 1300 crores in the year 1999.
- Even though it is covered under Chapter V(b) yet it has given a return on net worth of 45% to 50% i.e., on every Rs 100 of its net worth invested in the business, it gets a return of Rs 45 to 50 per annum.
- On the other hand Unilever, its parent company inspite of not having Chapter V(b) of the Industrial Disputes Act gives a return on net worth of around 25% to 30% per annum.
- In spite of Chapter V(b) being on statute book the company has through Voluntary Retirement Scheme (VRS) reduced around 10,000 workmen.
- The Company has threatened that in the event that an exit policy is brought in by the Government it shall not go by any Voluntary Retirement Scheme and will give this statutory minimum.
- The amount given by the Voluntary Retirement Scheme roughly amounts to around 80 salaries broken up in to a lumpsum and a pension which is not protected against the Cost of Living Index.
- These VRS scheme have caused pauperisation amongst the workforce who have accepted.

From what has been stated above it is clear that even without the elimination of Chapter V(b):

- i. Hindustan Lever has been able to exit around atleast 50% of its workforce, which is a high figure of around 10,000.
- ii. The existence of Chapter V(b) has in no way prevented the company from doubling its profits every three years and its turnover every 4 years.
- iii. In spite of Chapter V(b) Hindustan Lever is an even more profitable business than Unilever PLC, its parent company.
- iv. The existence of Chapter V(b) has nudged the company to pay a higher amount than the statutory minimum.
- v. The higher amount is even now inadequate but would have been immensely worse had there been no Chapter V(b).
- vi. There is no direct connection between the profitability, good management and the existence or otherwise of Chapter V(b). On the other hand there is a direct connection between workers being paid more than the statutory minimum and the existence of Chapter V(b).

Why then did Hindustan Lever shed 10,000 jobs?

- The jobs which the company has shed has been its direct permanent employees, whilst on the other hand giving the same work which is its core business on contract.
- The contract manufacturer again have a large number of worker working on contract and many places they have to work for 12 hours.

- The company had shifted its jobs/manufacture from locations where it was not getting fiscal benefits/subsidies example Bombay, Calcutta, Ghaziabad, Madras, Jammu etc., to places where it was getting fiscal subsidies like Khamgaon, Chindwara, Orai, Pondicherry, Daman etc.
- The basic purpose of throwing out around 10,000 workers was to avail of fiscal subsidy. This is against the law. The law states that such subsidy will be available only if the new units is not formed by the reconstruction or splitting of the existing units. It is not available only for shifting job.
- The subsidies given by the government have been the direct motivation for the loss of jobs.

In this situation what can be the objection to Chapter V(b) when it provides workers in the existing units the following:

- i. The right to know the reason and the extent of loss of job
- ii. The right to be heard before their loss of jobs
- iii. The right that their livelihood would not be lost if it was avoidable.
- iv. The right to work out a mutually beneficial scheme for any exit.

Recommendations

In view of the above the Federation believes that flexibility and exit of the workforce can be achieved within the parameters of existing laws. The following are our recommendations:

1. The Chapter V(b) in its present form should fundamentally the same except that it may be made more effective, transparent and fair. Loss of jobs will not be forced on workmen if it is avoidable.
2. Exit will thus be possible if after a transparent and fair enquiry it is held to be unavoidable.
3. In the case where it is held to be avoidable exit will be by mutual consent. In such a case the employer will:
 - a. Give all information and consult the Union.
 - b. The employer and the Union may reach an agreement if there are willing workmen who wish to exit and will work out a social plan on full or part compensation for any financial prejudice sustained by the staff as a result of the proposed loss of jobs. This would be the social compensation plan.
 - c. If no reconciliation of interest can be achieved in connection with the proposed alteration or if no agreement was not reached on the social compensation plan the matter will be referred to the Industrial Court.
 - d. The Court will decide the compensation in full or part of any financial prejudices sustained, in particular by reduction in income, loss of additional benefits, pension etc., and would take into account the fact that labour is a stakeholder in the company and also that the remaining jobs are not seriously jeopardised.
4. In the case of a profitable company where the employer wants to reduce workers the loss in the workers wage and future benefits could be compensated by converting part of the future wages into equity like as been suggested in the case of Indian Airlines.
5. The loss entitled to the workmen cannot be compensated by any VRS Hence loss of jobs should be avoided and the only alternative which is viable is the re-deployment, re-training of workmen on a new job. This can be seen from the fact that even if a worker drawing Rs 8,000 were given 100 salaries he would earn

around Rs 8 lakh which will give him a monthly amount of Rs 7,500 approximately. The value of Rs 7,500 would be as follows in the following years, but he would continue to get Rs 7,500.

Year	Salary equivalent to Rs 7,500 of the year 2000
	7,905
2001	8,842
2002	9,906
2003	11,116
2004	12,484
2005	14,038
2006	15,576
2007	17,296
2008	19,226
2009	21,387
2010	23,807
2011	26,520
2012	29,555
2013	32,954
2014	36,765
2015	41,031
2016	45,807
2017	51,156
2018	57,149
2019	63,863
2020	71,380

Thus the value of the R. 7,500 will be Rs 71,380. Even though Rs 7500 may be enough for the present it will be around 10% of its value in 20 years. Unless the workmen get another job and unless the amount of money is given as a pension which will increase alongwith inflation no amount of monetary payment as a compensation can suffice. This is seen from the fact that in the year 1990–1991 the workmens’ salary at Hindustan Lever net would be around Rs 1700 to 1800. The company gave a VRS of Rs 1200 and a lumpsum of Rs 40000 on the ground that the workmen would get his net take home pay. In the year 2000 what is the value of Rs 1200. It is almost 50% of the minimum wage and is less than the poverty line. Hence the workers who have taken VRS — and compensation calculated on this basis — have been pauperised.

The Federation states that the compensation in terms of money cannot compensate the loss of job.

VI.

Who is a Workman?

Query no.9(b) of the Commission, under Labour Legislation, raises the issue of uniformity of the definition of workman under various laws. There are broadly two types of definitions:

- a. In the Industrial Disputes Act, which is based on primarily the nature work.

- b. In the Bonus Act, the Plantation Workers Act, the Wages Act, etc., which are based on a certain salary level.

The definition according to a nature of work is a preferred definition because it bases itself on the nature of work. The definition in this act is consistent with the definition under various international laws governing the rights of workers in different countries.

International laws and practices

- The British law under sec 296 (1) defines workers as “any individual who works, or normally works or seeks to work:
 - a. under a contract of employment, or
 - b. under any other contract whereby he undertakes to do or are perform personally any work or services for another party to the contract who is not a professional client of his, or
 - c. in employment under or for the purposes of a government department (otherwise than as a member of the naval, military or air forces of the crown) in so far as such employment does not fall within paragraph a or b above.”
- The Japanese law defines workers under section 3 of the Law of 1949 as “workers under the present law shall be those persons will live by wages, salaries or other remuneration assimilable thereto, regardless of the kind of them for the occupation”.
- In Argentina that definition of worker includes even managerial staff. Section 1 of act number 23551 the defines worker as “worker means any person who engages in a lawful activity on behalf of an other person who he is entitled to direct such activity.”
- In Jamaica managerial staff are included in the category of workers.
- In most countries of Europe not only are workers as defined by the industrial disputes act allowed to form Unions and engage in collective bargaining but also supervisors and managerial staff.

Thus the international practice — if that is to be considered by this commission in view of the globalisation of the economy — in most democracies, is not only are workers as defined under the industrial dispute act allowed to form Unions, collectively bargain, have rights to protect them against arbitrary dismissals and transfers, discrimination, their right to form Unions etc.

Effectively therefore the supervisors, officers, and middle management do not have an effective right in the private sector. On the other hand these category of employees in most countries of the Democratic world are allowed to form trade unions, collectively bargain for improvement of their conditions of service, and have a remedy against discrimination, unfair and arbitrary dismissals. This is the case in the United Kingdom, France, Germany, the Netherlands, Argentina, Japan, etc.

Constitutional right

The constitution of India guarantees every citizen the right to form unions and associations of their choice. This right cannot be put into effect if there is no protection against dismissals or any form of punishment if they exercise that right. The right is effective if the citizens are given the right to bargain collectively. This is possible only if all employees are covered under the definition of worker.

In India too employees in the category of officers — this includes the IAS, income tax commissioners, gazetted officers, defence scientists officers at the BARC etc. — are entitled to form unions. In fact they have the right to collective bargaining and have been represented before the Pay Commissions which are the expert bodies for determining the pay and other service conditions. In the case of state and central

government employees and this includes even secretaries to the government who are IAS officers the right to approach administrative Tribunals i.e. the Central Administrative Tribunal and the State Administrative Tribunal for redress in cases of wrongful and arbitrary transfers, dismissals, promotions etc. Even in other public-sector undertakings officers have the right to enforce their fundamental rights against the state. If senior staff in state and central government and officers in public-sector undertakings are covered for purposes of collective bargaining and wrongful and arbitrary acts against them it would be an invidious discrimination to deny support a supervisors and managerial staff such benefits.

Bonus Act

The Bonus Commission while deciding the issue of workmen under the Bonus Act was of the view to include all workmen as well as some officers and supervisors and management staff, as they also contributed to the profit of the company. This was view of the Bonus Commission in 1964. The Bonus Commission stated: "We are of the view that for the purposes of the Bonus formula, the portion of the available surplus which we have allocated as Bonus should be deemed to include Bonus to the lower paid supervisory staffs and officers." Hence the monetary limit fixed was Rs 1,600 in the year 1964, when the average index was around 420 (1934 = 100). The value of Rs 1,600 at CPI 420 of 1964 would be equivalent to Rs 40,761 at the CPI of June, 1999. Thus even though the value of Rs 1,600 is equivalent to Rs 40,761 at today's prices the monetary limit has been increased to only Rs 3,500.

Thus even though the object of the Act was to cover all workmen under 2(s) of the Industrial Dispute Act as also supervisors and officers, the very fact that the value of the Rupees has been dropping has resulted in an absurd situation wherein even unskilled workers in large number of undertakings are not covered under the definition. Can the deterioration of the value of the Rupee change the status of a workmen? Are not the workmen loosing both ways, one facing the brunt of the drop in real wages and secondly the withdrawals of precious right? Why should the workmen be penalised for the drop in the value of the Rupee?

Plantation Act

At the time when the Plantation Act was enacted a monetary limit was placed at Rs 300. Today the Plantation Act defines the workmen as those drawing Rs 700! Thus there is no plantation worker in India today.

The Industrial Dispute Act for supervisors

Under the Industrial Disputes Act there exists a monetary ceiling of rupees 1600 to qualify as workman if one he is a supervisor. This stipulation was introduced in 1947 when the ceiling was placed at 500. The value of rupees 500 at the 1947 index is equivalent is approximately to rupees 26,000 as off 1999. This does not take into account the change in the basket of commodities that have taken place since 1947. In view of the fact that amendments to do not easily take place when the value of the rupees goes down the same supervisor would go out of the purview of the act only because the value of the rupees has gone down. He may be at the same position and drawing a lesser value in terms of his real wage. This is great injustice to this category of workmen.

It is rumoured that the government would like to place a monetary limit on the definition of employee under the Industrial Disputes Act. This will lead to an anomalous situation wherein two workers doing the same work in the same industry would be discriminated against only because the fair wages in a smaller company in the same industry may be less than the fair wage for a bigger company in the same industry. Thus say, Rs 12,000 may be a fair wage for a worker in one company and Rs

8,000 may be a fair wage for a worker in an other company in the same industry doing the same work. If a limit of Rs 10,000 is fixed one worker will be taken out of the definition of the workmen whilst the other would be within it, only because the fair wage is determined by the capacity of the company to pay. Thus the workers would seek a fair wage on the one hand and lose all his precious rights on the other. Moreover, such a worker would not have the right to collective bargaining and would be thrown out from his job if he formed a union and exercise his fundamental rights. He would also have no remedy against such termination. On the other hand senior officers in government and public sector would have these rights whilst even an unskilled workers would not have the same. This is not equity, not what the directive principle of state policy require. It would only be the class wish of an employer who has lost basic democratic sense.

Even if they are not included in the definition of workmen under the Industrial Disputes Act, it is essential to have a law which gives them the rights to collective bargaining and the right of redress against arbitrariness in case of promotions, transfers, dismisses, victimisation etc.

Recommendations

Any uniformity of the definition of the workmen should be only by defining workmen according to the nature of their work and the definition under the Industrial Disputes Act should be adopted subject to the following modifications:

In view of the creation of a large section of professionals software and otherwise there are a large number of employees who are not senior managers or do not supervise and control the work of others. To cover this category unambiguously the definition of workmen under the Industrial Disputes Act should include the term 'professional workers'. The limit of Rs 1600 i.e., less than even an unskilled workers which has been prescribed for the definition of supervisors should be abolished.

In case the category of supervisors, officers etc., are not covered under workmen in the Industrial Dispute Act, they should be given the rights of collective bargaining and redressal in cases of unfair and arbitrary dismissals and transfers, discrimination and violation of fundamental rights.

The definition of workmen should not be based on any monetary limit of wages. This is because:

- Most democracies and otherwise defined workmen depending on the nature of their work and not on monetary limit. This is the case of United Kingdom wherein even supervisors and managers are covered under the term workmen. This is also the case in Japan, Argentina, France, Germany and The Netherlands etc. Thus even arguments of globalisation do not support any dilution of the definition under the I. D. Act.
- The right to Association is guaranteed by the Constitution to all citizens so also are the fundamental rights more particularly Article 14 etc. The right to collective bargaining is available to IAS officers and even the defence establishments who are heard before Pay Commission and other expert bodies. They have the right against unfair dismissals, discrimination and other arbitrary action of their superiors. To deny supervisors and managers the right which is available to senior personnels in public services and government is discriminatory and unfair.
- Even the powers of the Prime Minister, Election Commissioner and General in the Army are subjected to judicial review. There should be a law whereby the powers

of senior management are subject to judicial review in case of arbitrary action. For this purpose if the definition of employee is not expanded then in such an eventuality the private sector employee above the rank of workmen should get similar rights as granted to the government servant and public sector employee under the Central Administrative Tribunals Act. This Act should cover all employees in administration whether in the public sector, government or private sector. The CAT and the MAT Act etc., should be rationalised to cover all employees in all sectors.

- Most countries have collective bargaining, agreement for management staff and supervisors.
- The ILO covenants and the Freedom of Association committee of the governing Board of ILO in its Digest of Decision of 1985, 295th Report, Case No. 1751, and 278th Report, Case No. 1534 which were published by the committee. Section 233 states “As excessively broad interpretation of the concept of “workers of confidence”, which denies such workers their right of association, may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association”. Article 230 says: “As concerns persons exercising senior managerial or policy making responsibilities, the Committee is of the opinion that while these public servants may be barred from joining trade unions which represent other workers, such restrictions should be strictly limited to this category of workers and they should be entitled to establish their own organizations.”
- The right to Association and Union is a fundamental right in the Constitution, but without protection against the violation of this rights and without collective bargaining this rights is unusable. E. A. Ramaswamy, a management consultant, claims with regard to the supervisory staff and Officer’s Association as follows: “Many private sector organisations have mercilessly sacked the activists to nip the movement in the bud. Multinationals and family owned firms alike have followed this practice, although the hostility of the latter is understandably more intense.”

VII.

Unorganised Labour

Contract and sub-contract workers are the major form of unorganised workforce. Many companies including Hindustan Lever are subcontracting their core business to a number of sub-contractors who receive the raw material, packaging material, process plant etc., from the user company i.e., Hindustan Lever and produce, pack and deliver to the market. They are infact producing only for one company. The workers are not allowed to form Union and loose their jobs if they so. The wages are less than the minimum wages. Should the same product be manufactured for a company at less or at the minimum wage for a company like Hindustan Lever which should otherwise pay a fair wage to employee producing its goods? Should the mere fact that there is an in between contractors allow the company to get its product at any less than the fair wage?

The Federation submits:

- Within the premises of the company the present provision of Sec. 10 of the Contract Labour Regulation and Abolition Act should remain fundamentally the same with the provisio that where a board has not been constituted the workmen may approach directly the Industrial Court.

- That the core business of an undertaking should not sub-contracted to any party even outside the establishment. If it does so it should be abolished. In any event the principal company should also be made liable in the fixation of wages and deciding of other benefits in all these sub-contracted units. The Federation or any Union of permanent workmen should be given the right and the responsibility to negotiate a fair wage for all contract workers. This is especially so as the unorganised workers lose their jobs as soon as they start getting organised.

The major problem as regards unorganised labour is the implementation of any laws that may be enacted. Being unorganised the workers are not able to enforce such laws. Hence statutory institutions involving the workers are absolutely necessary in order to enforce the provisions of such laws. Firstly there is limited bureaucratic capacity to supervise the innumerable sites where regulated activities occur. Infact there is an extreme enforcement gap. This has to be dealt with by de-bureaucratisation. In Europe there is a nearly universal practice of using worker committees as deputy inspectors for health and safety regulations. The German Works Council are charged by the law to monitor the employers observance of pertinent labour regulations.

Especially in the field covering unorganised workers, as countless European examples attest, using mandated committees to perform regulatory function – in effect, deputing workers as co-administrators of regulatory schemes – is one way to address these problems. In principle such an approach can offer a monitoring and enforcement capacity greater than that of any state inspectorate, a cheaper form of worker input into decision making than that offered by lawyers and a system of information exchange within the regulated site that yields earlier identification of problems and efficient solutions through the use of local knowledge.

Take the example of Hindustan Lever Ltd., as an illustration. Its sub-contracted production to the tune of 25% in Soaps, 60% Detergents, 75% Personal Products, 35% Packaged Tea and 45% of Packed Coffee in the year 1998. This would mean employment of thousands of workers through sub-contractors at less than minimum wages, no health and safety standards and violation of Factory Act norms. The workers are not organised and any organisation would result in loss of jobs. Hence there is a need to have statutorily enforceable committees at all these sites. Also the permanent workers and other organised workers of Hindustan Lever Ltd., should be given both the power and the obligation to see to the enforceability of the labour laws in all the sites. This would enable the committees of workers to assist the labour departments on the enforceability of various laws.

An example that this was possible is seen from the case of Food Corporation of India Workers Union v/s FCI wherein Justice Paripoornan while delivering the judgement had to confront the fact that two decades passed before a finality in the litigation, yet there was a dispute of which workers would benefit from the order. The Court ruled: “No doubt, the counsel for the Corporation invited our attention to certain difficulties involved in ‘conclusively’ determining the identity of the persons as per orders of this Court dated 28-2-1985 and 17-1-1990. Be that as it may, long lapse of time cannot be ignored and this Court cannot shirk its responsibility in resolving the issue on the basis of available material, however difficult or arduous it may be. After all, it is a “human problem” that calls for an urgent decision. Taking in to account the totality of the facts and circumstances and to do complete justice in the matter, we hold that the only way to resolve this issue is to direct the appellant (trade union), through a responsible office-bearer, duly authorised, to identify the persons, whose identities are

questioned or disputed by the management. On such identification being made by the appellant, the management shall reinstate them in service forthwith and also continue to employ such workmen, who shall be entitled to all the rights, liabilities, obligations and duties as prescribed for the workmen by the Corporation, as held by this Court in Food Corporation of India case. We would, however, like to stress the fact, that the officer concerned of the appellant Union, should act with extreme candour and circumspection. If it turns out later, that any lapse or fraud in the matter was attempted or perpetuated, the official concerned of the Union along with the persons identified, will be liable to prosecution and further penalties.”

Applied to the situation at hand it would mean that the committees of workers both at the sub-contracted sites as well as the permanent workers would not only have the power but also the obligation to see that all the labour laws concerning these workmen are implemented. Such committees would necessarily act independently and fairly and report violations to the management as well the labour departments. This would make the enforceability at the various sites all over India possible. But at the substantive level the question to be asked is why should a company with a much higher return on the Net Worth than its Principals continuously use contract labour. It is often argued at the time of abolition of contract labour, that the employers would employ permanent workers only in the core activities and contract labour should be allowed in essential and perennial jobs. This is not proper as all other essential jobs are part and parcel of the ability to produce goods and services.

In any case what then can be the justification for sub-contracting of work of core activities i.e. manufacture of soaps, detergents, personal products, packaging tea, coffee etc? The only purpose has been to exploit government subsidies and workers labour. Work will be subcontracting at a plant in a designated area wherein Income Tax, Sales Tax brakes, investment subsidies are given. After 5 to 7 years when the subsidies end, the contract is terminated and a new contract is signed with an another party so that the subsidies can start again. This gives HLL permanent subsidies and the workmen in those units loss of livelihood for the only reason that the company would like to circumvent the provision that the subsidy was for a fixed time period. Could this be a justifiable reason for loss of livelihood? Should there be a reasonable restriction? But in this chapter what is necessary to be considered is whether such sub-contracted units workmen should be the workmen of Hindustan Lever itself. Deciding this issue the Supreme Court laid down the test: “Who is employee in Labour Law?... we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent Union’s workmen and so no direct employer-employee vinculum juris existed between the petitioner and the workmen... Indian justice, beyond Atlantic liberalism has a rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages... The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractors is of no consequences when on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contract. Myried devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real

employer, based on Arts. 38, 39, 42, 43 and 43-A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.” (1978 LIC 1264)

The follow-up implication of this is that where an employer subcontracts production of its core activity and where “the contractor” is fully dependent and manufacture only the item of that employer’s core activities, the workmen must be deemed to be the workmen of the principal employer and not the contractor. This will eliminate a large amount of exploited unorganised workers. As regards the rest of the un-organised workers, statutory provisions should be made where institutions are created involving the workmen themselves and other workmen having a community of interest to act as the deputy inspectors or assistants to the labour enforcing machinery. The workmen have a direct interest and a commitment to improving their lot which may be more than that of many a bureaucrat. These workers committee would work under the supervision and control of the enforcing authorities in matters concerning the enforcement of labour laws, more particularly for the un-organised sector.

VIII.

Other Recommendations

1. The provision of the Industrial Dispute Act should be amended to include the prevention of unfair labour practice. This should be done on the basis of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971.
2. The Industrial Dispute Act should be amended to allow for interim direction and injunction to prevent an unfair labour practices.
3. The Industrial Dispute Act should be amended to bring in provision of Recognition like the MRTU & PULP Act. The only modification should be that recognition be by secret ballot.
4. Sec. 23 of the MRTU & PULP Act giving the right for employees authorised by the recognised Union to appear or act in certain proceedings to be considered as an duty. (This is a practice and covered in the Law in the United Kingdom, Germany etc.)
5. The Industrial Disputes Act should amended to allow Unions to directly prosecute for any offense without the permission of the Government.
6. After a fixed period of two months in conciliation the parties should be entitled to directly approach the Industrial Tribunal. The period of conciliation can thereafter be mutually extended. The provision of government giving a Reference should be eliminated as unnecessary delay can be avoid.
7. Just as there are misconduct and punishment specified under the Employment Standing Order Act and the Standing Order there is no provision, clearly specifying the misconduct on the part of the managers and the punishment for such misconduct. Rules of misconduct of managers and the supervisors should be framed as also punishment. For example an unfair labour practice committed by any managers should invite disciplinary proceedings and punishment including dismissal. Another example is the Commission of Contempt of Court or failure to follow Court orders or the statute, should be punishable and the personnel manager or any other manager responsible for such a default should be punished in the same manner as an employee.
8. Benefit of health, housing, medical facility, education which are currently under the Plantation Labour Act should be included in the Factories Act.

9. Wages should have a component of Dearness Allowance which should neutralise the pay pocket at the rate of 100% of the Cost of Living, in the same manner as recommended by the Fifth Pay Commission.

SUBMISSION OF THE
TRADE UNION SOLIDARITY COMMITTEE
BEFORE THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000

Trade Union Solidarity Committee
6, Neelkanth Apartments, Gokuldas Pasta Road
Dadar (East), Mumbai 400014
Phone 4102252, Phone/Fax 4150750
E-Mail *aibef@yahoo.com*

4 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Sirs,

Trade Union Solidarity Committee (TUSC) is a platform of several unaffiliated autonomous unions functioning at plant/company level in and around Mumbai-Thane.

TUSC is making the following submission before the commission since trade unions are concerned about the conditions of labour existing in the country and the grave danger they are subjected owing to the changes being brought about specifically to suit the demands of the employers in view of the globalisation of economy and liberalisation of trade.

The Commission is aware that Vice President of India Shri Krishna Kant while addressing G-15 nations at Cairo on June 19, 2000, has pointed out that globalisation has aggravated inequities and marginalisation of developing countries from market driven prosperity. He said, “it has exposed a basic disjunction between social goals and unfettered market, particularly short term capital market”. All the developing countries, despite their initial enthusiasm about globalisation have now started seriously questioning the effectiveness of globalisation/ liberalisation prescription in poor countries. This can be seen from the statement of Jamaican Prime Minister, Mr. J.P. Patterson at the G-15 nations summit in Cairo when he said, the industrialist north must not use globalisation to shirk its past on poverty while developing nations “buckle under the burden of external debt perpetuated by those whose past transgressions, current intransigence and myopic vision will condemn us to the graveyard of penury”.

The ominous portents of globalisation and liberalisation can be seen from the above statements of Shri Krishna Kant and Mr. J.P. Patterson.

We are the unions functioning in the organised sector. We are aware that trade unions have not made any demand for setting up a commission. We are also aware that trade unions have time and again demanded revision in labour legislations in order to further protect the interest of labour and their organisations; not to curtail them. We are therefore shocked to see the terms of reference of the commission, which is, to suggest rationalisation of existing laws relating to labour in the organised sector and to suggest an “umbrella” legislation for ensuring a minimum level of protection to the

workers in the unorganised sector. Before setting up this Commission trade unions are not consulted and in the Commission all trade unions are not given representation.

The Commission's terms are narrow will become clear with a casual comparison of the terms of reference before the First National Commission on Labour. Let us quote the terms of Reference before the First National Labour Commission :

1. To review the changes in conditions of labour since Independence and to report on existing conditions of labour;
2. To review the existing legislative and other provisions intended to protect the interests of labour, to assess their working and to advise how far these provisions serve to implement the Directive Principles of State Policy in the Constitution on labour matters and the national objectives of establishing a socialist society and achieving planned economic development;
3. To study and report in particular on:
 - i. the levels of workers' earnings, the provisions relating to wages, the need for fixation of minimum wages including a national minimum wage, the means of increasing productivity, including the provision of incentives of workers;
 - ii. the standard of living and the health, efficiency, safety, welfare, housing, training and education of workers and the existing arrangements for administration of labour welfare — both at the Centre and in the States;
 - iii. the existing arrangements for social security;
 - iv. the state of relations between employers and workers and the role of trade unions and employers' organisation in promoting healthy industrial relations and the interests of the nation;
 - v. the labour laws and voluntary arrangements like the Code of Discipline, Joint Management Councils, Voluntary Arbitration and Wage Boards and the machinery at the Centre and in the States of their enforcement;
 - vi. measures for improving conditions of rural labour and other categories of unorganised labour; and
 - vii. existing arrangements for labour intelligence and research; and
4. To make recommendations on the above matters.

The present terms of reference run counter to the guarantees provided under the Constitution of India under its Fundamental Rights and Directive Principles of State Policy. The Directive Principles of State Policy have clearly laid down the following about which there is no reference either in the terms of reference or in the guidelines attached to it. The First National Labour Commission had dealt with Directive Principles of State Policy elaborately.

For the ready reference of the Commission, we are reproducing following Articles of our Constitution :

Article 39

The State shall direct its policy towards securing:

- a. that the citizens, men and women equally, have the right to an adequate means of livelihood;
- b. that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- c. that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment;
- d. that there is equal pay for equal work for both men and women;

- e. that the health and strength of workers, men and women and the tender age of children are not abused, and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- f. that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41

The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want.

Article 42

The State shall make provisions for securing just and humane conditions of work and for maternity relief.

Article 43

The State shall endeavour to secure (by suitable legislation or economic organisation or in any other way) to all workers, — agricultural, industrial or otherwise — work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43A

Article 43A (introduced by the Forty-second Amendment, 1976) provides that the State shall take steps (by suitable legislation or in any other way) to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

The Constitution guarantees full protection to every citizen in the country, economic, political and social. There is no provision in the Constitution for a “minimum protection”. We therefore, strongly feel that the setting up of this Commission with the terms of references as cited above is explicitly intended to work against the Constitutional guarantees. In view of this the Commission is constrained to work under compulsive situation that would go against their constitutional responsibilities. In effect the Commission has no right to exercise any genuine authority to protect the workers. This means the Commission is constituted to work towards the protection of certain politically powerful interests that threaten economically the sovereignty of our nation. It is under these circumstances we are of the considered opinion that such a Commission ought to be scrapped. However, the subject of labour being of utmost concern and interest to the workers and unions and if the Commission chooses not to dissolve itself, we set out below our views on some of the aspects without prejudice to our rights and contentions and with liberty to amend, alter, revise, expand, or withdraw our submissions. We reserve our right to challenge the constitutionality and validity of the recommendations, made by the Commission if they are found contrary to the interests of workers.

The Commission at all times and circumstances is duty bound to guarantee constitutional protection given to workers and unions and should not interfere with any of the existing rights under any law enjoyed by the workers.

The Commission must take into consideration the havoc globalisation and liberalisation brought on the organised sector labour so far in the sense that several thousand workers have been thrown out of employment through closures, lockouts and voluntary retirement schemes.

Globalisation is just another name of Corporatisation and Corporatisation merely stands for amassing wealth by a few.

Globalisation's success depends on massive unemployment, deregulation of labour, disintegration of society and reduction of labour cost and for this purpose globalisation speaks about labour market as if labour is a mere commodity for hire and fire. The Commission is expected to achieve this goal.

The oldest organised industry in Mumbai i.e., textiles has been virtually wiped out and thousands of workers have been mercilessly thrown out of work and hundreds of them have been pushed to unorganised powerloom and handloom sector producing textile to clothe the nation and also export garments from India to earn foreign exchange for a section of producers. Inhuman work conditions prevail in the unorganised sector. Mumbai textile workers became victims of liberalisation even before the New Economic Policy came into existence in 1991. As a result, over 2 lacs workers have lost jobs during the last decade. Those who have lost jobs and the livelihood have no means of survival since the government which aims at liberalising trade and industry to meet international competition has no programme or policy of social security for the uprooted workers and their families on a permanent basis. The situation of the textile workers is alarming. Hundreds of youngsters unable to get jobs for a decent living look to other avenues for earning money and in a place like Mumbai avenues of easy money lead them to anti-social activities and several of them have already fallen prey to allurements and have become victims of goons and gangsters. Commission cannot close eyes to this reality. The Commission must necessarily look into these devastating ill-effects on the working class.

It was with a view to avoid such a calamity, our Constitution was amended to incorporate Art. 31(1) in the context of Bombay High Court ruling against the take over of Sholapur Mills. This was followed by the setting up of National Textile Corporation by taking over sick textile mills in the country. The vision with which National Textile Corporations and public sector units were created can be ignored only by blind adherence and total submission to the dictates of Trans-National Corporations for creating a market driven economy to loot the people.

Therefore, we suggest that the Commission must set up a Committee of experts to report on the ill-effects of globalisation in Indian industries in different parts of our country precisely to evolve an appropriate recommendation that would give justice to the workers and an alternative to the industrial development. At this stage, we can only emphasise that the Commission should not feel strangulated, and, understanding the situation should initiate steps that would promote employment, create healthy and harmonious industrial relations in addition to generating overall development of our economy that alone would give hope to the millions aspiring to have a decent living. We hope that this Commission would rise to the occasion to refuse to toe the globalisation agenda of the government.

Mumbai-Thane area produced nearly 80% of pharmaceutical products till the onset of liberalisation and globalisation. The government's open market policy has been used and misused by the employers in this sector as a result about 17000 workers have

been thrown out of employment from pharma sector during the last one decade. The government has subsidised this highly profitable pharma industry to prune labour force by forgoing tax to the extent of Rs 250 crores. This exercise was carried out unit after unit in this industry to reduce labour cost. It is pertinent to emphasise here that the reduction of labour cost was not at all needed for this industry to be competitive. This industry, basically, under the control of multinationals, went into downsizing through the so-called Voluntary Retirement Schemes with a greed to amass huge profits with the explicit intention of repatriating substantial profits abroad and in addition to disposing of their real estate, closing down their units and sub-contracting the production to innumerable sweat-shops. In these sweat-shops the workers are working under forced labour conditions without having any social security or even statutory minimum wage. In fact the pharma industry engaged in steps which put back the labour condition prevailing at the end of 19th century in Indian industry. It is unfortunate that the government played the role of an active collaborator in creating such degrading working conditions.

This highly profitable industry led by the multinationals could hoodwink the government as well as the public by pretending to be non-competitive in the so called liberalised atmosphere. This liberalised atmosphere became conducive for them to generate high profits at the cost of ex-chequer. In fact the government conceded willingly hundreds of crores of tax concessions at the cost of thousands of jobs. Indeed such a concession for VRS was not at all needed. This has pushed thousands of workers into unemployment, miserable conditions of life and in some cases pushing them to *commit suicide*.

The engineering industry which occupied a place of pride has also been adversely affected on account of government's industrial policy. Several small, medium and large engineering companies have either been closed down or its manufacturing activities have been severely curtailed, the impact of this policy change has led to mushrooming growth of contracting and sub-contracting production units in interior parts where the unscrupulous employers get production from unprotected workers without any liability to pay statutory minimum wages or to provide social security measures. Globalisation has led to untold misery and devastation. Hundreds of engineering units, in and around Mumbai, closed down their units by adopting various methods including the abandonment of units by the owners themselves. The illegal lockouts and/or non-payment of wages in companies like Guest Keen Williams, Modistone, Rallifan, Ralliwolf, Oswal Petrochemicals, and textile mills like Khatau, Matulya, Mafatlal etc., continued inspite of court orders. Employers pay scant attention to the court orders and often willfully flout court directives. This poses serious threat to the rule of law and create a condition of discontentment among the workforce. Such a situation in a democratic set up is the most dangerous one because it can breed tension, conflicts and revolt. This is a serious matter that needs utmost attention of this Commission.

Referring to the questionnaire: they are heavily loaded in favour of the forces of globalisation, the employers. The questions reveal that the commission has already come to the conclusion that workers and their organisations have to work within the liberalised/ globalised sphere and they are bound to work according to the needs of market economy and as such they are expected to forgo whatever social gains and advantages earned through their past efforts through collective bargaining and tripartism. We have decided not to follow the questionnaire form.

TUSC would like the Commission to consider the following and make recommendations accordingly :

i. Right to work be recognised as a fundamental right and the same be made enforceable in Law.

Every attempt should be made to give priority for employment generation. Keeping this in view the government must stipulate certain policy guidelines for promotion of industrial growth linking it with employment growth, while inviting investments for economic growth a stipulation is absolutely essential to have investments linking with certain minimum number of employment, for example, to say a crore of investment must link it with a minimum level of direct employment of 100 jobs. If such a policy is evolved there will be a situation of employment growth coupled with economic growth. This in effect will have an economic growth with employment growth instead of having a jobless growth that creates hardship, misery, deprivation and denial of human rights.

If the Government is unable to provide work, unemployment allowance should be paid. The amount of unemployment allowance should be adequate enough to satisfy the basic needs of a family.

ii. No existing rights of the workers and their organisations be taken away through the recommendations of the Commission.

iii. The Commission must recommend widening the already limited rights of workers and unions, namely :

- a. That the government must ratify ILO conventions and recommendations hitherto not yet ratified concerning promotion and protection of employment, welfare measures, social security, health and safety and various other labour rights;
- b. Representative body of the workers must be determined through secret ballot with a provision for review in every two years;
- c. A mutually acceptable Trade Unionist agreed upon by the contesting parties be entrusted with the responsibility of conducting the secret ballot. In case of a dispute on the choice of the person to conduct the election, an officer appointed by the Registrar of Trade Unions shall conduct the election;
- d. Services of employees should not be terminated/dismissed on the question of misconduct without getting prior permission from judicial authority; this will ensure on the one hand maximum restriction on victimisation of workers and trade union activists and misuse exercised by employers in the name of managerial prerogative and, on the other, prevent, eliminate considerable number of court cases on account of unjust and illegal victimisation/terminations/dismissals from service by the employers;
- e. Domestic enquiry into alleged misconducts of workers be conducted by Enquiry Officers enjoying confidence of both sides to ensure impartiality. The present practice of unilaterally appointing persons who make enquiry a "business" and draw fabulous payment from employers be done away with;
- f. There should be no contract work within an establishment and no work of perennial nature be subcontracted;
- g. If any casual work is to be done through a contractor, such contract worker should be appointed with the written approval of the principal employer with a guarantee of wages at the rate applicable to regular workmen and with a clear understanding that the worker will continue as long as there is work even if the contractor is changed;
- h. Definition of "workman" in Industrial Dispute Act, 1947, should include "contract workman" also. The wage limitation in the existing definition of workman under the Industrial Dispute Act, 1947, be eliminated and it should cover all employees;

- i. The ceiling on the eligibility of Bonus under the Bonus Act be deleted;
- j. There must be an insurance linked gratuity fund whereby the owner of every industrial establishment shall compulsorily deposit every year the amount of gratuity eligible to each employees and the gratuity be paid to the employees directly from this fund immediately on his retirement, resignation or termination. Such a provision in the Gratuity Act will alone ensure the Gratuity Payment to the workers. This submission is made because in large number of industrial units thousands of workers are denied Gratuity payment in time and they are made to run from pillar to post to secure their hard earned terminal benefits.
- k. All the social welfare legislations such as Provident Fund Act, ESI Act, Gratuity Act, Bonus Act shall be made applicable to all employees irrespective of the number of employees employed in the industry/establishment.
- l. Enforce 8-hour working day in all the industries. All employers violating statutes in this respect must be severely punished. To that effect, effective deterrence should be suggested in the existing law.
- m. During the 52 years after independence the organised industry and service in India have seen several changes taking place as a result of modernisation, automation, computerisation etc. enhancing productivity many fold while the working hours continue to remain 8 per day. To tackle the question of growing unemployment, creation of more jobs, is a prime need. With this end in view 6-hour working day in all modern industries will open up avenue for one more shift providing employment for those who are seeking jobs;
- n. Ensure equal wage for women workers in agriculture and restrict their working hours to 5 hours a day precisely in view of peculiar responsibilities shouldered by them in rural sector;
- o. There should be a national minimum wage and a regional minimum wage linked to cost of living index and the same should be need based as per the recommendations of 15th Indian Labour Conference and further enhanced by the Supreme Court in the Raptakos Brett case. The regional minimum wage can be higher than the national minimum wage.

The present consumption unit considered for wage fixation is on the assumption that a family unit is three that is male adult 1, female adult 0.8 and two children 0.6 each. This is in-adequate and unrealistic. The food requirement for woman and children is under no circumstances less than the male adult consumption units. The Indian family has one or two dependent parents or blood relations to look after. Hence, a minimum of five consumption units may be considered for fixing the minimum wage.

- p. The right to Information in respect of whole aspects relating to industrial governance must be guaranteed to the workmen.

The transparency in industrial governance can be ensured by giving information to workers in respect of annual operating plans, investments, loans, inter-corporate deposits, diversification, mergers, amalgamations, takeovers, performance of the company and its periodic reviews etc.;

- q. Whenever and wherever disputes lead to litigation between the employer and the employees/unions the cost of litigation incurred by the employees/unions should be borne by the enterprise.

The employer is often engaged in costly litigations with the intention not only to victimise but also to place the worker in a perpetual misery using the resources of the company whereas the worker has to continue the litigation at his cost or abandon it in the midst of the dispute pending in court. In such an eventuality the worker is at a disadvantage and justice is denied to him in view of inequal situation. The employer utilises company's funds to fight workers,

for the growth of such funds, the workers too have contributed. If the employer can use company's fund, the worker must also have equal right to have access to such fund for pursuing his case for getting justice. Directive Principles of State Policy enshrined in our Constitution upholds this principle. Commission should make a recommendation on this highly desirable issue.

- r. The trade union representative elected from among the employees working in the establishment must get necessary protection to pursue his responsibility as a union representative.

The employer must relieve such worker representative from day-to-day work of the company and ensure wages and benefits and continuity of employment while he/she performs the duties of the union. Such benefits should be extended to atleast one representative of a union having a membership below 300 members where no such facilities are hitherto granted by the employer. Such right should be extended to more representatives depending upon the size of union membership.

- s. Workers and their organisations must have representations in all bodies to decide all matters pertaining to labour at enterprise level, state level and national level;

We have innumerable cases where entire families have been forced to commit suicide owing to unbearable conditions since they lost their jobs. The lockouts, closures and VRS as well as low wages and unprotected service conditions have caused untold misery to the masses. 19th century working conditions are prevailing in many areas. Government and employers have been insensitive to the plight of the labour while they endlessly talk about globalisation. To the workers globalisations means globalisation of poverty, extensive criminalisation, untold hardship, corruption, freedom for employers to exploit, oppress and downgrade people.

The Commission should hear the pathetic conditions of workers in powerlooms, dyeing and printing, quarry, dumping grounds where garbage is disposed off from the city, locked out/closed units in and around Mumbai-Thane. TUSC wishes to produce affected workers for giving evidence before the Commission.

TUSC demands that the Commission must visit a few of the selected work places where inhuman work conditions prevail in the above mentioned areas. We want the Commission to visit handloom units in Bhiwandi, quarries in Mumbai and Navi Mumbai, Dyeing units in Bhandup, dumping grounds in Deonar, Chembur, Mumbai. This will serve as an eye opener to the Commission as much as it will get first hand information before it suggests rationalisation of laws relating to organised labour sector as well as suggesting an "umbrella" legislation for the unorganised workers.

Highlights

We trust the Commission will give due weightage to the points raised by us and would agree to :

1. Uphold the Constitution in all respects and particularly Articles 39, 41, 42, 43 & 43A in the Directive Principles of State Policy;
2. Expand existing trade union rights;
3. Appoint a committee of experts to study the ill-effects of globalisation and liberalisation on organised as well as unorganised sector workers;
4. Agree to visit work places to see real condition of labour;
5. Insist on linking investment with employment generation i.e. atleast 100 direct jobs for every 1 crore investment.

The above submissions are made without prejudice to our rights and contentions stated hereinabove.

Yours sincerely,

Working Committee Members
Trade Union Solidarity Committee

SUBMISSION OF THE
ALL-INDIA BLUE STAR EMPLOYEES FEDERATION
BEFORE THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000

All-India Blue Star Employees Federation
6, Neelkanth Apartments, Gokuldas Pasta Road
Dadar (East), Mumbai 400014
Phone 4102252, Phone/Fax 4150750
E-Mail *aibef@yahoo.com*

4 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Sirs,

All India Blue Star Employees Federation (AIBEF) represents employees in Blue Star Limited (a private sector engineering company) in its establishments in Mumbai, Pune, Ahmedabad, Bharuch, Delhi, Kanpur, Chandigarh, Calcutta, Jamshedpur, Chennai, Secunderabad, Bangalore & Cochin. This company of 57 years standing employs about 2800 people.

We are making this submission before the Commission to highlight the approach and attitude of Blue Star Ltd. as an employer in respect of unions managed by internal employees.

AIBEF is conscious of the fact that the commission has been set up to speed up the economic reform process and more than 80 per cent of our population falls outside this process despite governmental leaders of all hues swear day in and day out that it is in the name of the masses they are venturing to reform the economy. The sole intention of the reform package is to further enrich the haves. We know the reference before the Commission is limited “to suggest rationalisation of existing laws relating to labour in the organised sector and to suggest an “umbrella” legislation for ensuring a minimum level of protection to the workers in the unorganised sector.”

These terms are very narrow leaving no scope for a proper study of all aspects concerning conditions of labour and work environment.

We are of the considered view that the Commission should not dilute, narrow down or reduce any of the social gains of workers in this country which they have earned through decades of struggle first against colonial rulers and then from the governments after the country became independent. The Directive Principles of State Policy in the Constitution have provided certain ideals to be achieved for the downtrodden as the country marches forward. The First National Commission on Labour had referred to these principles. It is our hope that this Commission would not ignore its constitutional obligations in upholding the ideals set by the founders of our constitution.

The narrow framework of the terms of reference with which the commission is expected to work bears testimony to the above statement. This is clear from the note accompanying the reference which stipulates that labour reforms are required to meet the liberalisation/globalisation agenda of the government which means the labour laws must be further deregulated and the already ill-protected section should be left to the mercy of the profit greedy corporations. Unfortunately, employers, foreign and Indian alike have been masquerading as the only section solely devoted to building an economically healthy India and raise its GDP and face global competition. In order to achieve such a “laudable” national objective they and the media controlled by them, have among other things been blaming “labour rigidities”, “lack of labour flexibility” as some of the reasons for demanding so-called labour market regulation and based on these demands of the employers, the commission has come to be set up. Hence, we have no doubt about the reasons for narrow reference and the ultimate outcome of the exercise.

Brief Background of our Federation

Formed in 1975 and recognised by the company in 1980 after 5 years of protracted agitation vide a settlement signed in conciliation on behalf of 12 constituents unions functioning in 12 cities and towns our Federation is run by employee representatives. There is only one Federation in the company.

The last settlement between the Federation and the Company took place in 1985. On the expiry of 1985 settlement Blue Star management refused to hold negotiations with the federation.

Going back further, there was no union in the company from 1943 to 1971 and no settlement was possible between the management and workmen till 1972. All efforts on the part of the employees to form unions became unsuccessful because of the belligerent attitude of the employer. Initially the hostility was to outsiders leading the union. This intransigence of the employer necessitated formation of unions with internal workers in its leadership. However, the management of Blue Star did not take kindly even to this initiative of the workmen.

The formation of the federation in 1975 led to instant dismissal of two leading activists in Bangalore and Secunderabad allegedly under the garb of maintaining “discipline”.

After the expiry of 1985 settlement and the refusal on the part of the company to enter into negotiations with the elected representatives of recognised Federation, litigation mounted in the company. There were nearly 200 cases going on simultaneously in different parts of the country.

Wage Settlement with Individual Workers

To scuttle the efforts of our Federation to reach a settlement either through direct negotiations or through adjudication the management evolved a strategy of large scale victimisation of union activists and luring individual employees to sign wage settlements provided they agreed to dissociate themselves with the local union and the Federation. Thus, the company violated workers Right to Association and Right to Collective Bargaining.

Some questions arise from the above.

1. Whether an employer has a right to refuse freedom of association and collective bargaining even if there exists only one representative union of workers ?
2. Whether an employer on his money power has a right to bust workers unions at will ?
3. Whether an employer has a right to enter into “wage” settlements with individual employees even admittedly they are members of recognised union?
4. Whether an employer can compel individual employee to dissociate from unions in order to get wage rise ?
5. Whether an employer should have the right to victimise union activists who do not agree to the terms arbitrarily set by the employer for a settlement ?

Answers to the above questions are not only relevant to Blue Star but also in several other companies following such practices.

Apart from the above Blue Star Limited took a stand that no employee representative will be allowed to carry out trade union activities during working hours. Practice followed in this respect was arbitrarily changed and argued that it was the sole right of the employer to give concessions and/or to withdraw the same. Nearly 44 elected union officials in Blue Star came to be victimised from 1989.

Commission’s Questionnaire

The Commission in its questionnaire has raised questions on the subject of union functionaries carrying out union work during duty hours.

We refer to Question Nos.31 and 59 in this respect, under the caption ‘Trade Unions & Employers Organization’. “What are the advantages of internal union and what are its disadvantages, What would you prefer, internal union or union with external leadership. Again, under Question No.59, it is asked - What should be the role of trade union leaders during working hours/on the shop floor, in redressal of grievances ? Should the workmen who are union leaders be allowed freedom to leave the work/workplace during the working hours to perform functions of union elders ? Should they be allowed to leave workplace/shop floor ?”

In this connection, AIBEF would like to draw Commission’s attention to the report of the First National Commission on Labour and also the Recommendation No.43 of International Labour Organisation (ILO) which are relevant.

The First National Labour Commission in Chapter 20 of its report has dealt with Workers Organisations.

In para 20.50 while dealing with outsiders in Trade Unions and alternatives methods the Commission has made the following comments :

“The right course would be to take steps to promote internal leadership and give workers a more responsible role to pay and keep them outside the pale of victimisation. Without creating conditions for the building up of internal leadership, a complete banning of outsiders would only make unions weaker.”

Further, in para 20.51 the Report observed :

“Already, the fact that unions in some ‘white collar’ employments and in newly developing industries which require an adequate complement of educated workers

are managed effectively by persons from the rank and file lends support to this view. Industries of the future will be mostly of the type where employment of educated workers will be the rule.” Going further the Report said “with the spread of workers’ education and a greater emphasis of training of trade union workers, we hope internal leadership will develop. Adequate protection against unfair labour practices, an important factor inhibiting the emergence of internal leadership, will also help. Compulsory recognition of majority unions to represent workers and negotiate on their behalf, recommended elsewhere, will vest union officials with greater responsibilities and will give them the needed confidence to build up competent internal leadership. Added to these, if legal procedures are simplified and industrial relations practices are rationalised, workers will certainly be able to stand on their own. The compulsions of developments taking place in the sphere of industrial relations will by themselves provide a check to outside influence. To hasten the process of building of internal leadership, the permissible limit of outsiders in the executives of the union should be reduced.”

The Commission did not stop there. It went further. In para 20.53 of this Chapter the First National Commission has made the following recommendations :

“We are of the view that outsiders in trade unions should be made redundant by forces from within rather than by a legal ban. Simultaneously, legal position to protect internal leadership should be strengthened. Along with this, measures will have to be taken on several fronts to strengthen forces for building up internal leadership. For this we recommend the following steps:

- a. intensification of workers’ education;
- b. penalties for victimisation and similar unfair labour practice;
- c. intensification of efforts by trade union organisers to train workers in union organisation; and
- d. limiting the proportion of outsiders in the union executives as follows:
Where the membership of a union is:
 - i. below 1,000 the number of outsiders should not be more than...10%
 - ii. between 1000–10000...20%
 - iii. above 10,000...30%
 - iv. the permissible limit for industrywise unions should be...30%
- e. treating all ex-employees as insiders;
- f. establishing a convention that no union office bearer will concurrently hold office in a political party.

It is not a mere coincidence that the International Labour Organisation has also made similar recommendations (Recommendation No.43) in respect of rights to be granted to workers representatives. We reproduce the following :

“Dealing with Facilities to be afforded to workers Representatives, it is recommended that workers representatives in the undertaking should be afforded the necessary time off from work without loss of pay or social and fringe benefits, for carrying out their representation functions in the undertaking.”

It is also the recommendation of ILO that workers representatives in the undertaking should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers representative or on union membership of participation in union activities. According to ILO :

“Workers representatives in the undertaking should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representative functions”.

Workers representatives should be granted without undue delay access to the management of the undertaking and to management representatives empowered to take decisions, as may be necessary for the proper exercise of their functions.

Workers representatives be authorised to collect dues regularly on the premises of the undertaking.

Workers representatives acting on behalf of a trade union should be authorised to post trade union notices on the premises of the undertaking in place or places agreed on with the management and to which the workers have easy access.”

Blue Star Limited made a vain attempt in 1994 to withdraw the recognition accorded to the federation. When this matter became a dispute between the Federation and the company and when the federation sought intervention of the Hon'ble Bombay High Court in deciding the fate of federation recognition Hon'ble Justice Mr. R.M. Lodha in his 1997 order held that the attempt on the part of the company amounted to unfair labour practice and the company has no right to withdraw the recognition accorded to the federation. Yet Blue Star Limited has refused to hold discussions and bargain collectively with the federation. We hope Commission will take serious note of such blatant disregard of the court orders by employers like Blue Star. We trust the Commission would agree with us that for the promotion of harmonious industrial relations, the employers must recognise the right of employees to form and run union without hindrance and interference. Trade union should be free of employers.

In the case of Trade Union work with pay while on duty, Blue Star Limited went before the High Court, Mumbai and Division Bench held that a concession granted by the employer to do union work by an employee representative can be withdrawn.

From the above it becomes clear that internal leadership has to be developed/encouraged to manage the affairs of a trade union and the internal leaders should be protected from unfair labour practices and victimisation by the employer for fearlessly taking up the cause and grievances of their members.

In this information era trade union leaders must have time to attend to training programmes on labour issues and this should be considered as an essential requirement of the industry. Trade union representatives should be allowed time off with pay for trade union training courses of their choice.

The employer engages a battery of officers and managers to deal with labour at the cost of the company. Employers provide training to these managers to update their knowledge. Employees who are equally contributing to the creation of wealth for the company must also be considered as equals for receiving time off and wages and benefits for performing their trade union functions and undergoing training in labour matters.

Conclusions

The Commission's recommendation should include that :

1. Workers have a right to form their unions and elect their representatives; employers should be debarred from interfering with the rights of workers;
2. Employer must follow collective bargaining process, negotiate with trade unions and their elected representatives;
3. No “wage” settlement with individuals;
4. Trade Unions representatives be given time off on full pay to attend trade union training programmes, attend to employee grievances, dispute resolving processes, conciliation matters, courts, etc;
5. At least one union representative be relieved on full pay and benefits to perform union functions wherever such practice does not exist.

Your sincerely,

N. Vasudevan
General Secretary, All-India Blue Star Employees Federation

SUBMISSION OF THE
KAMGAR AGHADI
BEFORE THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000

Kamgar Aghadi
252, Janata Colony
R.N. Nadkar Marg
Ghatkopar (E), Mumbai 400077
Phone 5163606, 5119114

3 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Sirs,

We are giving our submissions during the hearing which is being given to us on 4th July 2000 between 11.50 a.m., to 12.30 p.m., at Mumbai. We are having the following registered composite trade unions functioning in Maharashtra and Gujarat States founded by late Dr. Datta Samant, a prominent trade union leader and ex-M.P.:

1. Maharashtra General Kamgar Union
2. Association of Engineering Workers
3. Association of Engineers & Officers
4. Best Kamgar Union
5. Maharashtra Girni Kamgar Union
6. Maharashtra Surksha Rakshak Aghadi

We have also few internal unions of which we are the office bearers and these unions are affiliated to Kamgar Aghadi. We are having 150 small and big unions with about 2 lakhs members.

At the outset we submit that the Government of India has taken reference of this Commission mainly for amendment to Labour Laws to support rapid technological changes, trade and services, globalisation of economy, liberalisation, international competitiveness etc. There is also privatisation of the public sector. It is, therefore, feared in the trade union circles that it is the Government and the employers who want a change in the Labour Laws to suit the above conditions especially for the employers and there was hardly any initiative from the working class or the trade unions to appoint a Commission. Some of the Issues being addressed to the Commission are the following:

- a. To implement globalisation, reduce costs to afford competition, remove Chapter VB from the Industrial Disputes Act, 1947. Here the trade unions and the workers feel that there is no necessity of removal of Chapter VB of the Industrial Disputes Act, 1947. There is a provision for closure, retrenchment for which the employees have to approach the Government where the trade unions can have a Say. It is, therefore a safeguard from the malpractices and malafides on the part of the

employers. The Kerala High Court in Laxmi Starch Ltd., v/s. Union (LIC July 1992, Page 1337) has given the following observations:

“After having taken advantage of several concessions and incentives and facilities and after having invited a large number of persons to join as employees, the employer cannot choose his own time and terms to close down.”

Therefore, there is no justification to remove Chapter VB. It will create serious repercussions if unrestricted powers are given to the employers for closure, retrenchment, lay off etc.

- b. There is a practice of offloading 100% production work and the workers are kept idle and then retrenched. Such employers seek permissions under Chapter VB under the plea of no work or less work.
 - c. The general understanding that high wages are responsible for bad performance. The wages form 2 to 15% of the total turnover. The Management has 85 to 90% of the turnover amount in which they can make changes, savings etc., under the various other heads. For example, Customs duty in India is average 30% as against only 3.5% in the developed countries. The managerial costs, interest, depreciations, commission, etc., are much more than the wage costs. It is also stated that many companies approach BIFR to get various financial concessions although not genuinely sick. Industrial sickness is, therefore, a matter to be always examined by a third party and not by the employer himself. Some Mill owners in Mumbai City are closing their mills having chronic sickness but are building towers in the premises.
 - d. While laws are sought to be made favourable to employers on the other side many employers are flouting even the orders of the Courts. Laws, are, therefore, only against the workers and the employers are hardly affected. They will take full advantage of the laws against the employees.
 - e. The problem arising out of the present scenario are:
 - i. Globalisation benefits not reaching the common man, workers, but only few rich and those in I.T. Industries.
 - ii. Growth in employment is almost zero due to automation, literal imports and resultant recessions, closures, VRS etc.
 - iii. Foreign investments is coming only in I.T. sector and not in any other essential or core sector.
 - iv. Privatisation of P.S.U.s and reduction in their activities like NTC mills has an adverse effect on employment.
 - v. Investors feel insecure and the workers also feel insecurity of their jobs.
 - vi. Increase in contract casual labour, availability of highly qualified workers, technicians, graduates, who are ready to work at low wages.
 - vii. Increased expectations of consumers for cheaper and better quality goods readily available with imports.
- For most of the above problems the remedy is not changes in Labour Laws. It has to be seen from other points of view like handling of finance, technology, ethics of quality consciousness, reasonable profitability, curbs on industrialists having high standard of living and lavish spending etc. One big industrialist having all his units sick and getting closed one by one believes in Vastu Shastra where he spend lakh of rupees for making changes in gates, doors of officers, walls etc. He visits Tirupati Temple regularly once a month by flying from Calcutta and giving alms in xxx daity. All his companies are before BIFR seeking reliefs from Government taxes, bank interests etc. Many workers in his closed factories are on road without getting even gratuity.
- f. The trade unions and the workmen also amicably settled many issues by multi skilling, multi tasking, increase in the productivity, curtailing cost of canteen, transport, misuse of medical insurance bills etc. The organised workers also

- suggest methods for large scale savings in processes. There is, therefore, full consciousness amongst the organised workers to avoid any wasteful practices.
- g. For unorganised labour there is too much exploitation as it suits the employers and there is need for having laws governing their employment viz., an umbrella legislation. It may, to be seen whether the employers will follow the labour laws which are made for these unorganised labour.
 - h. We find a large number of small units almost about 50% in many industrial colonies in Maharashtra (MIDCs) are closed for various reasons which are not at all attributable to the workmen. It will not help them by changing or making any labour laws but the real reasons for their sickness are to be examined in different field than labour.
 - i. Labour Laws like Minimum Wages Act, Contract Labour (Regulation and Abolition) Act, Employees Provident Fund and Miscellaneous Provisions Act., etc., are not followed by employers in unorganised sector for which no Government machinery is active. These employers make a general statement that they cannot afford even these minimum provisions of labour laws. Can there be anything less than the minimum which they are expecting from this Honourable Commission?

We, therefore, strongly urge that this Honourable Commission should not be misled or impressed by the propoganda being made by the employers and even the Government with regard to so called rationalisation of labour laws to favour them. We are, however, suggesting amendments/improvements in some of labour laws which we find necessary from our day to day functioning in industrial relations.

Industrial Disputes Act, 1947:

Section 2(m), Public Utility Services

The authority given to the appropriate Governments for declaring an industry as public utility services is being misused in collusion with the employers, for example, Bakeries in Mumbai City are continuously declared as public utility services while the minimum wages paid to bakery workmen are extremely low and they are not paid any special allowance bearing with the consumers price index for the working class. The bakery workmen cannot agitate because of this restriction. There is no provision of even allowing a hearing to the Union of the workmen before declaring any industry as public utility services. This clause should be duly amended.

Section 2 (s)

The definition of the workmen should include contract labour, the various workmen working under Mathadi Boards, Security Guards Boards etc., in Maharashtra State. It should also include the officers, supervisors and the pay limit of the supervisors of Rs 1,600.00 should be removed.

Section 3

The Government's discretion in confirming the workmen conditions should be removed and the workmen conditions should be made statutory.

Chapter III

Union or the workmen should be allowed to directly approach the Courts or the Tribunals for their disputes. Conciliation process should be kept only as an alternative measure.

Chapter V, Section 25

Prohibition of payment to illegal strike and lock out should be more elaborate as at present this is being totally neglected. There are many more lock outs than strike and the adding of lock out is to be further elaborated.

Chapter V(B)

This chapter should not be deleted as is being stressed by the employers lobby. They have the remedy of getting permission from the appropriate Governments. It clearly amounts that the employers not having faith in the respective Governments when they want the abolition of Chapter V(B). They are exposed to various questions by the union even with regard to their last three years balancesheets which they do not want. It will clearly amount to encouraging their misdeeds if Chapter V(B) is removed. The Government is more aware about the conditions of the employers and the industries than anybody else. This is only forum where Union and the workmen can question an employer. In genuine cases the Governments are giving permissions.

The Second Schedule and the Third Schedule are to be further extended and number of matters should be added.

Industrial Employment (Standing Orders) Act, 1946

The provisions in "E" schedule of the Act and the Model Standing Orders formed by the State are as follows:

"The employment of a permanent workman employed on monthly rate of wages may be terminated by giving him one month notice or on payment of one month's wages in lieu of notice".

This provision is held illegal by the Supreme Court first in Inland Water Services, Bangalore, case and in many other cases subsequently. The termination can be done only after issuing chargesheet and holding enquiry. This provision should, therefore, be deleted.

The Schedule giving matters to be provided in Standing Orders should either be extended or should be made stricter for certification of Standing Orders. The matters beyond the schedule should not be allowed to be certified. The Section 10-A – Subsistence allowance during suspension pending enquiry should be made full wages after 180 days as is provided in Model Standing Orders by Maharashtra State Government. There is a disparity between the State employees and the Central employees in this regard. Also many employees also getting the Standing Orders certified with only 75% wages as subsistence allowance because it is in the Central Act. "Section 10-a(3)" — "the words in other law for the time being in force in any state" should be suitably altered because the Model Standing Orders are not considered to be the other law than the Standing Orders Act and, therefore, the Courts have ruled accordingly. The benefit of full subsistence allowance is not, therefore, available to workmen because of this interpretation. The punishment provided in the Standing Orders viz (a) Warning, (b) Fine (c) Suspension for a period of not exceeding 4 days and (d) Dismissal are not proper. Between suspension and dismissal there should be one or two more provisions like temporarily refrain or reduction in grade etc. Since the dismissals are more rampant because of the non provision of lesser punishment.

Procedure laid down in the department enquiry should provide the necessity or otherwise of an outsider Enquiry Officer, Management Representative who are the highly paid professionals always favour the employers.

The enquiry proceedings should be recorded in the local language followed by the workmen for which there is no provision in law.

Payment of Bonus Act

Limit of wages for eligibility of payment of bonus should be either raised to Rs 6,500.00 or completely removed as in case of Employees State Insurance Act where this limits has been raised to Rs 6,500.00. The eminity under the Bonus Act to the employers questioning the bonafides of the provides and the presumption of the accuracy of the balancesheet under Section 23 of the Act should be removed and the Unions and the workmen should have a right to question the same.

Payment of Wages Act

The wage limit of Rs 1,500.00 in this Act should be removed and should be made applicable to all the employees as provided in Section 1(6) o the Act. There are many cases where the eages are not being paid to the organised labour and there is no legal remedy against the same.

Contract Labour (Regulation And Abolition Act), 1971

More elaboration is required in provisions of the State Advisory Boards under Section 4. In Maharashtra State the Board itself is not constituted for months or years together and there is no remedy for thousands of contract labour whose cases are pending for reference to the Board.

The registration and licensing to the employers of the contractors should be made strict. The Unions in the industrial undertaking should be informed or consulted while giving registration or licence.

The limitation of 20 workmen for registration and licence should be removed because it is being misused. The absorption of contract labour after abolition should be provided in this Act suitably after Section 10.

Trade Unions Act, 1926

The provisions of Section 22 regarding outsider office bearers should not be changed or reduced to less than 50% as is being amended by the Central Government. The minimum requirement of 10% membership for registering an Union which has also been suggested in recent amendment by the Central Government is required to be clarified. This membership include the contract labour, casual or temporary labour etc., because in many units there is large work force of contract and temporary workmen. If they are not included in the membership list, the unions cannot be formed at all in such units.

There is no provision in the present Trade Unions Act for resolving the disputes between the office bearers and/or the members of the trade union. There is Section 28 (1-A) in Maharashtra Act but not in the Central Act. Event this provision is not adequate because it requires the consent of the Registrar and the trade unions for raising the dispute to the Industrial Courts. The Registrars are not giving consent and are raising their discretion by favouring one set of office bearers against another.

Yours faithfully,

P. N. Samant
President, Kamgar Aghadi

SUBMISSION OF THE
TRADE UNION CENTRE OF INDIA
BEFORE THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000

Trade Union Centre of India (TUCI)
1, Bharat Niwas
Soonawalla Agiary Road
Mahim, Mumbai 400016
E-Mail *sanjayx@vsnl.com*

4 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Sirs,

The Trade Union Centre of India is a federation of Trade Unions with around 200 affiliated unions all over India. It is in the process of obtaining registration under the Trade Unions Act, 1926 though it has been in existence since 1988, since the decision to obtain registration was taken only recently. In Mumbai, it has various unions like the Cipla Employees Union, the Biochem Pharmaceutical Industries Employees Union and the Rashtriya Janwadi Kamgar Sanghathana affiliated to it.

We have been through the questionnaire issued by this Hon'ble Commission but have not been able to prepare an adequate reply due to constraints of time. We will be handing in a more detailed and exhaustive reply to the commission in the future at its sittings at various centres all over India. However, we wish to hand over this preliminary memorandum to you by way of generally stating our stand.

At the outset, we wish to make it clear that we do not agree with the terms of reference of this commission. So far as the organised sector is concerned, the terms of reference restrict this commission to suggest rationalisation of "existing laws". This bears the impression that there is no need to make fresh laws and confer fresh rights on the workers in the organised sector. We believe that this is far from the truth. Many of the recommendations of the 1st National Labour Commission have still not been implemented. The concepts enshrined in the Directive Principles of State Policy of the Constitution of India of providing workers with a fair wage, etc. continue to remain as mere dead letters. New problems concerning closures, contractualisation and so-called voluntary retirement schemes have arisen to confront the workers and it is our fervent belief that new laws, giving much greater powers and rights to the working class are necessary to confront these problems.

The terms of reference as regards the unorganised sector are also vague. They read as though the level of protection being provided today is too high and only a "minimum" level of protection needs to be afforded to workers in this sector. We fail to see why the word "minimum" has been used at all. In the language of wage, the minimum affords mere survival – a mere animal existence. This runs contrary to the Directive

Principles of State Policy as enshrined in the Constitution of India which guarantee a fair wage (which is above even a living wage, leave alone a minimum wage).

Then again, the fixation of the said terms of reference with “rationalisation” and with “umbrella” legislation, is representative of the focus on destroying “license raj”, in the era of liberalisation. However, it must be remembered that every new right given to workers will imply a new restriction upon capital and correspondingly, possibly a new license. “Simplification of procedure” must not become an excuse to reduce the substantial rights of workers.

Further, the terms of reference urge this commission to take into account “globalisation of the economy...” “liberalisation of trade and industry...” etc. This is a reflection of the attitude of the government, which has abjectly surrendered to the imperialists and pretends that there is no alternative to a globalised economy and to removing the protections given to Indian industry and Indian workers. They urge this commission to make the laws “conducive to a flexible labour market...” Roughly translated, this means nothing more than a return to the rule of “hire and fire”.

The First National Labour commission was appointed in 1967. Its terms of reference were based upon the Directive Principles of State Policy as detailed in the Constitution of India. We believe that even these directive principles fall short of the professed aim of “socialism” mentioned in the preamble of the Constitution. Still, they reflected the democratic principle that the state must strive towards a more equitable distribution of wealth. That it must weigh in on the side of the poor and the weak. Imperialism today is much more naked. It openly professes that the accumulation of wealth is not only morally acceptable but also desirable. The philosophy of neo-liberalism, which it espouses, restricts the state to maintaining law and order and mandates that the state shall not interfere in the daily struggle between capital and labour, between the rich and the poor, between the haves and the have-nots. The recommendations of the first National Labour Commission are still awaiting their dawn. They are now being sacrificed at the altar of neo-liberalism and the honour of tightening the noose has been awarded to the present commission.

Undoubtedly, many nice-sounding phrases like “golden mean”, “budgetary constraints” and “removal of bottle-necks” will be brought into the picture to justify the legalisation of the butchery of the working class. But all these phrases cannot hide the fact that every year and, indeed, every day, prices are rising, secure jobs are disappearing and even workers homes are being ground into the dust.

We have already existed under the New Economic Policy for around a decade and under the growing swell of monetarism, ultimately leading to neo-liberalism for around two more. It is time to take stock and see what the realities are. It is all very well for the UNDP to praise India’s record of social development but this cannot hide the fact that it still ranks 128th in the world in this aspect (lower than it did when we achieved independence). Recent statistics of the A.S.I. show that employment in India has grown over the past few years.¹ What this does hide is that this is merely the figure obtained by dividing the number of man-days of production by the number working days.

Let us not quibble about definitions and suppose that the employment has in fact risen. What is the quality of the employment that has been created? The employment in the formal sector as a percentage of the total employment in manufacturing, in

¹ See *Economic and Political Weekly*, 1 April 2000

India, fell from 24.5% in 1972/73 to 17.4% in 1987/88.² It is not also as if there has been any good news after this date. Total employment (in absolute terms) in the formal sector has almost stagnated since the past decade. It has hovered between 26.73 millions (1990) to 27.94 millions (1996). In the manufacturing sector, in the same period, employment has stagnated between 6.33 millions and 6.79 millions.³ Thus, we can safely conclude that the workers in India are being forcibly pushed from the formal (or organised) sector to the informal (or unorganised) sector.

Another effect of this model of development is that unionisation takes a bashing. According to the ILO World Labour Report, 1997-98, union membership as a percentage of non-agricultural labour dropped from 6.6% in 1985 to 5.5% in 1995. This report estimates that less than 2% of the workers in the formal and informal sectors in India are covered by collective bargaining agreements.

At the same time, production has grown by over 40 % in the period from 1993-94 to 1998-99. It may be true that the inflow of foreign investment has grown by around 80 times between 1990-91 to 1998-99 from 113 mn \$ to 8906 mn\$. However, during the same period the outflow of foreign investment has grown *390 times* from 10mn\$ to 3913mn\$. At this rate, the outflow is soon likely to outstrip the inflow. The net inflow has peaked in 1997-98 and is now falling. Since 1990 till today, over 1.4 lakhs large and medium industrial establishments have been closed down. More statistics can be quoted to show that real wages of industrial workers have fallen. That the standard of living of the workers has deteriorated. That the super profits being enjoyed by the multinationals and the comprador capitalists do not have any trickle-down effect, But reality belies the need for quoting such obvious figures. Papers have been written that prove that the new policies of liberalisation have driven more women below the poverty line and increased their initiation into prostitution. The government Economic Survey 1998-99 had crowed that the real wages of agricultural workers had grown by over 4% per annum for the past two years. (This was only the result of severely depressed wages earlier). It has had to eat crow this year when real wages for agricultural workers have fallen by over 2%.⁴

It is therefore clear that liberalisation of the economy, and the removal of protections have not helped any growth of our economy but have only helped to increase the misery and impoverishment of the people. The new globalised economy confronts the weak and bewildered worker with huge monster Multinational corporations which have massive resources at their command. It should be clear to any one who pays even lip service to the Constitutional goal of Socialism that a globalised economy calls for *more* and not less protections for workers.

This will go against the dictates of the IMF, the WB and the WTO, which want to impose a "free-market economy" upon the labour and the capital market. They constantly require newer and newer markets to exploit, failing which they must squeeze their profits out of the heightened exploitation of the workers, the environment and the consumer. To do this they require that all legal protections against such unbridled exploitation be removed. Their cries are taken up by the local associations of the capitalists like the Federation of Indian Chambers of Commerce and Industry (FICCI), Indian Merchant's Chamber (IMC) etc. The CCI (Confederation

² See A.K. Ghose, "Economic restructuring, employment and the safety net: a note" in *Social Dimensions of Structural Adjustments in India*, New Delhi: ILO-ARTEP, 1992

³ Statistics from the web site of the Asian Development Bank, <http://www.adb.org>

⁴ Praful Bidwai, "India's Bubble Economy Booms as Poverty Grows", *Financial Express*, Tuesday 11 April 2000

of Indian Industries) has it stated on its web site that section 25-O of the Industrial Disputes Act, 1947 brings too much “rigidity” into the labour market. The same complaint is echoed in respect of sections 25-N and 9A of the I. D. Act. Mr. Hakeem of SCOPE (the apex organisation of Public Enterprises) says that the contract labour system must be allowed to exist if Indian Public Enterprises are to compete with MNCs. This is obviously a frivolous statement when it is well known that the government intends to privatise all the plum public enterprises and will most likely be selling them to those self-same MNCs. So goes the cry of the “running dogs” echoing the sentiments of their masters. The governments of both the BJP and the Congress have openly expressed their willingness to act as the midwives for this change. It is in such circumstances that this commission is launched and we hope that it will be something more than a mere doormat to welcome the depredations of the imperialists. It is with that hope that the following concrete changes in the law are being suggested.

Before getting to the actual proposals, it is necessary to bring certain ground realities to the attention of this Hon’ble Commission. Today, with the growth in technology and particularly in information technology, the earlier trend of building huge monolithic enterprises has disappeared. In its place we have the decentralised business. The new mantras of the production “gurus” are “flexibility” and “just in time” production. In short, the Toyota system has replaced the older Ford assembly-line system. It is in such an environment that we have to devise laws to protect the rights of workers and to give effect to the constitutional goal of socialism.

Industrial Disputes Act, 1947

Ever since the amendments were effected bringing into force Chapter VB and section 9A, this Act has become the focus of attack by the capitalists. In spite of their brouhaha, it is clear the sections 25-O and 25-N need to be strengthened and widened in their scope. There is no justification for limiting the application of sections 25-O and 25-N only to the establishments employing more than 100 workers (in Maharashtra). They must instead be made applicable to all establishments. In fact, the growth of technology, which this commission has been asked to take into account, has rendered huge factories capable of being run by a very small work force. The massive leaps in information technology in recent years have allowed the earlier large plants to be broken up into several small but syncopated units. The earlier limits on strength were imposed with the intention of protecting the small capitalist. This is no longer the case. The small capitalist with independence to produce is fast approaching extinction. All the latest studies show that the small establishments exist mainly as ancillaries to large companies. Only large companies get the benefits of such protections. In such circumstances, there is no justification for continuing the limits for the application of Chapters VB and other sections. Further, Chapter VB has the larger aim of protecting workers’ interest and the public interest. The smallness of an establishment can be no excuse to exempt it from either. We therefore propose that the restriction on the application of Chapter VB be removed.

In the same act, there is an unholy confusion over the meaning of “establishment”. With respect to the Learned Judges of the various High Courts and the Supreme Courts, their pronouncements have done nothing to ease this confusion. As mentioned before, in today’s liberalised business atmosphere, a large part of the integral work of the business is out-sourced to small establishments though the over all control over production is maintained by the parent company. We therefore propose that the words “establishment” or “undertaking” should be defined to mean all premises wherein any operation is carried out which forms a part of the production process or is incidental to or necessary for the same.

As far as section 9A of the act is concerned, we propose that the management must give notice of any condition of service that it might seek to change. The limiting schedule 4 of the Act can be done away with and the obligation to give notice must arise whenever any condition of service is to be changed which can be the subject matter of an industrial dispute. The day is long gone when the owners of property can abrogate unto themselves the right to arbitrarily fix any single condition of service.

We also view with concern the utterances in the press, of late, about restricting the definition of “workman” to those earning below Rs 10,000 per month. We can see no justification for such a step. In fact, the limit (then Rs 500) for the wage of a supervisor to be considered a “workman” was set way back in the 50’s. This limit needs to be revised in keeping with inflation by linking it to the price index. In keeping with the definition of establishment, the definition of “workman” will also have to be amended to include contract workers and the workers of the out-sourced premises.

One more small point is that there is no protection provided to workers who are union leaders or who raise a dispute for the period between the time the failure report is prepared and the reference is made. This flaw must be rectified.

Contract Labour (Regulation & Abolition) Act, 1971

Similar changes are required in this act as well to give heightened protection to workers. However, since we are a constituent of the *Thekedari Padathi Virodhi Manch*, which has submitted its own memorandum, which we have had the benefit of reading, we are happy to adopt the same.

Minimum Wages

We are aghast at the recent trend of the Maharashtra Government to reduce the rate of neutralisation to below 100 %. It is well settled in many matters concerning Dearness Allowance that the lowest paid workers must be afforded 100% neutralisation of the rise in prices as they cannot be expected to shoulder any part of the burden of inflation. Sadly, there are still industries which have a minimum wage wherein no Special Allowance (to obviate the rise in the cost of living) is prescribed. We therefore propose that it be incorporated in the act itself that every notification for minimum wage must prescribe a Special allowance that would totally neutralise any rise in the prices.

Further, there is no need now to prescribe different minimum wages for different industries. As capitalism grows, the rate of profit tends to equalise across industries. The cost of living also is the same for people in the same area irrespective of the industry that they might work in. We therefore propose that the minimum wage be equalised across industries and be varied only in respect of geographical zones.

Further, it is common for unscrupulous employers to pay less than the prescribed minimum wage and then to show the worker as having been absent for a large period. This must be stopped. The only way to do this is to make the minimum wage payable irrespective of the number of days worked. There is also justification for this in the argument that the minimum wage is precisely that – *a minimum*. It is calculated as the least amount of money required for the bare essentials of life. A person’s absence from work cannot reduce these essentials. Habitual absenteeism will, of course, expose the delinquent to penal action. However, absence for a justified reason should not be held cause to reduce the minimum wage.

Lastly, the rates of minimum wage are fixed abysmally low. A more scientific method must be evolved to reflect the actual essentials of life. These keep changing. National and international standards must be considered to arrive at such essentials.

Trade Unions Act, 1926

The basic protection given to Trade unions, of immunity from civil or criminal prosecution, is under threat. The National Consumer Tribunal has held in the case of the Indian flight Engineers' Association that the prohibition under section 15 of the act does not cover the Tribunal since the Tribunal is not a "court". The Act therefore needs to be immediately amended to rectify this confusion. When the Trade Unions Act was enacted in 1926 there were no Tribunals and therefore it is clear that the use of the words "any court" must include a Tribunal. This must be made more clear.

We view with concern the attempts to curb the rights to unionise. Many formulas have been bandied around in the press about how only those unions that have 10% of the workers in a particular industry must be allowed to register a union or how no more than two of the office bearers must be honorary members, etc. These are only methods to break the united strength of the working class. On the contrary, the whole process of registration of unions must be made smoother and less cumbersome.

We also propose that recognition of trade unions by the management must be strictly based on a secret ballot. Such an exercise must be carried out one every year subject to the right of the majority of workers to requisition a ballot at any time.

Bonus

Today almost no workers are eligible for Bonus. The limits under the Bonus Act for eligibility and for wage are almost less than the minimum wages prescribed for many industries. By this inaction, the Government has laid low what was once touted as the epitome of socialism. The Government had devised Bonus as a formula for profit sharing. At the time when it was first enacted, the Act had fixed the eligibility limit very high (at Rs 1600) precisely to accommodate most of the employees in profit sharing. A simple calculation will show that Rs 1600 at that time (1965) was worth what Rs 25000 would be today. We propose that either the eligibility and wage limits for Bonus should be enhanced accordingly and should be linked to the price index for the future or should be done away with altogether.

The same argument about eligibility and wage limits would also apply to the Payment of Wages Act, The Gratuity Act and various other Acts.

Dearness Allowance

Even a lay observer can gauge that the way Dearness Allowance is calculated does not reflect the reality of the rise in prices. Many of the commodities in the basket are outmoded and are not properly weighed. The calculation of the price index must be enhanced to reflect the real rise in prices faced by a worker. We propose that an expert committee of workers and their representatives be set up to make the appropriate recommendations to the Government in this behalf.

Social Security Provisions

The First Labour Commission had suggested many social security provisions that have not so far been implemented. Workers today have no assurance of many basic amenities like housing and education for their children. Such provisions have to be enacted. Further, many employers, sometimes mala fide, seek the protection of smallness. As explained earlier, most of these "small" establishments are actually big establishments or their agents, in disguise. Such employers do not provide canteens, urinals, clinics, first aid or even drinking water to their workers. To remedy this we propose that even if a certain small establishment is genuinely an independent establishment, it must be clubbed with other such small establishments to provide these minimum facilities to their workers.

The Process of Adjudication

There is an abject failure of the adjudication machinery today. Cases take so long that adjudication is no more a viable option. It is only the court of last resort. These delays are often the result of management tactics. The delays in hearing matters invariably favour the management, which has the advantage of the right of ownership. This can only be set right by inverting the onus of proof in Labour Law. In other words, there must be a presumption in favour of the worker(s) in all matters. In a dismissal it must be presumed to be wrongful unless proved otherwise; in a lockout it must be presumed to be illegal and unjustified unless proved otherwise. This would obviously be more equitable than presuming an artificial equality between the workers and the owners. The Supreme Court in the case of Dilip Kumar Nadkarni vs. the Trustees of the Port of Bombay had hinted at such a burden. Today, when the workers are faced with the brutal attack of large corporations, this principle needs to be urgently incorporated into law.

Right to Information

Much ado has been made about workers' participation in management. We believe that as long as the concept of private property exists, there can only be a very limited "participation in management". However, the right to information has today been recognised as a legitimate democratic right all over the world. To that extent, workers must be entitled to all information that may directly or indirectly effect them. Proper legislation in this behalf is urgently necessary.

Protection against Sexual Harassment

Though the Supreme Court has laid down some guidelines in this behalf, our laws are woefully lagging in this department. This again should be referred to a committee of workers for making recommendations to the Government.

Voluntary Retirement Schemes

Though we crave leave to file a more detailed note on this important topic in the future, we wish to make our stand clear. It is obvious that every VRS is a change in the conditions of service of the workers (especially those who remain) and by that token, no VRS scheme can be made without first giving adequate notice and then going through the gamut as would be required for any other change.

Role of workers

Many of the above suggestions and also some of the earlier decision making powers (like deciding an application under section 25-O of the ID Act or under section 10 of the Contract Labour Act) have mishandled by the Government. We propose that it is high time that committees of workers be elected to handle such decision making. We do not see this as far fetched when the FICCI can be nominated as the advisory body to the Government for suggesting changes in labour laws. In fact, we can see no other alternative.

Yours sincerely,

Sanjay Singhvi
Secretary, Trade Union Centre of India

MEMORANDUM OF THE
THEKEDARI PADDHATI VIRODHI MANCH
TO THE NATIONAL COMMISSION ON LABOUR
AT ITS PUBLIC HEARING IN MUMBAI, 4–7 JULY 2000

Thekedari Paddhati Virodhi Manch
National Railway Mazdoor Union Office
Next to Platform 4, Matunga Railway Station
Matunga, Mumbai 400016

4 July 2000

To:
The Honourable Chairperson and Members
Second National Commission on Labour
Mumbai

Dear Madam/Sir,

We are making this representation to you on behalf of the Thekedari Padathi Virodhi Manch. This is a front comprised of around 40 unions/federations working among contract and permanent workers in and around Mumbai and Thane. We had submitted the signatures of more than 50,000 workers to the President of India protesting against the attempts of the Public Sector managements to have the judgement of the Supreme Court of India delivered in the case of Air India vs. United Labour Union referred to a constitutional bench. Our manch has been formed to protect and extend the right of contract workers to permanent employment. We stand for the complete abolition of the contract labour system for all work of a permanent and perennial nature.

At the outset, we are very strongly opposed to the terms of reference of this commission. The terms of reference begin with prejudice. They presume that the changes in the industrial atmosphere the world over are inevitable and desirable and that our existing laws are ill suited to the “new economy”. In fact, the terms of reference of this commission reflect the anxieties of the imperialist transnational companies that seek to modify the labour laws in India for their own selfish needs. In the name of “modern organisation” and “flexibility”, a “neo-liberal” philosophy is being imposed on our nation. As per this philosophy, the State is abandoning its former role as social arbiter and the field of labour is sought to be governed by the jungle law of hire and fire and a totally unregulated labour market.

The questionnaire circulated by this Commission is a clear indication of your intentions and hidden agenda. We cannot fail to note, by comparison with the questionnaire circulated by the First National Labour Commission, that your questionnaire has carefully, deliberately and thoroughly deleted all reference to the Directive Principles of our Constitution on labour matters. These Directive Principles were central to the efforts of the 1st National labour Commission. To you, they are evidently unacceptable, inconvenient, and an obstacle to your hidden agenda. So you have tried to censor these Principles. This will not be allowed by the Indian working people. These Principles are precious and have formed the basis of much legal progress in the last fifty years, as far as the rights of the working class are concerned.

It is our unfortunate duty to remind you that you are bound by the Indian Constitution, which you are trying to suppress. Your questionnaire is an eye-opener in this regard. We therefore enclose as our first Annexure, the Directive Principles of the Indian Constitution for your careful perusal and we reiterate that your recommendations must be guided by these principles, which take precedence over and are more basic than your terms of reference. We also enclose as Annexure B the recommendations of the First National commission on Contract Labour, which continue to be relevant and need to be re-emphasized by you.

Such is the opposition to the terms of reference of your commission and its clear hidden agenda, that some of the constituent member unions/federations of our Manch have taken a decision as a union/federation to boycott the Commission. However, as a majority decision of the Manch it has been decided to submit our proposals to you, without prejudice to our extreme opposition to the Commission and belief that its broad recommendations are a fore-gone conclusion.

Every person who has studied the situation of workers in India over the past few decades and over the last decade in particular has been forced to admit that the real wages of the workers are falling. The number of persons registered with the employment exchanges has grown enormously over the last decade. All investigators have reported that the real rate of unemployment in society has grown at least as fast. All this has given the lie to the proposition that the new economic policy will lead to plenty and prosperity for the nation and greater employment. It has proved that it was not the "protectionism" of the Indian economy that was responsible for its stagnation. In fact, it shows clearly that the workers need further and better protections in the context of "globalisation" and the new economic policy.

Our manch consists of many unions/federations, some of which will be making their own representations before the commission. As such this memorandum will restrict itself to the question of the contract labour system which it is our avowed aim to finish. Earlier, large establishments used the contract labour system to circumvent various labour laws and to avail of the concessions which were given to the small scale. For instance, an establishment, by allotting its workers to various sham contractors each having less than 10 workers could avoid E. S. I. and P. F.

Today, the establishments have a far greater need for the contract labour system. With the growth in information technology over the past few years, the new buzzwords in the corridors of industry are "flexibility" and "just-in-time" production. The strategy has changed from the massive centralising of establishments on the lines of the Fordist ideal to an ultimate degree of decentralisation with control being maintained by means of hot lines, e-mail and the Internet. Due to this strategy, the expansion of the contract labour system has gone beyond all control and today industry seeks to replace the entire "permanent" workforce with contract labour.

It is a mistake to think that there is nothing wrong in capital using the new methods to expand profits and perhaps, production. All the changes that may have taken place in the industrial milieu all over the world have not changed the Directive Principles of State Policy as enshrined in Articles 39, 41 and 42 (?) of our Constitution. If we are still to be guided by the beacon light of the Constitution, then our efforts must still be to extinguish the contract labour system whatever may be its advantages to the "new economy". It is in this context that various commissions appointed by the Government and various courts in India have referred to the contract labour system at times as "evil"; at times as "pernicious" and at times even as "slavery" or "flesh trade".

Proposed Changes to the Law Regarding Contract Labour

As the Contract Labour (Regulation & Abolition) Act, 1971 stands today, it effectively regularises and facilitates the contract labour system, with the provision for its abolition being extremely cumbersome and tardy. Any amendments to the law regarding contract labour must be aimed at increasing the scope for *abolition* of the contract labour system and permanent employment for contract workers. In this regard, we make the following proposals:

1. The definition of “workman” in the Industrial Disputes Act, 1947, should be amended to include contract workers employed in an establishment.
2. At present, under the Contract Labour (Regulation & Abolition) Act, 1970 (‘the Act’), the procedure concerning the issuing of licenses and registration certificates is totally unsatisfactory. Any principal employer/contractor can obtain a registration certificate by simply filling out the prescribed Application form, following which the Licensing Authority issues the registration certificate/license. Thus registration certificates and licenses are routinely being issued in respect of work, which is permanent and perennial and satisfies all of the criteria laid down in Section 10 of the Act for abolition. In this regard, the only way that the aims and objectives of the Act can be achieved is to provide in the Act/Rules that before granting a registration certificate/license, the Licensing Authority must carry out an investigation to find out whether the work concerned satisfies Section 10 of the Act. If so, the issuance of a registration certificate/license must be refused. Such an investigation must include visiting the establishment and investigating the work concerned and calling and giving a hearing to both the permanent employees/their union of the establishment concerned and any contract workers/their union already employed there. Further sections 8 and 14 of the Act should be amended. They should provide that if at this stage there are no contract workers employed in the establishment, then they/their union must be called by the Licensing Authority after their employment and given a hearing with regard to the nature of work and whether it satisfies Section 10. If at this stage the work is found to satisfy Section 10 then any registration certificate/license issued should be revoked.

In addition to the above, at the time of applying for a registration certificate/license, the principal employer/contractor must be required to give a Declaration on Affidavit that the work concerned does not satisfy any of the criteria laid down in Section 10 of the Act. If the statements made therein are later found to be false, the principal employer/contractor should be liable to perjury proceedings and criminal prosecution. (In this regard the proposed changes to the Maharashtra Contract Labour (Regulation & Abolition) Rules, 1971, as per the Notification issued by the Maharashtra Government (NO. CLA 1095/CR 3361/LAB.1) are totally inadequate.

3. In 1996 the Hon’ble Supreme Court passed a landmark Judgement in the case of Air India Statutory Corporation v/s. United Labour Union & Ors. By this Judgement, the Supreme Court laid down that on the abolition/prohibition of a contract labour system under section 10 of the Act, the contract workers concerned *automatically* become the direct and permanent employees of the principal employer. However, ever since the said Judgement was delivered, managements throughout the country, and particularly those of the Public Sector, have been lobbying furiously to get this Judgement overturned. At their instance, the case has now been referred to a Constitutional bench of the Supreme Court for reconsideration. The right to absorption by the principal employer is the most fundamental right of contract workers. If this right is taken away or in any way

watered down, the provisions of the Act vis-à-vis abolition become effectively meaningless. Alongwith the contract labour system the employment of contract workers would be abolished. It is therefore crucial that Section 10 of the act be amended to specifically provide that on the abolition/prohibition of a contract labour system under the section, the concerned contract workers will *automatically* stand absorbed as the direct and permanent employees of the principal employer.

4. The Contract Labour Act should apply to any establishment/contractor where/who employs even 1 contract worker. That is, the limit of 20 workers provided in Section 1(4) of the Act should be removed.
5. The Contract Labour Act should be amended to provide that all contract workers must be paid at least the wage and benefits paid and extended to the lowest paid permanent employees employed in the establishment in which they are employed. Over and above this, if the work done by the contract workers is the same kind of work done by permanent employees employed in the establishment, then the contract workers will be entitled to the wages and benefits paid to those employees, as provided in Rule 25 of the Contract Labour Central Rules, 1971. Further, this Rule 25 (and equivalent rules in the respective State Rules) should be amended to clarify that the phrase “same kind of work” refers to the *grade* (i.e. unskilled, semi-skilled, skilled and highly skilled).
6. At present, making an application for abolition under Section 10 of the Contract Labour Act is extremely risky for contract workers, in so far as very often their services are immediately terminated/the contract with the contractor is terminated in order to frustrate their claim. The Contract Labour Act should be amended to provide that when an application for abolition/prohibition is pending before the Contract Labour Board, the service conditions of the workers, and their employment in the establishment of the principal employer concerned, should not in any way be changed, without the prior permission of the concerned Industrial Tribunal.
7. At present the whole process under Section 10 of the Contract Labour Act is extremely long, with an applications often taking years together to be decided. Therefore, Section 10 should be amended to provide that the Contract Labour Board concerned should carrying out its investigation and make its recommendations to the appropriate Government within 3 months from its receipt of an application for abolition/prohibition. The appropriate Government in turn should give its decision in the matter within 1 month of its receipt of the recommendations from the Contract Labour Board.
8. We have come to understand through highly reliable sources that the Government of India is planning to introduce a Bill in Parliament to either repeal Section 10 of the Contract Labour Act in its entirety, or drastically reduce and water-down its scope. We also understand that similar proposals will be made before your Commission by various managements/management federations. We *vehemently* oppose any such moves, which go against the stated aims and objectives of the Act. We once again reiterate that any changes made to the law regarding contract workers and specifically to the Contract Labour Act, must be to strengthen and increase the scope for abolition of the contract labour system, and most certainly not to further dilute this.

Deepti Gopinath
Joint Convenor, Thekedari Paddhati Virodhi Manch