Chapter I

INTRODUCTION

It is a matter of extreme gratification to free labour throughout the world that the Government of India has shown its awareness of the importance of an enlightened and comprehensive public policy in regard to labour in the context of economic development and has appointed a National Commission to recommend a framework for such a policy. In a way the Commission's task is pioneering, for throughout two-thirds of our globe which is economically submerged and faces as a whole the complex problems of development, India is looked upon somewhat as a leader and naturally therefore the recommendations of the Commission are expected to have a wider relevance than to the immediate Indian context. The ICFTU-ARO hopes that the Commission will find it possible to undertake its task not merely as an exercise in immediate reform of the existing Indian conditions in this respect but also as an attempt to lay the groundwork of a constructive policy applicable and adaptable to developing economies anywhere. This is not to say that Indian realities should be ignored or that they should not primarily or even decisively influence the Commission's conclusions, but certainly to emphasise the need to reject anachronistic but deep-seated notions of labour as a class of hired mercenaries in favour of a forward-looking concept of labour as a partner in the national enterprise of economic construction , to be informed by the long experience in development of the established economies with a view to expedite the acceptance of, and transition to, the social and productive relations that must inevitably prevail with or without prolonged struggle, to investigate the role of a progressive labour policy itself as an accelerator of economic development and finally to comprehend the overriding importance

of human as against physical resources as a prerequisite to economic development.

Equal to India's determination to shorten its march to the vanguard of the technological revolution now sweeping the world is its passionate devotion to democracy and its methods. This, in fact, is the focus of the sustained interest that India's economic struggle evokes in the world of free labour. The commitment to democratic methods and ideals, however, introduces elements into the process of economic development that sometimes appear to make progress painfully slow and sometimes even seem to be frustrating the very economic objectives. Often enough the temptation to jettison democratic methods, even as a temporary measure, in the interest of a more rapid progress is strong but it is at such times also that the mettle of a nation's leadership is tested. Economic development without popular participation may well become an instrument of subjugation of the people. For countries like India which have a democratic constitution and a political faith in egalitarian socialism to defend, it is just not enough to create a huge productive apparatus; it is equally important to create the institutional edifice through which alone can the whole people have a stake in and share the gains of that productive apparatus. Under the conditions of widespread illiteracy and social conservatism that prevail in the developing countries, it would be idle to expect popular participation to emerge as a spontaneous development. It will have to be patiently fostered and state policies adapted to bring about its maximisation.

While many steps in various fields will have to be taken to make the people development conscious and to ensure their participation in

decision making and implementation alike, the most significant and the most obvious in the immediate context of industrial development is the recognition of the role of trade unions as genuine instruments of participation and deliberate encouragement to make them strong, autonomous and truly representative. It is only if this can be done successfuly that a widely accepted labour relations system can emerge and solve one of the most ticklish problems of economic development.

If economic growth is not fast enough in the developing countries it is not entirely due to dearth or misplanning of capital investment; a major reason is also the ill organised or unorganised state of labour and the almost total lack of manpower planning. It needs no proof that an organised labour force alone can ensure a rise in productivity and even if organised labour may claim and even get a fairer share of the cake, it certainly increases its size. It is a very myopic view indeed to seek industrial prosperity and profits by keeping wages low, stinging in measures of social security and welfare and thus causing continuous attrition of valuable human resources. Unfortunately, however, such a view is not uncommon and has been responsible for a climate wherein trade unions are looked upon with considerable suspicion and are at best tolerated as necessary evils. This attitude needs to be reversed now and trade unions accepted as basic organs of industrial society as well as primary institutions of industrial democracy. Only then can we hope that trade unions will grow from strength to strength and exercise the responsibility and moderation that only strength can breed rather than contrive to prolong their existence as organisations of weak but violent protest. It may still be some time before trade unions come into their own and start

playing their beneficient role effectively but there is no reason why their status and crucial role should not be recognised here and now.

If trade unions in developing countries are to play their part in economic development effectively, a misunderstanding must be dispelled: in many quarters trade unions are considered useful as a mere instrument of development policies. Though they undoubtedly can be an important conveyor of such policies, they should more accurately be described as an achievement of development itself. The growth of trade unions is part and parcel of the process of building national manpower and this process itself is one of the basic motors of economic development. Their growth enables people to decide for themselves under what conditions they are ready to perform the work needed by the national economy. Only independent and democratically run trade unions can successfully perform these functions. However, the task of building up such unions in the underdeveloped countries is hampered by the fact that economic decision making is to a large though variable extent concentrated in the hands of governmental agencies; as a result, governments, particularly in countries with dictatorial or totalitarian tendencies, are often inclined to abuse their strength in order to transform trade unions into mere instruments of their own policies. However, attempts to force the unions to respond automatically to every injunction of the state, or even to construct new state-run unions, have invariably yielded pitiful results, both in developing and in industrial countries. Except in the rare cases where they eventually manage to escape complete state control, such unions have always proved useless. Incapable of influencing the opinions and attitudes of the workers they are reduced to various odd functions that could be more efficiently performed by public administration.

To assess properly the usefulness of trade unions in view of their role in economic development, governments and planners will have to realise in the first place that even the simple fact of trade unions conscientiously discharging their normal functions - which they must discharge in every country, be it developing or developed - is a very constructive contribution to economic development.

Historic experience has shown how much the growth of modern economy was furthered in the industrialised West by the establishment of enlightened industrial relations, inclusive of fundamental trade union rights, of suitable machinery for prompt and equitable settlement of individual labour conflicts through mediation, conciliation and voluntary arbitration, as well as of a well functioning labour inspection closely cooperating with trade unions. Yet all this was achieved by trade unions through a bitter and protracted struggle during which the employers claimed that such enlightened industrial relations would undermine the profitability of industry. The beneficial economic effect of these conquests of organised labour became evident only after they had been obtained. In this respect, the developing countries are in a privileged position: they can learn from the industrial countries without going through the same struggle again. While the high proportion of unorganised labour in the developing countries give a particular importance to the establishment of minimum wages, this activity should not interfere with collective bargaining for the organised workers and should indeed aim at preparing the ground for collective bargaining in those sectors where trade unions are not yet strong enough to negotiate wages and conditions with the employers.

It has to be borne in mind that the concern of labour policy can no longer be only the elimination of extremely stringent conditions of work and protection of a defenceless working class as it indeed was at one time. It has now to contend with the problems arising out of the needs of development of the nation's economy as well as the urges to social and economic betterment of a more literate, more articulate and more awakened working class. It will thus clearly not be adequate in the changed context to have a labour policy which accepts the conflict between labour and capital as facts of life and has the state to play the policeman's role in enforcing peace between disputants. Such a policy of deterrence can only succeed in accentuating and driving deeper the mutual distrusts between the parties and creating a situation of cold war. What is needed, equally clearly, is a policy which recognizes and delineates the roles and responsibilities, rights and duties and expected sacrifices for the commonweal of all concerned in the building up of the nation's economy, which, having done this, uses the moral authority of the state and of public opinion to secure an ungrudging acceptance of these norms on the part of all and which, lastly, provides forums and agencies to help in the conciliation of divergent views and the resolutions of disputes. It is obvious that the role of third party intervention in such a policy is minimal.

Irrespective of whatever views may be held in the matter of an adequate industrial relations system, it is apparent that collective bargaining, judicial determination through adjudication, voluntary arbitration or a combination of these are the only alternatives available to serve as a base for the system. To the extent collective bargaining employed, the question of the representative capacity of the union entering

such bargaining comes to the fore. In India this is usually termed as the problem of 'Recognition of Unions'. It is quite clear that in order to have meaningful collective bargaining, not only should the union be representative enough of the workers of the bargaining unit to be able to contract obligations on their behalf and guarantee performance, but such a character of the union should be recognised and accepted by the other party, namely the employer.

Troubles arise from many directions in the process of union recognition. Trade union rivalry, hostile attitude of employers to trade unions in general and in many cases to particular trade unions, the conduct and credibility of unions and of course political factors all enter into it. It is not proposed here to suggest one basis of recognition against another but an attempt has been made in later pages to present the various systems employed in other countries.

While the success of an industrial relation system must undoubtedly be judged by its ability to reduce the incidence of industrial dispute to a minimum, no system can however afford to ignore to provide adequate measures of speedy settlement of such disputes when they do arise. As in the case of union recognition, many difficulties beset the evolution of an acceptable and satisfactory machinery for settlement of industrial disputes. Considerable controversy attends some of the most salient issues involved. Should compulsory adjudication with all its implications of state interference be preferred to voluntary arbitration? Should judicial determination accord rigidly to legal procedures or be informal? In case of arbitration should the consent of both parties be required or should one party be made competent to ask for arbitration? Is it possible to clearly

define the domains of collective bargaining and judicial determination according to the nature of industrial disputes? Should the failure of collective bargaining leave the parties free to resort to direct action or should the state step in with reference of the dispute to adjudication and simultaneous injunction to keep the peace?

There are several others but the moot point is the permissibility and extent of third party intervention, in most cases by the state. Practices prevalent in other countries in respect of settlement of industrial disputes have been stated elsewhere in this memorandum. No attempt has however been made to discuss their relative merits beyond giving the reactions of the trade union movements in the respective countries.

With the increasing importance of the role of trade unions in economic development and the inevitable growth in their size, power and ramifications in proportion to the increasing centralisation of all other economic institutions caution must be exercised lest the multiplicity of the general functions of trade unions relating to economic policy, long-range planning, etc. may interfere with their primary role of looking after the living standards and wellbeing of their membership. This can result in a dangerous alienation of the leadership from the grassroot organisation. For the trade unions, economic growth is not an end in itself but the means for their greater economic welfare. They are interested, in fact committed, to increasing economic growth and development because they know that it is the only way for betterment of the workers' economic condition. It would indeed be difficult, if not impossible, for the working people to estimate the benefits of economic development without reference to its contribution to their own welfare. It is thus futile to

exhort trade unions to take the long range view and sacrifice today's needs for tomorrow's comfort. It must be clearly realised that austerity on the part of labour cannot go very far hand in hand with unrestricted incomes in other sections of society.

The wide disparity in incomes and welath is perhaps the most conspicuous feature of the contemporary economic scene in the developing countries and its reduction to a decent limit the most essential psychological condition for a climate of growth. There would be little justification for trade union efforts in economic development if they were not simultaneously to see that the distribution of its fruits is equitable and fair. Trade unions will never accqt, much less work for, economic plans that call for the creation of wealth but are silent about its fair distribution.

It has become a cliche that developing countries have nothing but poverty to distribute, that production must precede distribution. True, but also equally true is that without a proper distribution mechanism, production merely serves to widen the gulf between the rich and poor and thus acts as its own disincentive. It is too late now to keep people satisfied in the belief that the returns of development capital are entirely used up in further capitalisation. Working people are finding it increasingly difficult to advise themselves to put up with wage restraints in the absence of corresponding checks in non-wage incomes like managerial remunerations and the part of profits that make the income of the owners. This is a world-wide trend and, no wonder, it is stronger in the developing countries where the poor are very poor and where wage demands, in general are aimed at securing not increasing standards of living but a decent subsistence.

Unending arguments based on the allegedly low productivity of labour and on the assumption that wage rises are always inflationary have bedevilled the evolution of a rational wage policy in developing countries.

It is stated that technical progress is making productivity less and less dependent on the worker and more and more a function of the means of production and the rationalised utilisation of physical inputs. This is often emphasised by those who wish to reduce labour as a marginal factor of production and thus question his entitlement to the gains of productivity. They, however, conveniently play down the great disadvantage that this phenomenon is causing to labour's bargaining strength and the extra effort that workers must accept without reward. It should be clear that in such a situation any deficiencies responsible for lowering the other partial productivities are bound to affect labour productivity equally adversely. Thus it will be seen that the productivity of labour often depends on factors beyond its control at least as far as any improvement in it is concerned. All that can reasonably be asked for is that labour will not be guilty of malingering or otherwise obstructing the process of production. It is evident that minimum satisfaction of the workers' wants is essential to ensure that such propensities do not afflict him. There is another aspect, however, in which productivity of labour assumes significance. Modern techniques of production, while they are assisting an encroachment by the machine on the importance of human labour, are also demanding much more skilled and efficient manpower to make them feasible. It is in the domain of acquiring these skills and proficencies that the scope for an improvement in labour productivity lies. But that clearly is impossible unless adequate investment is made in the development

of human resources and wages are at least sufficient to keep the workers away from the consuming struggle for existence. For a long time to come, the bulk of labour in developing countries will have to put up with less sophisticated technologies which largely depend for increased outputs on the productivity of labour.

Further, apart from skill, health, diet and a sense of security are the most important factors that influence human productivity. In the absence of corresponding norms of work output and wages sufficient to cover the health and security requirements, talk of productivity cannot be very meaningful. No system of payment by result can successfully operate without the provision of fall-back minima of wages and effort, for, otherwise labour must suffer for lapses not its own. It should thus be conceded that a primary prerequisite to any linking of wages with productivity is the provision of a minimum wage sufficient to sustain labour as an efficient tool of production at normal levels.

Similarly, the arguments based on inflation do not appear very convincing. Apart from the general premise that economic growth is itself inflationary and that such normal inflation need not be considered unhealthy, it is open to serious doubt whether the abnormal inflationary tendencies in developing countries are a result of higher wages. Considering the distribution of national incomes, the flourishing black markets and other questionable trade practices and the fact that real wages have actually regressed, it would seem that it is the rise in prices that has necessitated a rise in money wages rather than higher wages pushing up prices.

However, for some time to come at least, the major issue of a wage policy is going to be the minimum wage and whether it should be

related to minimum physical needs of the worker or made subject to the highly tentative capacity to pay. Trade unions cannot, for valid reasons, accept a standard to judge wages different than the one applied to managerial remunerations and returns and incentives to capital. In any event, it does seem incongrous that human capital engaged in production should be allowed to deteriorate when a similar ignoring of the physical capital would be considered unpardonable. The principle of a need based minimum wage no longer needs any defence. It is widely accepted. The hitch seems to be only if it can be impleted in existing conditions. In fairness the question whether need based wage is possible within existing conditions needs to be objectively and impartially examined. Of course, the results of such an examination are bound to depend on what priority is given to the need based wage among the various charges on industrial production. Without anticipating the outcome of such a fair enquiry, it can safely be said that international experience has not found any conflict between rising wages and the interests of economic development.

Next to wages, the most important issue of labour policy is social security. The need for a comprehensive system of social security is evident in view of the extreme poverty, wide prevalance of disease and destitution due to unemployment and under employment that the developing countries have in common. Aside from this, social security measures are inseparable from economic development and constitute not only one of its aims but one of its most powerful means. In the case of developing countries particularly, social development at no cost be allowed to lag behind economic development. Any imbalance between the two, if allowed to remain for any length of time would on the one hand act as a drag on economic growth and on the other

create a backlog of social requirements which would be difficult to clear. The time is now to realise that at this stage of development, consumption through social services like housing, health programmes, etc. is in fact investment, reflected in increased productivity. It is an observed fact that investment in social security is more productive (in terms of economic growth) than investment in any other factor of social development. This is relevant in as much as a high priority is sought for social security in programmes of socio-economic development.

India has made a good beginning in respect of social security but a lot remains to be done. Most important of all, the contigency of unemployment has to be provided against. While the Commission will naturally look into the possibilities of extending the existing schemes from the point of view of increased benefits as well as wider coverage, it seems that the relative merits of a penion security over the one offered by provident fund would also receive attention.

The ICFTU-ARO would have liked to answer the Commission's questionnaire in detail but it has resisted this desire with a view to respect the freedom of its two affiliates in India to take their stands according to their assessments of the Indian labour situation, especially on points of detail where more than one opinion are possible. The object of this memorandum is mainly to place before the Commission international trends and experience in the vital spheres of industrial relations, the relationship between wages and industrial development and social security.

Chapter II

THE RIGHT TO ORGANISE

The right to organise unions of their choice to initiate action for achieving their economic betterment is the corner stone of the whole edifice of trade unionism. As far as workers and their movements are concerned, they hold this right to be inalienable. And too, mere recognition of the right in principle is of no great avail to workers if conditions of its free exercise are withheld. The abridgement of the right to organise can be attempted in more than one way. Countries are not lacking, especially in Asia and Africa, where on one pretext or another civil liberties and even the basic human rights, not to speak of the right to organise, have been kept in abeyance unedingly. Then there is the whole host of countries in the communist world, the so-called'workers' states' where the right to organise is exercisable, in fact has to be exercised, only by joining the organisations provided by the Communist Party. In countries, however, where the right to organise is recognised by the law, it would be facile to presume that its free exercise is automatically ensured. If the great battles that labour has fought in developed countries to secure and maintain this right against concerted attacks of employers and their hirelings, have any lesson for the developing countries, it is to realise that rights have not only to be created but protected as well.

The main controversies in relation to the right to organise centre round three issues. First, should the right to organise be exercisable by state services, particularly those employed to maintain law and order, in the same measure as by other workers. It would be a

fair compromise of the two extrme views that while the right to organise should be equally conferred on all, the state services could be restricted from organising strike actions in lieu of a guarantee of compulsory arbitration of demands and implementation of its award.

The second issue is whether and to what extent should the law provide prohibition of unfair labour practices like victimisation etc. and deterrent punishment for breach by employers. The employers plead the sanctity of their right to hire and fire but the concept of social justice in industrial jurisprudence is now too well entrenched to leave any meaning in this argument. The most that can be required is the prescription of rules of conduct for both parties in such matters.

The third issue relates to the critical point, when and where trade union action can be supposed to militate against law and order. This needs serious and dispassionate consideration for, it is often quite easy to use public order and maintenance of peace as pretexts to curb trade union action. There should be an attempt to provide clear and precise guidelines for the desirability and extent of interference of law and order authorities with trade union action.

The wider implications of the right to organise are often missed. It is not a right that exhausts itself after a single exercise, that is to join or create a union. It is a continuing right, the nature of which is at all times determined by its origin and aim. The right flows from a recognition of the unequal positions of the worker and the owner of his means of production and the helplessness of the individual worker in modern collective systems of production. The right aims at enabling the worker to strive for his economic freedom and join hands with others like

him to collectively pursue better standards and amelioration of working conditions. It would thus be seen that the exercise of the right to organise in one form or the other, will continue as long as the conditions it safeguards against or the objectives it seeks to achieve are there. When workpeople are seeking to expand and strengthen their unions, when unions are bargaining and otherwise undertaking action for the furtherance of their cause, the right to organise is being exercised.

In the context of modern economic development in a democratic society, the right to organise assumes increased significance. It almost becomes a duty to society. The trade unions, products of the exercise of the right to organise, are necessary not only to resolve the stresses threatening production, but to prevent the strains that inequalities of wealth and incomes cause in society from developing into major upheavals.

The state, therefore, that recognises by law the right to organise, has the additional duty cast on it to create conditions in which the right can be exercised freely and with benefit to all. India has legally recognised the organisation of unions and given legal protection in many ways to trade unions. But it is not sufficient to permit trade unions, it is necessary to encourage them. It needs no convincing to anybody that it is much better to have strong trade unions than to have weak unions. Strength alone can enable trade unions to do their duty to society.

The pressing need of stronger trade unions does not arise, however, merely from their all-important and central role in democratic development. Their conventional utility in the running of industry itself would make them indispensable. As a matter of fact, no development plans can be successfully carried out without the assistance of strong and efficient

unions. It would be impossible, for example, to ensure the enforcement and implementation of protective and safety legislation without the watchfulness of vigilant trade unions. It would be equally impossible to hold labour responsible for its obligation in regard to discipline, productivity and specific contracts if there is no representative organisation to answer in the event of breaches.

The argument is often advanced that the industrial sector in developing economies being small, stronger trade unions would at best further the interest not of the working class as a whole, but of a section of it alone, sometimes at the cost of the rest. It is easily seen that the argument is specious. Without detracting from the necessity of maximum broadening of the base of the trade union movement, it must be said that unless and until suitable and powerful unions come into being in the industrial sector, the possibilities of organising the agricultural and other less developed sectors would remain marginal. Industrial trade unions with increased power and status will not only help in the expansion of the movement of unorganised sectors but also create the necessary urge among the workers of those sectors to get organised.

What can the state or Government do to strengthen trade unions? It must be made clear at the very outset that any intervention causing detriment to the autonomy or freedom of trade unions will only serve to weaken them. Trade unions have to be helped to help themselves and a climate created under which unions can grow, acquire strength and be self-reliant. There are a variety of weaknesses which trade unions in India suffer from and which present great scope for rendering assistance.

The Indian trade union movement has not acquired the strength it should chiefly because trade unions lack financial resources, adequate personnel is not available to run them, general and trade union education is poor and they have not been able to sponsor activities to promote the social and cultural welfare of the membership like consumers' and producers' cooperatives and programmes of education and self-help. These are all interrelated weaknesses, one flowing from and to the other. Thus financial weakness prevents progress in other fields and the promotion of subsidiary services for social security and cooperative benefits helps in building up the interest and loyalty of members and consequently in improving the financial position of the union through increased contributions. Trade unions will have to build up their strength through their own efforts but those efforts have to be helped.

The problem of trade union finances is indeed very serious. Indian statistics show that unions are growing in numbers but the average size is shrinking. In 1962-63 the average Indian trade union had only 499 members. Calculating on the basis of the statutory minimum membership fee of Rs.3 per annum, the average trade union could have a revenue of Rs1500 in a year from its members. This means it had only Rs.125 to conduct all its business. This is an average but it indicates that with the number of unions on the increase, a large number of trade unions were existing on even less than Rs.125 a month. The utter ineffectiveness of such organisations is not hard to imagine.

Actually in practice it leads to either of two things. The union does little and after some time loses the confidence of workers and

fades out or it levies extra charges from individual members for services like representations, or conduct of legal proceedings in which case the very basis of union organisation, that is, one for all and all for one, is lost and union membership steadily falls as workers tend to postpone enrolment until they are personally in difficulties. It must therefore receive serious attention whether statutory minimum for membership fees should not be raised.

It seems fair to link fees for union membership to the earnings of the individual worker. It will go very far to bring financial stability to unions as well as to instil feelings of solidarity and cooperation among workers if union fees are fixed as a percentage of annual earnings, and each member required to contribute according to his income. As a matter of fact nearly all advanced trade union movements follow this pattern. In Europe the union subscription can be as high as 3 to 4 per cent. Even in a country like Korea the contribution has been fixed as 2 per cent of earnings. It would thus seem that in India a statutory minimum of 1 per cent of earnings could not be said to be high.

One of the major hurdles in the way of voluntarily raising union subscription is the rivalry that exists among unions in the same unit of industry. Efforts should be made to seek unanimity on the point in the common interest of all unions so that workers are not made to pay fees however small, to unions which just cannot do any service to them.

Another aspect that may be profitably studied in this connection is of trade union structure. There is no getting away from the fact that comparatively small unions can only effectively exist if the membership fees are sufficient to cover necessary cost of their activities, and

wherever the possibility of a higher subscription is limited, recourse must be taken to a large enough membership so that again the revenues are sufficient to cover the running expenses.

In India the present trend seems to be small, unitwise unions loosely federated in national industrial federations. In such situation if the unions are poor, the federations which derive their income from unions are even poorer and in general most of the affiliates exist without paying anything for years together. It is worthwhile considering whether national unions instead of loose industrial federations will not be more suitable and useful. As far as finances, at least are concerned, the setup of the national unions seem to be more viable than the other. Also the national industrial unions are bound to be more effective at collective bargaining or representation in bipartite and tripartite bodies because of their ability to command better resources for trade union education and research.

The scarcity of trained personnel to man the union offices is another obstacle to the growth of trade unions and is in part related to the paucity of financial resources in the unions. There are many reasons why efficient and able persons are not attracted towards trade union positions. The most important being: a) the inability of the unions to pay even for a living of minimum decency for the officials; b) the low social status of work in trade union; c) the inability due to rampant illiteracy and a general low level of education of the working class to throw up a leadership from among itself; and d) the reluctance of public minded social workers to subject themselves to unsuitable conditions in the trade unions due to political and other factors. While to a consider-

able extent this situation will improve as a result of the general recognition of the improved role of the trade unions in economic development, the lack of necessary training among working class cadres will have to be corrected. A comprehensive programme of workers' education and instruction in trade union methods must be undertaken. Government and voluntary public institutions must come forward with full cooperation and help to encourage trade unions in the task of organising educational programmes for their members.

Much censure is often poured on what is termed as outside leadership in trade unions. It is said that such leadership is always politically motivated and often subordinate trade union aims to political aims. As far as India is concerned the historical development of the trade union movement as a part of the national freedom movement made such a leadership inevitable but it cannot with truth be said that by and large the political predilections of this leadership have made it fail in its duty towards the trade union movement. However, in general, trade unions in developing countries can hardly remain aloof from politics. There seems to be a misconception in the minds of many that trade unions cannot play a part in or influence politics without losing their free character. The idea of a free trade union, however, implies only that it will be subject to no other pressure except the democratic decisions of its membership. It is precisely on this ground that a leadership from inside the union is preferable.

In order to enable the Indian working class to throw up from its ranks leaders of sufficient calibre and in sufficient numbers, it is first essential to raise its own general educational and social level.

The democratic functioning inside trade unions does provide valuable training but it is not sufficient to improve the capacity to comprehend issues and take decisions in the absence of a minimum level of education and consciousness. This calls for an effort of a magnitude that trade unions alone cannot put up. The importance of workers' education and adult education programmes carried out through the union and other voluntary agencies is great but they are mainly aimed at coping with the present insufficiencies of the trade unions in this respect.

Equally important is to ensure that the coming generations of workers will not suffer the same handicaps as plague the working class today. No time should therefore be lost in introducing education about trade unions from the very primary levels of general education in schools right upto the college and university level.

This seems indicated as a token of the acceptance and recognition of the place of trade unions in society as well as by the need of young people to have a thorough understanding of their rights and duties not only as citizens but also as workers and cooperative builders of a democratic society.

It is also necessary to have trade unionism as a compulsory sub subject in all vocational and technical institutions. It is very important that the skilled workers coming out of these institutions inculcate in themselves a feeling of workers' solidarity and are equipped to provide leadership in the workers' organisations. Even for trainees, who later take up employment as supervisors, it is necessary

that they do not start with an attitude of hostility or cross-purpose towards trade unions.

The great momentum that the trade union movement has gathered in the developed part of the world has in no small measure been due to the development of subsidiary services catering for the social, cultural and economic needs of their members. Trade unions in developing countries have to realise that their place in society and their relevance to democratic development cannot be assured by mere recognition at the hand of others. They have to make efforts and through them and their beneficence assert the pivotal role they claim. Through the development of subsidiary services in the field of additional social security for members, such as unemployment relief, etc, and augmentation of incomes through cooperatives as well as in the field of culture and education, it is possible for them to effect a total identification between members and organisation and thus construct links which will relate them not only to the worker's employment but his life.

Not only have trade unions prospered and built up huge reserves in the form of investment in such services, but they have been able to use them as means for commanding greater loyalty and attachment from the members. While the present gigantic size of these ancillary service organisations owned by trade unions may seem forbidding and discouraging to attempt to emulate them in the developing countries, it should be remembered that their beginnings were quite lowly. Among such subsidiary services the chief are the consumers' and producers' cooperatives. They are also the ones in the development of which public policy can play a

part. As a ma tter of fact the need for the cooperative and trade union movements to develop side by side is crucial in the developing countries and trade unions can with greater benefit encourage cooperative activities. In a low-wage economy it is as important as to win a wage increase as that the purchasing power of existing wages is pushed up. Consumers' cooperatives supplying daily needs to members of trade unions at cheaper rates are in fact performing similar service as the trade union getting them a wage increase. Similarly producers' cooperatives can be a powerful instrument to cope with the problems of seasonal or casual unemployme t. Governments in the developing countries cannot make a better investment than to render assistance financial and technical to trade unions for starting and expanding cooperative activities.

Chapter III

RECOGNITION OF TRADE UNIONS

The need for a satisfactory procedure of recognition of trade unions arises out of its indispensibility in the evolution of an industrial relations system but what lends it added significance is its inextricable link with and sometimes decisive influence on the enjoyment of the Freedom of Association. The Royal Commission on Trade Unions and Employers' Association appointed in the U.K. in 1965 while submitting its report in 1968 has pointed out the pith of the relationship. It says "It is impossible in practice to separate problems of freedom of association from those of trade union recognition. Unless employees join a union, there will be no union for the employer to recognize. Moreover if an employer is known to be "anti-union", employees may be deterred from joining for fear of dismissal or of incurring other disadvantages, and the consequent failure of the union to recruit many employees can be used by the employer as a reason justifying non-recognition. Conversely, if an employer recognises a trade union it is much easier for the union to persuade employees that it is worth their while to join."

In regard to recognition, broadly the countries of the world could be divided into two groups: countries where recognition is left to the mutual consent of the parties concerned, namely the employers and trade unions, and countries where recognition is subject to judicial determination in accordance with prescribed procedures. This categorisation is, however, general and practices in countries in each category vary widely. The most representative example of the first category, namely where recognition is left for determination between the parties by mutual consent,

is Britain. The Scandinavian countries also closely follow the same practice. It is evident that in this group of countries, since the law is silent over the question, the recognition of a particular union by the employer is relevant only in the context of collective bargaining and in fact only indicates the conferment of a bargaining status on the union.

The system of collective bargaining in Britain is rather complex as there are no exclusive bargaining rights enjoyed by a particular union. There is considerable multiplicity of trade unions even in one industry or in establishment of it. In large industrial plants the collective agreement can indeed be signed by a number of trade unions. It is mentioned that one agreement covering the production workers of Ford Motor Company Ltd. in the United Kingdom was signed by 21 unions represented in a national joint negotiating committee for that company.

The Royal Commission on Trade Unions and Employers' Associations has stated that Britain has two systems of industrial relations. One is the formal system embodied in the official institutions. The other is informal system created by the actual behaviour of trade unions and employers' associations, of managers, shop stewards and workers. The formal system requires industry-wise collective bargaining between powerful trade unions on the one side and powerful associations of employers on the other. But the Royal Commission has gone on to remark that the informal system has developed because the organisations on both sides of industry are not strong. The Commission has asserted: "Central trade union organisation is weak, and employers' associations are weaker". In Britain, the Commission remarks, the informal system is "often at odds with the formal system". The recommendation of the Royal Commission is

for greater emphasis on factory and workshop bargaining if "greater order into factory and workshop relations is to be accomplished."

The Royal Commission refers to difficulties experienced by trade unions in securing recognition and mentions instances of hostile attitude of some employers towards trade unions. The British TUC General Council submitted to its 1967 Congress the result of a survey which confirmed that such practices were still prevalent in Britain and that a number of employers were trying to hinder the exercise of freedom of association by workers and refusing to deal with them.

In Sweden negotiations occur at three levels: 1) Central - between the top confederations (LO and SAF), which negotiate general or framework agreements for acceptance at other levels; 2) National - between national unions and employers' associations, each of which represents the majority of an industry group; and 3) Local - between unions and single employers or small groups of employers in an area.

In contrast to Britain, most Swedish unions are industrial in character, so that usually only one union negotiates with the employers' association in an industry. Mutual confidence and maturity in relations between LO and SAF has been established which has extended the functions of the two federations into new areas. This is indicated by the adoption by LO and SAF of a basic agreement in 1938 to protect workers against unfair discharge and third parties against injury in disputes, establishing a bipartisan Labour Market Board to hear cases and make recommendations in those matters. The other examples are 1942 LO-SAF agreement on workers' safety which led to the establishment of a Joint Committee for Workers' Protection; in 1944 an agreement for the promotion of occupational training

in a bipartisan Vocational and Guidance Council, an agreement concerning works councils in 1946 promoting the setting up of some 3,500 local joint production committees, in 1948 agreement concerning time and motion studies, and in 1951 an agreement providing for Joint Labour Market Council for Women's Questions. These top agreements are supposed to be of a "framework" character which means that the affiliated national unions and employers' associations must negotiate acceptance of each agreement before it applies in that industry. Such acceptance has resulted in the coverage of the bulk of the workers in LO unions.

It would appear that there are various differences between collective bargaining in Sweden and in Britain, although superficially national bargaining seems to be the dominant factor in both countries. While in Sweden negotiations are time consuming and involve usually considerable amount of State mediation, in Britain the negotiations take relatively short time without any State mediation. The national unions exercise more supervision and control in local bargaining in Sweden than in England. Further, rank and file members participate at various stages in national bargaining in Sweden whereas the national bargainers in Britain are full-time officials and such top bargaining is rather remote from the rank and file.

The other category of countries consists of those where recognition of trade unions is secured through legal intervention. Countries like Russia, Australia, the United States of America and France and many others could be put in this category. Patterns of recognition and those of collective bargaining in this category of countries are indeed much more varied. This category of countries could further be divided into four main sub-categories.

There are countries like Russia and the East European countries with communist rule where monopoly of organisation is granted to only one national centre promoted and closely allied with the only political party permitted to exist, namely, the Communist Party. Such pattern is followed sometimes by even some non-communist countries as well, such as Ghana under the presidentship of Dr. Nkrumah. In these countries since only one national organisation has the monopoly of organising the workers, the possibility of rival organisations in a particular plant or industry contending for recognition can be ruled out. The organisation promoted by and affiliated to the only national centre permitted to exist would automatically achieve the status of a recognised trade union. Such a pattern can hardly offer any attraction for countries believing in democracy and democratic institutions.

In countries like Australia trade unions, in order to be able to secure the right of representation in arbitration court proceedings and become party to awards, are required to register with industrial tribunals. Since there are industrial tribunals both at the state level as well as federal level, it is possible for the trade unions to register at any one or both levels. Trade unions which register with tribunals are also protected from the discriminatory acts of the employers and are accorded some sort of recognition. Registration of a union by a tribunal almost amounts to its recognition as it involves determination by the tribunal of the jurisdiction of a union over the various categories of workers. Articles 132 and 142 of the Conciliation and Arbitration Act 1904-56, quoted below, are relevant in this connection:

"132. (1) Any of the following associations of persons may, on compliance with the prescribed conditions, be registered in the manner prescribed as an organisation:

(a) any association of employers in or in connection with any industry, who have in the aggregate, or any employer, who has, throughout the six months next preceding the application for registration, employed on an average taken per month not less than 100 employees in that industry:

Provided that an association of employers may be registered as an organisation notwithstanding that it contains, in addition to employers in or in connection with the industry, other persons, whether employers in the industry or not, who are officers of the association and have been admitted as members of the association;

(b) any association of not less than 100 employees in or in connection with any industry, together with other persons, whether employees in the industry or not, who are officers of the association and have been admitted as members of the association; and

(c) any association of not less than 100 employees engaged in an industrial pursuit or pursuits, together with other persons, whether employees engaged in an industrial pursuit or pursuits or not, who are officers of the association and have been admitted as members of the association.

(2) The conditions to be complied with by associations applying for registration and by organisations shall be as prescribed.

(3) Upon registration, the association shall become and be an

"142. The registrar shall, unless in all the circumstances he thinks it undesirable so to do, refuse to register any association as an organisation if an organisation, to which the members of the association might conveniently belong, has already been registered."

In an interesting judgement, namely Melbourne and Metropolitan Tramway Board versus Municipal Officers' Association (1944) 68 Commonwealth Law Reports 628, the High Court had decided that an Association could be registered even though it describes the industry of its members "as the Local government Municipal and Statutory Corporations industry". Only bar to registration is the existence of an already registered union in the field in the same industry or trade area. The statutues provide that the industrial registrar must refuse registration when there is already a registered union to which workers can conveniently belong unless he sees reasons to the contrary. It is noticed, however, that it is comparatively rare that an application for registration of a second union has been refused. The application of assotiations of workers whose functions were of the supervisory type, even though very faintly so, have nearly always been granted, even though such workers could have belonged to a general union of workers in that particular field.

The existence of ill-feeling between members of an established union and certain members of breakaway group(because the latter failed to participate in the strike) has been considered a ground for granting of permission for the registration of a separate union (Australian Railways Union versus National Union of Railwaymen) (1933) 32 Commonwealth COMMU A.R. 433 and 445 to 51.

Another category of countries in this group consists of the United States, Canada, Japan and the Philippines where the law provides for the selection of a single "bargaining agent" or a representative or recognised trade union for a particular bargaining unit. The United States was the first country where such a system was established mainly under the inspiration of the "New Deal" policy of President Roosevelt in 1930s. The success of such a system in the United States later persuaded neighbours like Canada and countries like the Philippines and Japan where the United States had for a certain period its political influence, to adopt a similar system, of course with necessary modifications.

Section 9(a) of the Taft-Hartley Act reproducing the relevant provision of the Wagner Act states that the representatives designated for collective bargaining purposes by the majority of the workers in an appropriate bargaining unit must be regarded as the exclusive representatives of all the workers in that unit in matters relating to the negotiation of wages, hours of work and other conditions of employment. The appropriate bargaining unit may be composed of all employees in an industrial unit or (as according to frequent determinations in the United States particularly in the printing industry, construction industry and others) of certain groups of employees. These determinations have frequently set separate groups of craft employees, maintenance workers, professional employees, white-collar employees or truck drivers as an appropriate unit for collective bargaining.

The Act provides for the establishment of a National Labour Relations Board which has been given the power to decide on questions relating to the appropriate bargaining unit as well as to ascertain and to certify the choice of employees with regard to designation of a trade union

as their bargaining agent. The determination of sole representative or bargaining agent is of utmost importance in view of the wide powers wielded by the organisation so designated. The majority union has the right to negotiate collective agreements on behalf of the workers. The general procedure in the United States of America is somewhat as follows: A union which has succeeded in organising a considerable proportion of employees in a plant tries to secure authorisation cards from more than 50 per cent of the employees in a unit for approaching the employers to recognise it for collective bargaining. If the employer accepts the claim of the union to represent the majority of the employees in the unit he will negotiate an agreement with the union covering all the employees. It is, however, open for an individual employee who is opposed to the union to file a complaint to the National Labour Relations Board and assert that the union did not really represent the majority. If after the investigation the Board comes to the conclusion that the charge is valid it will find the employer guilty of an unfair labour practice and order him to cease recognising the union.

The employer, however, does not easily agree to recognise the union simply on the union's presentation of authorization cards. There are two grounds on which the employer may refuse recognition - first the employer may doubt the union's majority status, or he may dispute the unit which the union seeks to represent as an appropriate one. If the union feels that employer's refusal is not based on good faith it may file charges with the National Labour Relations Board and appeal to it to order the employer to recognise and bargain with the union. It is, however, extremely difficult to prove the charge that refusal was not based on good

faith. The usual thing for the union therefore is to file a petition for election with the NLRB. For this the union must produce representation cards signed by a minimum of 30 per cent of the employees in the desired unit. The Board will then conduct a hearing and will decide as to which should be the appropriate unit for collective bargaining and which employees should be included in it. It is mentioned that if the union seeks to represent the units composed of the entire plant the Board will generally accept the union, but if the union seeks to represent a section of employees performing a certain job in the plant, the Board will rarely accept such a union as appropriate bargaining agent.

The Board will then order an election for the certification of a bargaining agent for the union. If the union wins the election the Board will certify the winning union as the bargaining representative and order the employer to enter into bargaining negotiations with it. The employer is enjoined not to coerce the employees from voting the union or to commit any unfair practice which could be a ground for setting aside the election. If it is proved that the employer indulged in unfair practice in an election, even though the union may lose it, the Board could order the recognition of such a union.

It has been pointed out that though in many cases the employer and the union do agree on recognition without going through the above formalities such voluntary recognition deprives both the parties of a number of benefits conferred by the Act, such as employer's obligation to negotiate with certified union for at least one year; the guarantee that in the absence of a collective agreement the Board will reject any new application for election during the year in which certification has been granted;

protection against a strike by any union demanding recognition by the employer (which could constitute an unfair labour practice). It has also been pointed out that the system of recognising a union direct without going through the official election procedure sometimes gives rise to abuse.

An illegal practice reported in a number of New York industries sometimes back was that of forming "paper" organisations called "fly-by-night" unions to negotiate collective agreements with the owners of small businesses some of which mainly employed Puerto Rican Labour. These contracts, it is mentioned, fixed wages and conditions of employment to suit the employer and arranged for automatic deduction of union dues without first obtaining the workers' permission as required by law.

Heavy turnover in some trades like Building has also created some difficulties in application of the provisions of the Taft-Hartley Act since it usually involved quite a lengthy procedure. According to the Landrum-Griffin Act recognised unions in the building industry do not need to continue to establish the fact that they represent a majority, as employment fluctates from week to week.

The procedure for election usually involves agreement between the employer and the union on a number of basic points. In over 70 per cent of cases such agreement is easily possible. It was, however, pointed out to an ILO Mission that "legal quibbling and trickery can make this a long-drawn-out process, thereby delaying the certification of the union as the exclusive representative". The ILO Mission to the United States notes that "experts on this type of litigation explained how the organisation of the workers in a plant could be impeded for a period of several years" by such legal quibbling. The ILO Mission has further pointed out that a very

important change introduced by the Taft-Hartley Act was that it denied strikers the right to vote when they were not entitled to reinstatement i.e. workers engaged in economic strikes whose jobs had been permanently filled, as well as workers involved in a strike during a period of 60 days before the expiry of a collective agreement. It was left to the Board to decide in which cases a worker's job could be held to have been permanently filled. Under the Wagner Act the Board allowed workers to vote while they were on strike as well as those who were replacing them. But the Taft-Hartley Act changed the situation. This was heavily criticised by trade unions because the election results could be quite seriously affected. The Landrum-Griffin Act seems to have accepted these criticisms and tried to remedy by giving the right to vote to workers engaged in an economic strike who are not entitled to reinstatement "under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within 12 months after the commencement of the strike".

In France a remarkable system of recognition of trade unions and collective bargaining was adopted during the period of the Popular Front Government in 1936. This legislation was enacted at a time, when according to a celebrated authority, "trade unions were relatively weak in numbers, unstable and divided by philosophical, religious and other considerations." This legislation provides for the conclusion of collective agreements by "joint commissions" consisting of spokesmen of the "most representative" organisations of employers and employees.

Elaboration of this concept of "most representative" organisations, particularly on the trade union side has been extremely interesting.

The trade union movement in France at that time was split into a number of rival organisations. There was the powerful CGT and a much weaker catholic union of the CFTS in addition to a number of unaffiliated organisations called "autonomous" unions.

A circular of the Minister of Labour addressed to the staff of the Labour Ministry, particularly Labour Inspectors who had a share in the determination of the "most representative" organisation in the collective bargaining areas smaller than the entire nation, enumerated a series of factors to be considered. It was emphasised in the circular that the size of the membership was not alone decisive. The circular then went on to lay down a number of factors to be taken into consideration, such as the age of the organisation, its share in past negotiations, the amount of its dues and the regularity of their payment, the character of the statutes and the conditions of affiliation (i.e. whether the workers had joined freely or under the pressure of their employers). The circular indicated that more than one organisation might be described as most representative.

Designation of a union as 'most representative/ had reference to the territorial framework of the negotiations. It was not necessarily the same union which was designated to take part in the negotiations of a national or a regional or a local (or possibly a plant) agreement. Similar distinction was made for negotiations dealing with particular categories of workers. For negotiations of national agreements the designation was made by the Minister of Labour. For negotiations in small regional units the Labour Inspectors were authorised to designate the "most representative" organisations. An appeal was provided against the above designations to the higher arbitration court, and after its suspension, by a decree of

November 1939 to a High Court, specially dealing with the legality of administrative actions. Although important changes have taken place in the legislation on collective bargaining since then, the above concept of 'most representative' organisations seems to have survived in France.

A circular of the Minister of Labour of May 28, 1945 repeated essentially the same articles as those mentioned in the circular of 1936. But it is said to have gone beyond it in three respects. It added as another factor to be considered "patriotic attitude" of the organisation during the war and the occupation; it emphasized the ned for particularly critical examination of the organisations restricted to one establishment; and finally it designated some organisations as fulfilling the requirements of this circular. As some difficulties had arisen in the designation of 'most representative' organisation according to the above circulars, the Prime Minister and the Minister of Labour on March 13, 1947 stated new principles stressing the membership of the organisation. According to the above statement, all eligible organisations could be considered as 'most representative' provided they enrolled 10 per cent of the total union membership in the branch of industry and 25 per cent in one of the occupational group to be considered. For the discussion of special parts of agreement, those organisations might also be admitted which had 33 per cent of the union membership in the particular occupational group. If no organisation fulfilled the above requirements the one with the highest proportion in the entire industry and the organisation with the highest proportion in the particular professional category would be selected. All other organisations however were given the right to address written communications to the President of the Joint Commission and be informed

The principle of multi-union representation in collective bargaining, according to an authority, has led inevitably to two chains of consequences: "It has greatly increased difficulties in arriving at agreements and an eternal struggle for change in the methods of selection of the most representative union; union rivalry at the conference table expressed itself in a process of competitive demands. Every union endeavoured to demonstrate that its competitor was "giving in" too readily to the employer and the union representatives were reluctant to accept reasonable compromises out of fear of their rivals. To demonstrate that no better result could be obtained, the union "tolerated" strikes with or without official approval - sometimes with the result that even the previously obtained concessions were lost."

"Struggle for admission to the 'charmed circle' of 'most representative union' was essentially waged with political weapons, since it was the Minister who decided in the last resort."

... ...

The above review would show that in the case of the first three categories the emphasis is on elimination of multiplicity of trade unions and recognition of one organisation as the sole bargaining representative for a particular unit. The review would also show the considerable complexities of the problems of arriving at any conclusion. The fourth pattern symbolised by France, which is also prevalent in a number of Benelux countries, attempts to recognise more than one organisation as the most representative and brings them together in a joint commission for the purpose of collective bargaining. The difficulties which arise in actual collective bargaining if a number of rival organisations are allowed to

represent workers together in a commission have already been mentioned. None of the above systems of legal intervention for recognition of trade unions may appear to be entirely satisfactory. On the other hand, there is thinking even in countries which have been symbols of voluntarism in matters of industrial relations, like England, that some sort of State intervention may prove useful. The Royal Commission on Trade Unions and Employers' Associations (United Kingdom), 1965-68 considered this question of recognition at some length. Among the various suggestions it considered was one that of Mr. Allan Flanders who proposed that an independent tribunal be established to which recognition disputes might be referred by the Ministry of Labour. Mr. Flanders' arguments were as follows:

"What is needed, if the institution of collective bargaining is to be given more practical support, is a permanent public authority empowered to hear recognition disputes and to make recommendations for their settlement. Although one does not wish at this time to multiply the separate pieces of machinery for public intervention in industrial relations, I would favour the creation of a special tribunal for this purpose rather than extending the powers of the existing Industrial Court. One important reason is that a body dealing with disputes of this character would not be acting as an arbitrator but more like a permanent Court of Inquiry. It could not possibly rely, for example, only on the parties' submissions for evidence. It would probably have to employ its own investigating officers to discover relevant facts, such as the degree of support for the union and whether other unions were involved. It would certainly be empowered to arrange a secret ballot, if this was thought to be desirable, although equally it should not be compelled to do so. Contrary to the usual

practice in arbitration, it would also be necessary for such a Tribunal to give reasons for its decisions and ensure that they were reasonably consistent with each other. It would in fact have gradually to evolve a set of working principles."

The Royal Commission has accepted Mr. Flanders' proposal in essentials and recommended that problems of trade union recognition should be dealt with by an Industrial Relations Commission which may prove a powerful instrument for encouraging the extension of collective bargaining. The above proposal is somewhat vague with regard to the sanctions behind the conclusions of the Industrial Relations Commission in respect of recognition. Yet, however, such a proposal has the great advantage of being not too rigid.

The above proposal may be of some interest to India as such an Industrial Relations Commission could indeed feel free to select and apply any of the methods mentioned above to a specific case taking into consideration the pecularities of the industrial relation situation in a particular geographical or industrial unit.

Chapter IV

SETTLEMENT OF INDUSTRIAL DISPUTES

Legislative practices with regard to settlement of industrial disputes seem to differeas widely, if not more, as those relating to recognition of trade unions. On the one extreme are countries where a system of compulsory conciliation and arbitration prevails which obliges the parties unable to reach agreement through negotiations between themselves to submit their dispute for the final adjudication by a third party -- an arbitrator or a tribunal. On the other extreme there are countries which would leave the parties practically free to settle their differences through negotiations, and in case negotiations fail, through a trial of strength. However, even in the case of such countries some forums for voluntary mediation, conciliation or arbitration are often available to the parties which they could use if they so wished.

In between, there is a variety of legislative practices, the variable factor often being the degree of state intervention in industrial disputes usually manifested in the degree of restriction on the right of direct action of the parties. This is done, it is maintained,mainly to protect the interest of the community involved in every industrial dispute as distinct from that of workers or employers.

Variations in legisiative practices are also based on the nature of the industry or service. Usually, certain industries or services are considered to be such that any disturbance in their normal functioning causes either great inconvenience and hardship to the community or grave damage to the economy of the country. In the case of such industries or services, even countries ordinarily refraining from any state intervention in industrial disputes, have found it necessary and desirable to adopt

certain special procedures to keep to the minimum any disruptions due to resort to direct action by the parties. Also the civil services or the services in the police or the army have been placed on a different footing as far as the right to strike action is concerned.

The following discussion offers a glimpse into the various systems at work and the responses they have evoked in working class organisations.

Systems based on Compulsory Arbitration

The most striking example is the Australian system which has prevailed ever since the first enactment for labour was put on the statute book over 60 years ago. It must be said at the very outset that the use of the phrase 'compulsory arbitration' to describe the arrangements for settlement of industrial disputes in Australia should not be misunderstood to imply a total absence of collective bargaining. In fact, considerable collective bargaining takes place, but, as some experts have put it, "under the shadow of the compulsory arbitration machinery"./ The decisive significance however belongs to compulsory arbitration.

The most basic and notable feature of compulsory arbitration in Australia is the nature of awards which is somewhat different from what the normal definition implies. The arbitration awards generally fix the minimum standards in the different respects. Extra-award-payments are quite common and better conditions of employment and wages have been looked upon with favour and sometimes even encouraged by industrial tribunals in cases where financial conditions of the industry or individual establishments could afford higher payments without detriment to the interests of the economy.

Nearly all the awards are expressed in terms of minimum employer obligations. But as one authority has expressed it "in the absence of a specific no-strike clause in the award, exertion of employers' concerted pressure through strikes meets with no implied prohibitions". The same authority further remarks that "the view that compulsory arbitration of the Australian variety inherently involves the legal prohibition on the strike weapon lacks substance". The fact that the awards only express employers' minimum obligations implies that labour unions are free to bargain for greater measure of rights than is expressed in the awards. It is stated that the incidence of what are called over-award payments is very high in non-governmental employment.

The impression that compulsory arbitration would automatically ensure greater industrial peace does not appear to have been borne out by its operation in Australia. From a comparative statement on strikes by a wellknown authority, it has been pointed out that mandays lost per worker through strikes are much higher in Australia than, say, in Japan, Netherlands, Norway or the United Kingdom

As has already been stated earlier, there is not much evidence to support the view that there is any inherent legal prohibition of strikes implied by the very existence of the system of compulsory arbitration. The original anti-strike provisions in the Federal legislation were repealed in 1930. Since then the tendency has been for the Federal awards to include a clause imposing restrictions on strikes. In the event of such an anti-strike provision in the award, any strike becomes a breach of the award itself, justifying invocation of the peanlty clauses in section 109 and 111 of the Act. The Arbitration Commission is not obliged to put in the award

an anti-strike clause. However, even if such a clause is not put in the original award, it is open for the employer to request its insertion at a later date.

However, in a number of Australian states there are statutory provisions, almost from the beginning of the introduction of the compulsory arbitration system, prohibiting strikes. There are wide differences with regard to the nature of provisions in the different states. Some states would prohibit strikes and lockouts altogether, whereas in the case of others, strikes or lockouts are illegal if carried out contrary to the procedure laid down by the industrial relations machinery. In Queensland, for example, all strikes and lockouts are illegal unless approved by a secret ballot conducted by the Registrar of Industrial Court. The New South Wales legislation specifies that certain types of strikes and "no other" are illegal. Strike by employees of the Government or by employees in any industry covered by an award of the tribunal are illegal in the state. There is, however, a procedure that an award that has been imposed for 12 months could be rendered inoperative by a secret ballot conducted by the union according to the procedure laid down by the legislation. In the State of Victoria there is no direct prohibition of strikes or any form of direct action. However, the Minister is empowered to suspend the operation of a wage board determination for upto 12 months if satisfied that an organised strike is about to take place.

Federal tribunals and tribunals of some states have power to order a union to have a secret ballot on any matter related to the dispute. Usually the state awards do not impose any restriction on strike activity, presumably because of the statutory provisions obtaining in most of the states restricting direct action.

The tendency recently has been to apply the penal provisions, namely section 109 and 111, more severely which is reflected by the increasing quantum of the fines imposed. It may be noted that while the fines imposed for the whole of the 12 years ending in 1961 were£A 13,800, in 1962 alone they were £A 9,150, in 1963 £A 12,500 and in 1964 £A 29,500.

It is remarked that penalties are more in the case of essential industries and services affected by a strike or a strike in defiance of an award, particularly when this offence occurs repeatedly, or when a small number of strikers throw a large number of workers out of employment.

There are a few other methods employed by tribunals to restrain a union from direct action. One of them is to withdraw certain advantages provided in an award, in case the union goes on strike. Sometimes the tribunals may refuse to continue proceedings while a strike or lockout is in operation with a view to putting pressure on the parties to abandon such direct actions.. It is intended that through such an action the union may be persuaded to think that a rapid hearing of its claims would be only possible if it gave up strike. However, it is pointed out that many factors determine whether the tribunal would use such a method. For it is unlikely that such a method would be used in a dispute in which public interest is greatly involved. In such a case the tribunal may be more interested in settling the case at the earliest without making an effort to induce the strikers to go back to work.

The other method used by some tribunals to put pressure on the union to give up strike action is to threaten to deregister the union in case of a direct action. It is argued that since the registration is

provided by the industrial tribunal, the fact that a union applied for such a registration should imply that it accepted the system of arbitration, and the union's action in resorting to strike may be considered to be refutation of its previous acceptance. Hence, it is argued that the union exposes itself to the action of deregistration by the tribunal. It must be admitted that deregistration does hurt the union as the union loses its position and power vis-a-vis the industrial relations machinery and leaves the field open for the registration of a new and perhaps hostile union. However, the court's powers are exercizable only over registered unions and in case the union is deregistered the industrial tribunal also loses its hold over the union. In case the union chooses to stay outside the system even the penalties envisaged in Article 109 and 111 would not appear to be applicable to the union.

Another feature of the compulsory arbitration system prevailing in Australia, which has invited much criticism, is its legalism. A continuous tension has existed in the Australian system inasmuch as some prefer speedy and simple procedures administered by "practical men" while others would like the rigours of law to have full sway over industrial relations. The difficulty has been of assigning defined spheres for the conciliation of disputes and their compulsory arbitration. However, in recent years a pattern has emerged which, it is claimed, offers some prospects of reconciling the different viewpoints by providing both courts, where legal procedures are rigidly followed and tribunals which are generally manned with arbitrators having practical experience. The concept was adopted by the Federal machinery in 1956 as a result of High Court's decision in the Boilermakers' case which ruled in substance that the Federal parliament could not invest in the one boday both arbitral and judicial powers. As

a result of this decision, the long established Commonwealth Court of Conciliation and Arbitration, which had carried out both functions, was superseded by two separate bodies - the Commonwealth Conciliation and Arbitration Commission (referred to as the 'Commission') concerned with arbitral matters and the Commonwealth Industrial Court concerned with the judicial function of interpretation and enforcement as well as the function of administering the laws under which trade unions and employers' associations, registered under the Arbitration Act, operate. The Commission is composed of members with the status of judges and lay commissioners. The Industrial Court consists entirely of judges.

Systems based on Free Collective Bargaining

The United Kingdom is the most typical of countries which have opted for collective bargaining as the basis of industrial relations. In the United Kingdom the autonomous machinery, voluntarily set up by both sides of the industry, is given the fullest opportunity for its working and legal intervention is kept to the very minimum.

The present law in the United Kingdom is contained in three enactments - the Conciliation Act of 1896, the Industrial Courts Act of 1919 and the Terms and Conditions of Employment Act of 1959. The above enactments provide machinery for the settlement of disputes by Conciliation Officers, arbitrators and arbitration tribunals of various kinds, and by commissions or Courts of Inquiry. One of the fundamental features of the industrial relations machinery in the U.K. is said to be that "autonomous machinery has priority over statutory machinery". This means in other words that the statutory machinery for conciliation, mediation or arbitration will not be invoked unless all the processes set up by the parties themselves

have been exhausted.

The Industrial Courts Act of 1919 has expressly provided that the Minister of Labour must not refer a dispute to the Industrial Court either for settlement or for advice if there is still a prospect of settlement by autonomous agencies, even though both the parties may have consented to a reference to the Industrial Court. If the dispute has been decided through such autonomous machinery it is a "final settlement of that dispute", and the Industrial Disputes Tribunal cannot in any case be used as a court of appeal against an autonomous settlement. A celebrated authority on industrial relations has commented that statutory machinery for settlement of disputes in U.K. is always subsidiary, always only a 'second best', and intended to do no more than fill the gaps left by autonomous negotiations and arbitration machinery. He goes on to comment: "Thus a collective agreement or autonomous arbitration award which produces no 'legal' effect and which, in the eye of the law, is a bare 'nothing' is a bar to the activities of statutory bodies and to the exercise of legal compulsion. This illustrates the extent to which all purely legal analysis in this field is apt to be academic, and how little the absence of legal sanctions matters in fact."

The act of 1896 is the basis for the conciliation service provided by the Industrial Relations Department of the Ministry of Labour. The duty of the Headquarters staff and of the conciliation officers in the regions, as laid down in the law, is "to be fully and continuously informed as to the state of relations between employers and work people throughout industry and to keep in close touch with all developments likely to affect these relations, to prevent and settle trade disputes, and also to assist "in

the formation and maintenance of joint voluntary machinery in industry.

It is estimated that in recent years some 200 to 300 disputes each year have been settled by direct participation of industrial relations officers. Under both Conciliation Act of 1896 and the Industrial Courts Act of 1919 provision is made only for voluntary arbitration on trade disputes i.e. arbitration by consent of both the parties. There is no means under these acts for compelling an unwilling party to go to arbitration. Further, the arbitration awards under these two acts are not legally binding on the parties concerned. However, it has been noticed that since the reference to arbitration is based on the joint desire of both the parties, no question with regard to enforcement of such awards has really arisen. It is reported that during the first 20 years of its existence the Court rendered 1,755 awards, all but four of which were observed by the parties.

While provision for arbitration is made in both the enactments, that of 1896 as well as that of 1919, the latter enactment, namely, the Industrial Court Act of 1919 is based on the recommendations of the Fourth Whitley Report and is designed to remove the difficulty in the 1896 enactment which had failed to establish a standing full-time arbitration tribunal to which disputes could be referred. The Industrial Court set up by the Industrial Court Act of 1919 is not, in the legal sense, a 'court' deciding legal disputes, but a permanent arbitration board with a full-time president and a number of chairmen, as well as employer and employee representatives, some of whom give full-time services.

The Industrial Court is independent, which means that the Minister can only refer cases to it. He cannot instruct it how to handle

them, let alone how to decide them. He is prevented even from giving any general directives on policy.

Compulsory arbitration is alien to the spirit of industrial relations in Britain. Both employers and unions in the country have been traditionally opposed to compulsory arbitration. However, during the period of the First and Second World Wars, both employers and unions consented temporarily to have a measure of compulsory arbitration. During the First World War under the Munitions of War Act, 1915 strikes and lock-outs were prohibited throughout a wide range of industries and occupations, and disputes about terms and conditions of employment which occurred in that range could be reported and referred to arbitration at the instance of either party to a dispute. The awards resulting from this form of arbitration were made legally binding upon the parties. During the Second World War an Order was made under Defence Regulations called the Conditions of Employment and National Arbitration Order, 1940 (Statutory Rules and Orders, 1940, No. 1305). The main purposes of the Order were to prevent work being interrupted by trade disputes and to supplement existing machinery for the settlement of differences by providing an ultimate resort to arbitration at the instance of one party to a dispute, even without the consent of the other party.

Part I of the Order provided for the settlement of disputes by negotiation and, if necessary, by arbitration and established the National Arbitration Tribunal which consisted, in each single case, of five members, three being independent members, including the chairman, with one each representing employers and workers. Awards made by such a tribunal became an implied term of the contract between the employers and workers and could

be enforced by law. Part II of the Order prohibited strikes and lockouts unless the difference had been reported to the Minister but had not been referred to arbitration by the Minister within two-one days from the date of report.

After 1945, when the War ended, the Minister of Labour consulted the National Joint Advisory Council about the future of the Order No.1305 and with the agreement of the Council it was continued on the understanding that it would be reviewed at any time on the request of any side in the Council. During 1950-51 it became clear that the provisions of the Order which prohibited strikes and lockouts no longer commanded general assent. After a series of discussions in the National Joint Advisory Council the Minister revoked the Order No. 1305 and replaced it with the Industrial Disputes Order, 1951 (Statutory Instruments 1951, No. 1376). The New Order provided for compulsory arbitration on lines similar to those of Order 1305. It followed the principle of supporting and encouraging the joint machinery of negotiation to the fullest possible extent; in case that machinery did not prove sufficient or effective, to provide a ready means for the peaceful settlement of disputes.

There were number of significant differences between the Order No. 1305 and the new Order No. 1376, the most important being that the new order did not contain any prohibition of strikes and lockouts. If the Minister considered that drastic action, such as a strike or lockout is being taken by either party in connection with a trade dispute, he might delay the reference of that dispute to the Tribunal. In case he had already referred the dispute to the Tribunal he might notify the Tribunal that such action was taking place and in that even all proceedings before the Tribunal were

stopped until the Minister cancelled the notification. Since under the New Order disputes could now take place without any obligation to report them to the Minister before strike or lockout action was resorted to, the term 'compulsory arbitration' took on a somewhat different meaning. What remained of the original conception was the right of either party to take a dispute to the Minister for reference to the Tribunal without the consent of the other party, and any award that the Tribunal might give was to be legally binding upon both parties.

Some of the other differences were: 1) the new Order excluded certain types of disputes which were entertainable under the old Order from the jurisdiction of the Industrial Disputes Tribunal and confined it to terms of employment or conditions of work; (2) There was also a provision that a dispute which had been the subject of a decision by joint machinery for settlement of disputes, or of an award under the Conciliation Act,1896 or the Industrial Courts Act of 1919, could not be dealt with under the Order. The purpose of this provision was to uphold the authority of the voluntary machinery; (3) The general obligation imposed by Order 1305 upon employers to observe the recognised terms and conditions of employment, or terms and conditions not less favourable, was not continued in the new Order, but provision was made for the reporting of 'issues' concerning the observance of such terms and conditions by an individual employer.

The new Order imposed a limit on the right to make representation under the Order emphasizing that such a right be available mainly to trade unions or employers' organisations which "habitually take part" in the settlement of terms and conditions of employment in the industry, or a section of the industry or undertaking concerned; or which, in the absence

of negotiation machinery represented a substantial proportion of the workers concerned in the relevant industry or section of industry. This restriction was designed to protect established voluntary machinery by preventing break-away unions and other unorganised bodies from making use of the statutory machinery.

The new enactment called the Terms and Conditions of Employment Act, 1959 embodies in one of its section a continuation of a residual and ancillary feature of the compulsory arbitration system. Now called the "claims" procedure, this is the only statutory provision for compulsory arbitration in Britain at present.

The central purpose of this section of the 1959 Act is to give representative organisations of employers or workers the statutory right to invoke, through the Minister of Labour, the adjudication of the Industrial Court in cases where it appears to them that an employer is not observing the terms or conditions of employment which have been established for the industry in which he is engaged, that is to say, the "recognised terms or conditions". The Industrial Court has been given the function of adjudicating on such claims and the Industrial Disputes Tribunal has disappeared.

Aside from Conciliation and Arbitration a third feature of the British system is the 'Court of Enquiry'. Both under the Conciliation Act of 1896 and under the Industrial Courts Act of 1919, the Labour Minister has the authority to enquire into the causes and circumstances of any trade dispute whether reported to him or not, and to appoint a Court of Inquiry to enquire into the matter and report to him. The Courts of Inquiry have no direct relationship with conciliation or arbitration, and the decision

to appoint a Court of Inquiry rests solely with the Minister. The consent of the parties to the appointment of a Court of Inquiry is not required.

Courts of Inquiry are primarily a means of informing Parliament and the public of the facts underlying causes of a dispute. A Court of Inquiry is appointed only as a last resort when no agreed settlement of a dispute seems possible, and when an unbiased and independent examination of the facts is considered to be in the public interest. The power to appoint a Court of Inquiry is used only sparingly and is reserved ordinarily for matters of major importance affecting the public interest.

A Court of Inquiry usually consists of one or more persons selected and appointed by the Minister. The Chairman is always an independent person, but the other members of the Court may be persons representing in equal numbers employers and workers outside the industry concerned. The Act requires that any report of a Court of Inquiry shall be laid, as soon as possible, before both Houses of Parliament and published for the general information of the public.

In cases where the public interest is not so wide and general as to call for a court of inquiry, however, the Minister can also appoint a small committee or even a person called a 'committee of investigation' for enquiring into the matters of dispute. The procedure of such committees is less formal, and its report is not laid before Parliament. However, just as in the case of a court of inquiry the report made by such a committee to the Minister may lead to an agreed settlement of the dispute.

A celebrated authority on industrial relations while comparising the system in Australia and that obtaining in the United Kingdom has remarked that the rationale of the labour relations system in the U.K.

"is not to prescribe and enforce the terms of employment but to provide a maximum inducement to the disputing parties to reach an agreement by voluntary negotiations". This inducement is provided by the flexibility and uncertainity of the form and timing of the Government intervention.

The American scene presents interesting similarities to and distinctions from the British in the matter of Industrial Relations. The reluctance to impose governmental settlement on disputing parties is a common factor of both. Ample facilities are provided for conciliation and voluntary arbitration, but unlike in the U.K. there is no provision for compulsory arbitration even under conditions of emergency. In the United States, in the case of strikes which may imperil the national health or safety, the Act lays down a special procedure granting wide powers to the President of the United States who is authorised to appoint a Board of Inquiry, to petition for a court injunction forbidding the strike for a specified period and to propose such measures as he may think appropriate to Congress.

Systems in between Compulsory Arbitration and Collective Bargaining

In addition to the two extremes of full-scale compulsory arbitration on the one side and an autonomous machinery for settlement and free collective bargaining on the other, there are a number of systems varying according to the proportion in which the two are combined. There are, for example, countries like Canada where, though the right of the parties to bargain collectively and in the event to reach settlement, to go on strike or to declare a lockout are conceded, yet an obligation is imposed on the parties to conciliate in the presence of a state-created machinery and to convince it that failure is in spite of good faith. State intervention in

the form of compulsory conciliation is directed to help them to reach an agreement. In the event of this procedure yielding no success, however, they are free to resort to direct action. In the case of Japan, for example, while there are no binding provisions for compulsory conciliation, mediation or arbitration and the legislation seeks only to help strengthen the autonomous machinery provided for by the parties, many restrictions have been imposed in the case of a big chunk of employees employed in national corporations and national enterprises and those covered by the description of industries engaged in public welfare work, in addition of course to the civil servants.

A brief review of legislative provisions in the above two countries may be of some interest. The Japanese system has been described in some detail.

CANADA: In Canada the first legislation passed in 1900 made provisions for the appointment of officers and boards to help in settlement of labour disputes through voluntary conciliation and for systematic collection of information on labour matters. Later on a bitter experience with prolonged strike in one of the coal fields led to new legislation which prohibited a strike or lockout while conciliation efforts were in progress. This temporary suspension by law of the right to strike or to lockout accompanied by the provision of conciliation services was based, according to the statement of a Government spokesman, on the principle that "the public should not suffer from hasty or ill-considered strike or lock-out action". It was been further pointed out that the authors of the above legislation believed that public opinion could exert an influence "towards achieving reasonable settlements through being informed of the issues in

dispute, of the attitude of the parties, the efforts made to effect settlement and the recommendations of the board of conciliation for a fair settlement where such recommendations were made".

The highlights of the Canadian legislation are: (1) compulsory conciliation and prohibition of strikes or lockouts during the period of the progress of conciliation; (2) prohibition of strike while a union is being certified and while negotiations for a collective agreements are in progress, and (3) prohibition of strikes during the life of a collective agreement. The Federal Act and most of the provincial legislation provide for compulsory arbitration of all disputes arising out of the working or implementation of an agreement during its term. This should be distinguished from arbitration on the terms of a new agreement. A trade unionist has described the provisions of the legislation for recognition of trade unions and collective bargaining as almost amounting to "compulsory collective bargaining". "The parties of course do not have to reach an agreement, but they must bargain in good faith, within a defined time. The employer cannot simply refuse to talk to the union which represents the majority of the employees, nor can he indefinitely postpone the date. He must talk, and talk quickly; and if he then says 'no' to everything, or to a lot of things, the conciliation machinery begins to work".

JAPAN: The Labour Relations Adjustment Law which prescribes the statutory procedures of conciliation, mediation and arbitration of disputes, lays emphasis on the right - even the duty - of the parties to establish their own procedures by agreement. Section 2 of the Labour Relations Adjustment Law provides that:

> The parties concerned with labour relations shall make special endeavours mutually to promote proper and fair labour relations, and fix by trade agreement matters relating to the establishment as well as management of regular agencies to adjust differences constantly, and in the event that labour disputes occur to endeavour to settle them autonomously in all sincerity.

Section 4 of the Law further reinforces Section 2. The same spirit is reflected in the concluding sections, namely, Sections 16, 28, and 35 of the Law, dealing respectively with conciliation, mediation and arbitration, which again mention that nothing in the provisions of the Law shall be construed to prevent the settlement of a dispute by other means of conciliation, or mediation, or arbitration, either by mutual agreement or in accordance with the provisions of a trade agreement.

It would appear, therefore, that to a great extent the above provisions reflect the spirit of the British legislation.

The authority to conciliate, mediate and arbitrate in labour disputes is vested, in general terms, in the Labour Relations Commissions, by section 20 of the Trade Union Law. Each Labour Commission shall appoint and keep a panel of coniliators who "shall be men of knowledge and experience who are capable of rendering assistance for the settlement of the dispute". In the event of a dispute, upon the request of both or one of the parties or on his own initiative, the chairman of the competent commission shall appoint a conciliator from the panel or, with the consent of the commission, may appoint a person not on the panel as a temporary conciliator, who shall endeavour to contact both parties, ascertain their

views and assist them in reaching a settlement. If he sees no prospect of effecting a settlement, the conciliator shall withdraw and report the essential facts of the case to the Commission.

The labour relations commission shall, pursuant to section 18 of the Labour Relations Adjustment Law, carry out mediation.

Mediation is to be carried out by setting up a mediation committee representing the employers, workers (these two groups in equal numbers) and the public interest, these persons being designated by the chairman of the commission from among the members of the labour relations commission or the special adjustment committeemen respectively representing these three interests.

Section 26 of the Labour Relations Adjustment Law empowers the mediation committee to draft a proposal for settlement, present it to the parties concerned and recommend them to accept it, and publish (if necessary with the aid of the press and radio) the proposal for settlement together with the reasons therefor; if the proposal is accepted by both parties and thereafter disagreement arises over the interpretation or implementation of the settlement, the party concerned shall request the mediation committee to present a clarification which shall be given within 15 days, prior to which clarification or to the end of the said period neither party shall resort to acts of dispute.

The arbitration of labour disputes in the private sector is voluntary.

Section 30 of the Labour Relations Adjustment Law provides that the labour relations commission shall arbitrate either "when a request for arbitration by the Labour Relations Commission has been made by both parties

concerned with the dispute" or "when a request for arbitration by the Labour Relations Commission has been made by both or either one of the parties in a case where the trade agreement provides that application for arbitration by the Labour Relations Commission must be made".

The Labour Relations Adjustment Law does not prohibit strikes or lockouts except to the extent indicated in section 36, which provides that "no act which hampers or causes the stoppage of maintenance or normal operation of safety accommodations at factories, mines and other places of employment shall be resorted to as an act of dispute".

Certain other enactments like those controlling the methods of acts of dispute in electrical enterprises and the coal mining industry (Law No.171 of 7 August 1953) provide that "the employer in the electric enterprise or those employed in the electric enterprise shall not perform, as an act of dispute, an act of suspending the normal supply of electricity or any other acts of interrupting directly the normal supply of electricity".

There is another provision mentioned in section 26 of the Labour Relations Adjustment Law requiring abstention from acts of dispute pending the making by a mediation committee of any clarification requested in respect of a proposal for settlement which it has made and which has been accepted by the parties.

This is the position with regard to ordinary industries. There are, however, special provisions for disputes affecting public welfare work within the meaning of section 8 of the Labour Relations Adjustment Law. "Public welfare work" is defined in section 8(1) of the Law as

"the following work which provides services essential to daily life of the general public: (1) Transportation work; (2) Post, telegraph or telephone work; (3) Work for supplying water, gas or electricity; (4) Medical treatment and public health work".

Section 37 of the Labour Relations Adjustment Law provides that when the parties concerned in a case involving public welfare work, resort to any act of dispute, they shall notify it to the labour relations commission and the Minister of Labour or the prefectural governor, at least ten days prior to the day on which the act of dispute is to begin; section 38 further provides that when it has been publicized that an emergency adjustment has been decided upon, the parties shall not resort to any act of dispute for 50 days from the day of its publication.

Section 35-2 of the Labour Relations Adjustment Law empowers the Prime Minister "when he deems that, because of the case being related to a public welfare work, or being of a large scale, or being related to a work of special nature, suspension of the operation thereof arising from an act of dispute seriously threatens national activities or the daily life of the nation", to decide upon emergency adjustment, but only when there exists such a threat. In taking such a decision, the Prime Minister shall first ask the opinion of the Central Labour Relations Commission. When he has taken the decision he must immediately publicize it and the reasons therefor and notify the Commission and the parties concerned.

The Public Corporation and National Enterprise Labour Relations Law (P.C.N.E.L.R.Law) "aims at securing the uninterrupted operation of the public corporation and national enterprise at maximum efficiency for the

promotion and protection of the public welfare, by establishing the usages and procedures of collective bargaining in order to bring about an amicable and peaceful adjustment of grievances or disputes over wages and working conditions between labour and management".

Strikes and lockouts are entirely prohibited in public corporations and national enterprises. Section 17 of the PCNELR Law provides that "employees and their unions shall not engage in a strike, slowdown or any other acts of dispute hampering the normal course of operation of the public corporation and national enterprise, nor shall any employee conspire to effect, instigate or incite such prohibited conduct" and that "the public corporation and national enterprise shall not engage in a lockout". Any employee violating the provisions of section 17 shall be subjected to dismissal.

The term "Public Corporation and National Enterprise" as used in this law includes those designated below :

> Public Corporations: (i) the Japanese National Railways; (ii) the Nippon Telegraph and Telephone Public Corporation; (iii) the Japan Monopoly Public Corporation.
>
> National Enterprises undertakings cover the following services (including the services incidental thereto):
>
> (i) services including post, postal savings, postal money order, postal transfer savings post office life insurance and postal annuity (including such works operated by the government agencies undertaking the above-mentioned services as entrusted by the Nippon Telegraph and Telephone Public Corporation, the International Telegraph and Telephone Company and the Japanese Broadcasting Association, as concerned with selling, amortizing, and purchasing national saving-bonds, and paying their premium, as concerned with selling stamps, and as concerned with paying the annuity and pension and receiving and disbursing the treasury funds);
>
> (ii) services of state-owned forests (including forestry conservation works administered under the state-owned Forests Special Account);

(iii) services of printing notes of the Bank of Japan, paper currency, national loan bonds, stamps, postcards, etc. (including services of manufacturing paper necessary for the said services and of compiling, making and publishing the Official Gazette, statute books, etc.);

(iv) services of mintage (including the services of making medals, etc.);

(v) services of alcohol monopoly.

The P.C.N.E.L.R. Law enjoins the parties to carry on collective bargaining "exclusively through negotiators" representing the respective sides. It is provided that such negotiators shall be nominated by the public corporation and national enterprise and the union. The Law also regulates the scope of collective bargaining, which under section 8 is to cover the following :

(1) matters concerning wages and other remuneration, working hours, recess, holidays and vocations;

(2) matters concerning the standards of promotion, demotion, transfer, discha rge, suspension from office, seniority and disciplinary disposition;

(3) matters concerning safety, health and accident compensation for work;

(4) matters concerning working conditions other than those provided for in the preceding items.

While the law encourages collective bargaining the implementation of certain agreements under section 16 of the P.C.N.E.L.R.Law is subject to the funds available from the budget of the Corporation itself and is not binding on the Japanese Government which may be required to appropriate necessary funds for the purpose of meeting the commitments of the agreement.

The P.C.N.E.L.R.Law establishes a system of conciliation, mediation and arbitration similar to the Labour Relations Adjustment Law. However,

with regard to arbitration, according to section 33 of the Law, the P.C.N.E.L.R. Commission shall undertake arbitration -

(1) when both of the parties concerned have applied for arbitration to the Commission;

(2) when either of the parties concerned has applied for arbitration to the Commission according to the provisions of a collective agreement;

(3) when either of the parties concerned has applied for arbitration to the Commission, in case the Commission has failed to settle a dispute within two months after it commenced conciliation or mediation;

(4) when the Commission has decided that it is necessary to undertake arbitration regarding a case in which the Commission has been undertaking conciliation or mediation;

(5) when the competent Minister has requested the Commission to undertake arbitration.

The arbitration committee is expected to give its award within 30 days from the commencement of the arbitration and shall notify the parties concerned of the award and make it public (Enforcement Order of the P.C.N.E.L.R. Law s.13).

There is no information of any decision which the Government may have taken in recent times to use emergency adjustment procedure. It is learnt that in 1952 the Central Labour Relations Commission was asked by the Prime Minister whether it was appropriate to take such a decision during the 1952 strike of coal miners which had already lasted several months. The Commission is reported to have favoured such a decision, but the dispute was solved by the Central Labour Relations Commission Chairman's opinion before the decision was really made.

... ...

Evaluation by Trade Union Movements

Perhaps of more interest than the provisions of the different systems is the experience of the trade unions in respect of their actual working and their assessment of the pros and cons of the different systems. It has been possible to ascertain the reactions only in the case of Australia, U.K. and Japan.

Australia :

The trade union movement in Australia has been rather critical of the system of compulsory arbitration. There is a feeling that through a system of free collective bargaining the unions would be able to achieve much more gains for labour in the form of wages and conditions of employment than through a system of compulsory arbitration. It is pointed out that "since 1953, the average level of real wage rates have virtually stood still and the real basic wage has fallen by nearly 5 per cent".

The recent judgment of the Commonwealth Conciliation Arbitration Commission in June 1967 seems to have further shaken the confidence of the trade union movement in the compulsory arbitration system. According to the above decision, the Commission will in future base wage margins on general considerations of the national economy rather than on accepted principles of job evaluation, as has been the case hithertofore. The trade union movement feels that the above decision destroys the system for wage determination which had been in force in Australia for over 60 years.

The Congress of the Australian Council of Trade Unions held in 1965 adopted a resolution on "Penal Provisions". The resolution, while noting the amendments to the Commonwealth Conciliation and Arbitration Act

introduced by the Federal Government, stressed that it still ensured the continuance of the employers' preferential economic power by destroying or nullifying the legitimate use of the industrial strength of the workers organized in their trade unions. In this way, the resolution continues, the union's right to withhold labour is denied and when it becomes necessary in the opinion of the trade union movement to exercise that right, the penal provisions are used as a means to attack the financial position of the workers' organisations by imposition of excessive fines and heavy legal costs.

The Congress, re-emphasizing the decision of the Executive taken in August 1958 remarked "These methods of attacking the trade union movement are causing loss of confidence in the conciliation and arbitration system as a means of improving living standards and will destroy goodwill in industry".

The resolution further warns the employers' organisations that a continued policy of attempting to have penalties inflicted on trade unions for strike action will aggravate the position to which the Executive drew attention.

The Congress urged the Executive to continue its campaign for the removal of the pernicious penal sections of the Commonwealth Conciliation and Arbitration Act. In the intervening period, the Congress warned that penal action taken by the Governments or employers against unions involved in industrial action authorized by or endorsed by the ACTU or its State Branches, must inevitably be met by the trade union movement taking its own practical steps to bring about industrial justice within the community.

United Kingdom :

While the British TUC remains a strong adherent of the system of free collective bargaining and retaining for trade unions maximum freedom of direct action, it is also of the view that a system of arbitration at the request of one party as embodied in the Order No.1376 of 1951 should have been retained. The TUC pointed out that it undoubtedly averted strikes, and it had also promoted the use of voluntary machinery by employers who would have otherwise refused to bargain. In a later analysis which the General Council carried out regarding the operation of the Order, they noted that during its period of operation (August 1951 - February 1959) the Tribunal made 1270 awards of which 1,070 related to the settlement of "disputes" i.e., differences of interest, and 200 to the settlement of "issues" i.e., questions of rights concerning the application of agreements (which can now be taken to the Industrial Court in the form of "claims" under the Terms and Conditions of Employment Act). There is no reason to suppose that unions will be less inclined to use the Order now than they were in the 1950s. Furthermore, there is reason to believe that the action taken by the Ministry on reports under the Order may have stimulated voluntary negotiations; about one-third of the 2,600 disputes reported to the Minister under the Order (and about one-half of the 4,500 cases reported under Order 1305) were settled voluntarily - in most of these cases the settlement resulted from action taken by the conciliation officers of the Ministry.

In the Memorandum submitted to the Royal Commission on Trade Unions and Employers' Association, the British TUC has stated that arbitra-

tion at the request of one party could play a very useful part in settling disputes and have suggested that such new arbitration machinery should be complementary to the work at present being carried out by the Industrial Court. The TUC further stressed that unilateral arbitration "would to some extent provide a substitute for imposing a legal duty on employers to bargain and would in many cases promote collective bargaining". A number of organisations like the Transport and General Workers' Union, the Amalgamated Engineering Union, and the General and Municipal Workers' Union, also made similar representation to the Royal Commission. The Royal Commission while dealing with the above question has commented as follows :

> "On its own, unilateral arbitration would not in our view make a major contribution to the extension of collective bargaining. It is true that if an employer can be compelled by a union to submit to the award of a third party on its claim, his motive for refusing recognition will be weakened, and if the union can obtain a favourable arbitration award its ability to recruit new members is likely to be strengthened. However, the criteria which determine whether a trade union is to have the right of access to arbitration are of crucial importance; they are themselves in a sense a "recognition" test.
>
> "The restoration of unilateral arbitration must in any case be considered in the context of the future development of our industrial relations system as a whole. Many matters will come within the scope of company and plant bargaining, for example working practices and the flexible use of manpower, which unilateral arbitration is unlikely to deal with effectively. Moreover, where voluntary machinery is relatively well developed, the provision of unilateral arbitration must tend to have a distorting effect. It is already open to the parties to agree upon arrangements for arbitration, and if they have not done so, it is because one party or the other, or perhaps both, do not consider it in their interests. They may have valid reasons for not putting into the hands of a third party responsibility for decisions of great importance to them.
>
> "We do, however, see a useful role for unilateral arbitration to support the work of the Industrial Relations Commission, in three

different sets of circumstances. First, where the employer rejects a recommendation of the Commission to grant recognition, the Commission should be empowered to recommend that the union or unions should have the right of unilateral arbitration. This will give them at least a foothold and may encourage the employer to change his mind. Secondly, even where the employer accepts a recommendation to grant recognition he may still be able to evade effective bargaining, for where workers are traditionally reluctant to strike or scattered in small units so that it is difficult to bring their collective strength to bear he may be able to exploit the position to reduce bargaining to a mockery. In these circumstances the Commission should also be empowered to recommend unilateral arbitration as a means of imposing a fair settlement of the union's claims and a means to strengthen its organisation. Thirdly, the Commission's investigations may reveal circumstances of this kind even in industries in which unions are already formally recognized. Here again it should be empowered to recommend unilateral arbitration.

"We recommend therefore that unilateral arbitration should be available for use on a selective basis. Its use should be confined to circumstances where it can contribute to the growth of maintenance of sound collective bargaining machinery. It should therefore be available only in industries, sections of industry, or undertakings in which the Secretary of State for Employment and Productivity has certified that such circumstances exist, after the Industrial Relations Commission has so advised following an inquiry in which both sides have had an opportunity to put their point of view. The Secretary of State would at the same time define or specify in the light of the Commission's recommendations the parties who are to have access to the arbitration machinery. We envisage that the Industrial Court would be the arbitration body."

Japan :

Allegations were made by trade unions before the Fact-Finding and Conciliation Commission on Freedom of Association concerning persons employed in the Public Sector in Japan that while the above legislation, viz., the P.C.N.E.L.R. Law as well as the Local Public Enterprise Labour Relations Law, prohibited strikes in public corporations and national enterprises and local public enterprises, the mediation and arbitration system prescribed in the above laws did not safeguard adequately the interest of

the workers and, therefore, were not sufficient compensation for the loss of their right to strike. It was also alleged that the agencies of mediation and arbitration were not impartial, were dilatory and failed to protect the workers' interest, and thus the workers were forced to engage in dispute actions to protect themselves and their conditions of work.

The ILO Committee on Freedom of Association which considered the above allegations in its 54th Report recommended to the ILO Governing Body -

(i) to draw the attention of the Government to the fact that it would not appear to be appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those which are genuinely essential because their interruption may cause public hardship and those which are not essential according to this criterion, and to suggest to the Government that it may care to give consideration to this aspect of the matter at an appropriate time;

(ii) to draw the attention of the Government to the importance which it attaches to the principle that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by the provision of conciliation procedures and of impartial arbitration machinery whose awards are in all cases binding on both sides, and that such awards should be fully and promptly implemented once they have been made;

(iii) to draw the attention of the Government, while noting its statement that the large majority of awards have been fully implemented, to the importance which the Governing Body attaches in this connection to the principle that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards by the compulsory arbitration tribunal and to its view that any departure from this practice would detract from the effective application of the principle set forth in the preceding subparagraph;

(iv) to suggest to the Government that it may care to examine its legislation governing the settlement of dispute in

public corporations and national enterprises in the light of the foregoing principles and to consider what amendments to that legislation and to existing practice might be desirable in order to ensure that the said principles are effectively applied;

(v) to suggest to the Government that it may care to consider what steps can be taken to ensure that the different interests are fairly reflected in the numerical composition of the Public Corporation and National Enterprise Labour Relations Commission, from among whom arbitrators are chosen, and that all the neutral or public members of the Commission are persons whose impartiality commands general confidence.

The recommendation of the Committee on Freedom of Association was approved by the Governing Body in June 1961.

Conclusions

The one inescapable conclusion of this discussion is that negative attitudes towards either collective bargaining or compulsory arbitration should be avoided. The search for a suitable industrial relations system should be informed by a willingness to accommodate both methods and the aim to blend both in a synthesis, most acceptable and most responsive to the peculiarities of the national temperament and the requirements of policy objectives.

One of the main arguments often advanced in favour of compulsory arbitration is that such a system permits smooth running of industries and avoids disturbance in production through strikes and lockouts, contributing thereby to orderly economic development. However, the mandays lost in Australia in stoppages are indeed very high. They are higher than in many countries adopting systems of free collective bargaining like the United

Kingdom and Japan. Some industrial relations experts indeed have refuted any inference that "Australian variety (of compulsory arbitration) inherently involves the legal prohibition on the strike weapon".

On the other hand, in England which is the home of free collective bargaining, the trade union movement has been for sometime thinking in terms of a system of arbitration at the request of one party. The overwhelming majority of the workers in Britain are governed by free collective bargaining, but it is interesting that the TUC should favour unilateral arbitration which is indeed a modified form of compulsory arbitration. The application of such a system is suggested particularly for those section of industries where the employees have not been sufficiently organised and covered by the established collective bargaining machinery in the country. Does this have any significance for developing countries, particularly where the trade union movement is still not sufficiently strong ?

As regards systems in between the above two, i.e. the compulsory arbitration and free collective bargaining, mention has been made of the compulsory conciliation system of Canada and the system of Japan which excludes a big chunk of workers from the purview of free and autonomous collective bargaining.

In Japan, while the legislation lays great stress on encouraging the voluntary and autonomous machinery established by the parties for negotiation and settlement of disputes, it denies the right of strike to three categories of workers, namely, those engaged in industries covered by the term "public welfare work", in public corporations and national enterprises, and the civil servants. This excludes quite a sizeable group

of workers from the enjoyment of the right of direct action. The legislation of Japan seeks to compensate the workers covered by the above categories for the loss of their right to strike through a process akin to compulsory conciliation and arbitration. However, there have been allegations that while the Public Corporation and National Enterprise Labour Relations Law, and Local Public Enterprise Labour Relations Law prohibit strikes in public corporations and national enterprises and local public enterprises, the mediation and arbitration systems prescribed in these laws do not safeguard adequately the interests of the workers and therefore are not sufficient compensation for the loss of the right to strike. The ILO Committee on Freedom of Association in its 54th Report, which has been approved by the Governing Body of the ILO, has made very significant remarks. The Committee has attached great importance to the principle that "where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by the provision of conciliation procedures and of impartial arbitration machinery whose awards are in all cases binding on both sides, and that such awards should be fully and promptly implemented once they have been made". It has further stated that the "reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards by the compulsory arbitration tribunal and to its view that any departure from this practice would detract from the effective application of the principle set forth in the preceding subparagraph".

Three points of great significance emerge from the above remarks.

Firstly, in case strikes by workers in essential services, "public utilities" or welfare work industries are restricted or prohibited, such restrictions should be accompanied by provision affording conciliation and arbitration proceedings, the awards of which "in all cases" are binding on both sides. Secondly, such awards should be fully and promptly implemented. Thirdly, reservation of budgetary powers by the legislature should not have the effect of preventing compliance with terms of the award by the compulsory arbitration tribunal. The above remarks coming as they do from a high authority like the Committee on Freedom of Association of the ILO, deserve serious consideration of all concerned.

Public employees inmost countries seem to have been denied the right to direct action. In some countries like Britain they are permitted a measure of collective bargaining through the Whitley machinery. The question often raised with regard to salaries and remunerations of members of civil service and public employees is the standard by which the pay has to be regulated and the relation of remuneration in the civil service with those obtaining in private industries. In the United Kingdom there is a Civil Service Pay Research Unit which conducts periodic investigations into the remuneration and work of outside "analogues" for each class of "non-industrial" civil servants, to discover exactly what they are paid and how close their duties are to those of the civil servants. These studies form the basis of negotiations on the Whitley Councils, and if need be of submissions to arbitration.

In Japan the wages, hours of work and other working conditions

of the personnel of the regular service are established by law and not by collective agreement. Trade unions of public employees are, however, permitted to designate representatives of their own choice to negotiate with the authorities, though such negotiation does not include the right of collective agreement with the Government. The pay, or compensation as it is called in the Japanese legislation, is fixed by a pay plan prescribed by law and setting forth the rates to be paid to the different classes of personnel in accordance with the position in the classification plan.

There is a further provision that the standards concerning compensation, hours of work and other working conditions established under the Law may at any time be revised by the Diet to bring them into accord with general conditions of society. For the purpose a National Personnel Authority has been established which makes an annual large scale survey of wages over the entire country. If the survey shows that salaries of the public personnel are lower than the wages of comparable workers in private business, the Authority may recommend to the Government that it increase the salaries. The Authority shall report to the Diet and the Cabinet simultaneously on the propriety of salary and wage schedules not less than once each year. The above provisions operate in any event, irrespective of whether or not representations are made to the Authority by or on behalf of the personnel.

The system like those in U.K. and Japan which enable systematic and periodic review of salaries by Government is worth consideration. However, the principles laid down by the ILO with regard to awards in

respect of public utilities would also perhaps be applicable in the case of public employees as most legislations in their case too restrict the right to direct action.

There appears to be a common practice in many countries, including those which have systems of free collective bargaining like Sweden, Germany and Canada, to permit compulsory arbitration on issues arising out of the implementation or interpretation of a collective agreement. In Sweden Labour Courts were set up in 1928 about the same time the Collective Contract Act was passed for the purpose of administering the Act and interpreting the provisions of collective contracts. The main function of the court is to declare what rights and obligations of the parties flow from a collective agreement when disputes arise about it.

In West Germany the legal basis of the establishment of Labour Courts and of the procedure before such Courts is the law on Labour Courts passed on 3 September 1953 with minor amendments in 1955 and 1957. This enactment establishes three types of Labour Courts - the Local Labour Courts, the Land Courts and the Federal Courts. In addition to the Federal Court as the supreme body, there are at present 12 Land Labour Courts and 113 Local Labour Courts in the German Federal Republic. According to the law the hierarchy of the Courts is as follows : the Local Labour Courts are the courts in the first instance, the Land Labour Courts are courts of second instance, and the Federal Court is the Court of third and final instance.

While an attempt has been made to compare the significant

legislative practices in different countries, relating to settlement of industrial disputes, it must be stressed that the role of government in industrial relations in any country cannot possibly be considered in the abstract. A variety of factors must inevitably affect its role, such as the degree of economic development and progress and the political situation in the country, particularly guarantees available for the functioning of free institutions of democracy such as, free elections, free speech, freedom of association, as well as enlightened public opinion. While need has been felt for imposing some limitations on the right of direct action of trade unions under certain specified and limited areas, a wholesale denial of the right of direct action has never proved effective. The only reliable guarantee for the development of sound industrial relations would appear to be the strength and growth of democratic trade unions and the full recognition of their role in a free society.

Chapter V

WAGES AND ECONOMIC DEVELOPMENT

In order to investigate the relationship between wages and economic development, it is first necessary to precisely define the latter. Economic development is not just economic growth. It is something more. It is, infact, economic growth plus all that makes economic growth relevant to and the business of the whole people. Economic development thus necessarily implies that together with the increase in national output, the living standards of the people should also rise.

Development has been defined as the organised growth of living organism - a process of allowing and encouraging people to meet their own aspirations. Fastest possible rate of increase in the material welfare of the country is the common objective of all since the mass of the labour force has no hope of getting a higher standard of living unless steady economic progress is maintained. However, to accomplish this, it is also essential to plan for other changes which must take place concurrently if a satisfactory rate of development is to be achieved. And the criterion for planning these changes should be "whether they will encourage or discourage the spontaneous mobilisation of human resources - the living source of all wealth.

In the contemporary economic literature low productivity has been characterised as one of the major symptoms of underdevelopment and economic backwardness. There is now wide agreement also among economists that the crucial problem in developing regions of the world centres round the question of raising productivity within the shortest possible time. But how to raise productivity in these countries where wages are so low that they do not secure for the workers even the minimum nutritional and living

conditions needed for proper efficiency and productivity? It is often stated that low productivity of labour is responsible for low wages and that a rise in wages above the level consistent with productivity would have disruptive effects on the economy. Though it cannot be denied that in the long run wages and productivity are linked, the nature of this link is not so simple or undirectional as the oft-repeated argument that "workers should not expect higher wages unless their output rises", would indicate. If wages are so low that the workers cannot afford to have enough food of sufficient nutritional value, if he lives in a sub-standard house, if he is constantly worried by his inability to provide for the needs of his family, if he lives with the sense of insecurity and if he is deeply discontented with the treatment he receives from his employer, his very ability to work efficiently is impaired. In such circumstances improvements in wages and working conditions are the necessary steps to raise labour productivity. If this is not done the vicious circle of low productivity, low production and low wages cannot be broken.

This fact, however, does not seem to be fully appreciated by policy makers in most of the developing countries. Wages continue to remain miserably low and a large fraction of the population lives in conditions of acute poverty, sometimes on the edge of starvation. Most of these countries still do not have any national wage policy and wages in most of the cases are fixed on an ad hoc basis. But even in countries where some kind of minimum wage legislation exists, the rates are frequently either determined at levels insufficient to ensure an adequate minimum standard of living or not effectively enforced. The situation is further aggravated by the rising cost of living eroding the real value of wages.

Particularly, in some countries like India, Indonesia, South Korea and South Vietnam which have been experiencing sharp rise in consumer prices, the real earnings of workers have touched their lowest ebb. For example, while in India there was an increase in real wages between 1947 and 1955 (though one must remember that the 1947 level of wages was much lower than that of 1939) they remained constant roughly during the period between 1955 and 1960, and after 1961 there has been a continuous trend in the other directions and there has been considerable erosion in the real value of wages with the result that their level in 1966 was almost the same as in 1952!

What is even more disturbing is the fact that against such a situation the employers and governments in many countries in this region are thinking in terms of a wage freeze. Workers' claims for higher wages are frequently viewed as harmful to economic development. It is argued that higher wages slow down capital formation, push up prices, adversely affect exports by raising costs, reduce employment potential and so on. Trade unions are told that they should, in the interest of economic development, agree to relegate the primary objective of raising wages to a secondary place.

Trade unions are not unaware of their role in economic development of their countries nor do they disregard the importance of higher productivity. On the contrary, they are fully aware that in the long run it is the higher productivity which can promise them higher standard of living. They know that productivity is a major determinant of both wages and economic development.

However, at the same time, they also know that productivity in any industry or in any country will not increase by itself. It will neither increase by freezing of wages nor will it increase by fall in real wages. On the other hand, any substantial improvement in productivity is possible only through improved standard of living of the mass of the workers and by equipping them with better tools and machines.

The human aspect of economic development has however failed to get due recognition of economic planners. While much emphasis is given to economics of savings and investment, much less attention has been paid to human capital formation in economic plans. The fallacy of such formalised economic formulae is obvious because they leave out of reckoning the most decisive single factor in economic development - the human being and his performance. If one ventures to look into the history of economic development of the present developed nations he could find much evidence to the fact that most of the countries that have the best records of economic performances, have not won them because they have the best physical resources or because they have increased rapidly the reproducible goods but largely because their people have acquired the necessary skills and knowledge required to develop a modern economy. For example it will be interesting to note that in USA which is endowed with such vast natural resources, the contribution to the national income of natural resources is barely 5 per cent, of reproducible goods 20 per cent, while that of human resources 75 per cent.

Japan is another example which seems to prove that the highest possible economic growth could be achieved even amidst a poverty of natural resources by developing and utilizing the human resources. How actually it could happen becomes clear from the developments that have taken place in

Japan during the post second War period. It is interesting to note that between 1947 and 1955 when Japan was in the course of economic reconstruction, the wage level rose nearly eleven times in all industries. The index of real wages in manufacturing which dropped as low as 30.2 in 1947, from 100 in the base period 1934-36, was restored to 102.3 in 1952 and reached 114.5 in 1955.

This probably explains the phenomenal increase in labour productivity in Japan from 1959 to 1965. For example, productivity in the manufacturing industry rose by 67 per cent from 1959 to 1965. During the same period, the steel industry recorded a rise of 89 per cent, machinery 77 per cent, and chemicals 104 per cent.

This marked improvement in productivity, as has already been pointed out, was not achieved by keeping the wages behind productivity. On the contrary from 1947 to 1959 the wage increases were more than the gains in productivity. Even from 1959 and onward wages have generally risen either in accordance with or more than the rise in labour productivity. This could be seen from the following table:

Index of Productivity and Wages in Manufacturing
1959-65 (1960 = 100)

Year	Productivity Index		Nominal Wage Index	
	Index	% increased over previous year	Index	% increased over previous year
1959	88.5	N.A.	92.6	7.4
1960	100.0	13.0	100.0	8.0
1961	110.2	10.2	111.6	11.6
1962	113.3	2.8	122.1	9.4
1963	124.0	9.4	134.7	10.3
1964	141.4	14.0	149.3	10.8
1965	148.9	5.3	162.9	9.1

The continually rising wages have naturally resulted in a marked improvement in the standard of living of Japanese workers so much so that during the past few years, the rate of growth in both nominal and real per capita consumption has been greater than those of the various Western European countries. This trend could be seen in the objects of the consumption expenditures of a Japanese worker. In a worker's household, expenditure for food showed a real increase of 35 per cent from 1953-65; expenditure for clothing rose 72 per cent; for heating and lighting 77 per cent; and for housing 132 per cent: Furthermore, the combined expenditure for culture, recreation, education and medical care, health and sanitation have shown a marked rise of 94 per cent.

What is even more interesting is the fact that rate of increase both in money and real wages in Japan is higher than the U.S.A. For example an analysis of the changes in wages level over a relatively long term shows an upward trend both in Japan and U.S.A. but the rate of growth in Japan was about 2.2 times more than that of the U.S.A. In real terms it means that often due correction for changes in consumer prices, the average cash earnings of a Japanese workers registered a rise of 54 per cent from 1953 to 1964 as against 26 per cent in the U.S.A.

This is not to argue that wages in developing countries should reach the levels of Japan or USA, but to put emphasis on the fact that there is a positive correlation between higher wages and higher productivity. And in developing countries this coorelation has a higher co-efficient than that of developed countries. In developed countries the wages have already reached a level when a further increase in them may not have any perceptible impact on productivity. But in developing countries where majority of the population either lives on very low wages or on subsistence farming which do not secure for either of them even the minimum nutritional and living conditions, any increase in their earnings is bound to result in higher efficiency and higher productivity.

This has amply been proved by several field observations and controlled experiments made by the Food and Agricultural Organisation of the United Nations. For example, in one of the experiments, the influence of dietary supplements on the work output of a group of coalminers in the Ruhr District (Republic of Germany) was investigated with the aim of finding whether the low production could be raised by increasing the food rations. During the investigation it was found that a first supplement of

400 calories increased the coal output to almost 10 tons per person, which was what the workers knew was expected of them. The resulting fall in body weight indicated that energy expenditure was slightly in excess of calories intake. A further increase in calories resulted in a small further increase in output, but body weights rose again. Evidently, 177 calroes were required per ton of coal, and for the desired increase in output, 600 extra calories were necessary.

In another experiment, a controlled group of 30 workers engaged in building railway tracks moved about 1¼ tons of earth per hour on a food ration supplying a total of 2,300 calries. After ten weeks, additional food was given which brought the calories upto 3,000 and raised the output to 2½ tons per hour. Output per 1,000 calories increased almost 30 per cent. In the course of a year, the work output rose and fell with the inevitable miner fluctuations of food ration, while body weights remained constant or even increased slightly. It may be of interest in this context to note that a further increase of work output was achieved by a bonus of cigarettes for each additional ton, which was temporarily given for reason of comparison, but as there was no increase in food intake, the increased output proved to be at the expense of body weight.

An especially impressive example is the experience gained in the Central American Public Road Programme in Costa Rica. For the road work which was done by the United States contractors, local labour was employed and proved to be extremely inefficient at work. After some time the organisation of the construction camps was changed, sanitation was improved and the management began to supply substantial meals, including large portion of meat, to the workers who had formerly been subsisting on a poor

and mainly vegetable diet. The resulting improvement in working efficiency was striking. When the work was started in 1943 a labour force consisting of 30 per cent United States labourers and 70 per cent Costa Ricans moved 240 cubic metres of earth per man per day, with modern equipment. A year later, with 33 per cent United States labourers and 67 per cent Costa Ricans, the daily average had risen to 388 cubic metres per day. By January 1945, with 28 per cent United States labourers and 72 per cent Costa Ricans, 1,025 cubic metres were moved per man per day; and by January 1946, with only 12 per cent United States labourers and 88 per cent Costa Ricans, the average had risen to 1,157 cubic metres per man per day.

There is thus good reason to believe that with improved nutrition and living conditions the productivity of workers could substantially be increased.

However, despite the obvious necessity for continuous improvements in wages of the workers in this regions, fears are often expressed that beside other things such improvements will increase the unit cost of production which will ultimately result in cost-push inflation. It is to be remembered, however, that wages and unit labour cost are two separate things and that increase in wages do not invariably increase the unit labour cost. The American experience may be quite interesting in this connection. From 1953 to May 1957, average straight time hourly earnings of production and maintenace workers in manufacturing industries in U.S.A. rose from $1.67 to $2 - an increase of 19.8 per cent. In spite of this increase, unit labour cost in manufacturing industries did not rise - actually it was fairly stable. Total pay-rolls for production and maintenance workers in factories rose only 6.7 per cent, while the volume of factory production

also rose by about the same amount. As a result, therefore, the unit labour cost was approximately the same in May 1957 as in January 1963.

The question, therefore, is not whether wages should or should not be linked with productivity since it has become abundantly clear that in the long run if wages and thereby the living standards of the workers are to go up, productivity has to be correspondingly increased. The crux of the problem is how to create conditions under which the productivity of workers could be improved. The first step in this direction would be to ensure a minimum wage level to all workers which would secure them at least minimum nutrition, health, housing, education, etc. By implication it would mean that in countries where such minimum level has not been reached, substantial increase in wages has to be made even if it means wages being ahead than productivity. The reason is simple. In countries where wages are very low, consumption itself is productive investment which by raising productivity contributes both to an increase in the output and also in capital formation.

This is not only true for developing countries in Asia but is also the corner stone of trade unions' wage policy of the industrialised countries. For example the General Council of the British TUC declared in its statement of November 23, 1966 that "trade unions are ready to accept an incomes policy if they are convinced that its objectives are to increase the real living standards of working people and to redress injustices in the distribution of income and wealth."

The notion of "wage solidarity" which is a characteristic feature of the Confederation of Swedish Trade Unions (LO) and which means nothing more than providing special support to the improvement of wages in low-

wage industries is deep-rooted in several European trade union movements. For example, in Austria the trade union federation has used its position on the joint commission to give priority to claims coming from low-wage industries. In Holland rationalisation of the wage structure has been a major trade union aim and achievement in the framework of the country's wage policy.

Based on the foregoing discussion some of the important requirements of a new policy on wages can be broadly summed up as follows:

1. A comprehensive budgetary and monetary policy to contain inflation should be worked out as the first step in the evolution of national wage policy.

2. Adequate minimum standards of living should be ensured through the establishment of a dynamic minimum wage level for the whole country.

3. The minimum wage level so fixed should be periodically adjusted to take full account of economic growth of the country and to have due regard to increase in the cost of living.

4. Mere fixation of a minimum wage does not ensure that the workers concerned in fact receive that wage. Adequate inspection machinery in full cooperation with the trade unions should be designed to enforce minimum wage legislation.

5. Only after achieving a national minimum standard of living, wages should be linked with productivity.

6. In productivity geared wages, it should be real wages that should be linked with productivity.

7. Free collective bargaining should be encouraged for equitable sharing of gains in productivity.

Chapter VI

SOCIAL SECURITY

In public discussions attention is often directed to the economic cost of social security but much less frequently to the economic costs of social insecurity. No doubt, the economic cost of social security in a developing country would be high but in a country where human resources constitute the main resort of development, the economic consequences of social insecurity can be ruinous.

There is also the very superficial impression that social security constitutes an uncompensated burden on the developing economy of the country and that, it is, consequently a luxury that only rich countries can afford. On the contrary, in poor countries where malnutrition and disease are so wide-spread, unemployment and underemployment so grave, wages so miserably low and education, health and housing services at such a rudimentary level, the need of social security is far more urgent than that in the developed countries. This is particularly so because the gaps that social security has to fill in a poor country are much more wide than the gaps in rich countries.

There is also a misapprehension on the part of many regarding social security as purely a humanitarian or social device. Although social security is primarily social in purpose, but it has also significant economic aspects to which little attention is paid. In fact social security and economic development are inter-dependent, each making its distinctive positive contribution to the general development and to the improvement of levels of living.

For viable economic growth, development of human resources is an economic imperative. The principal activities that produce and maintain human capital are education, on-the-job training and social security. It is true that the level of economic development is an important element for expansion and development of human resources, but at the same time human resources in themselves may be an important catalyst in economic progress.

In its economic role, social security is a constructive policy which promotes industrial efficiency and hence productivity and production. Whether it is collective health policy or compensation for loss of income in contigencies affecting the capacity to work or allowances to cover the needs and responsibilities of the family group, social security helps in various ways to maintain, restore and improve the physical capacity of the human resources. It thus constitutes an essential addition to the efforts made to promote the full utilization of human resources in the service of economic development.

Further, the sums levied or distributed on account of social security in many countries today reach substantial figures, sometimes amounting to 17 or 18 per cent of the national income. For example, as of March 1961 a sum of about 900 million Rupees was irvested in Government bonds under the provident fund scheme of India. The Philippines social insurance scheme invested a sum of about 417 million pesos during the period from September 1957 to June 1965. The Japanese pension insurance scheme accumulated a total of 1,099,668 million Yens during the period 1942-64. The significance of these considerable amounts of money may be examined and evaluated from various points of view. For example, in Ceylon during the period 1962-65 the Employees' Provident Fund scheme was the

biggest investor in the government securities among major non-bank sources. The part played by the scheme in this respect may also be appreciated in the light of the total net domestic borrowings, that is borrowing through the issues of securities, treasury bills, etc., as a source of finance for the Government's capital expenditures. For example, the net domestic borrowing in 1963-64 was 325.5 million Rupees, representing 62.9 per cent of the total capital expenditures and the contributions from the Employees' Provident Fund to the Government securities in the same year was 65.6 million Rupees representing about 20 percent of the net domestic borrowings.

Operations of such magnitude necessarily have a profound effect on economic life. Their real incidence is, however, not widely appreciated since research in this field is not sufficient. It is thus not easy to present a total view of the economic role of social security. The subject must therefore be limited to a few observations on the main aspects of the problem.

In many cases the amounts levied on account of social security, either on individual incomes or on public resources, are not immediately used for the distribution of benefits in cash or in kind. A body of capital of greater or lesser size may in this case be used for economic purposes. From a different aspect, the attempt may be made to use the amounts levied on account of social security for purposes which contribute to the equilibrium of the economy in general. In periods of prosperity the amounts levied would exceed the sums required for benefits. Conversely, in periods of depression, benefits paid would exceed the amounts levied and, by increasing the demand for goods and services, would stimulate production and encourage economic recovery. This consideration played an important

part in the Beveridg Plan, which was largely inspired by the desire to combat unemployment by stabilising the economy. Funds levied on account of social security may be partially used for investment for health and social purposes which will ultimately bring advantages to beneficiaries in the form of improved health care or other services. Even if the effect of such investments is more social than economic, the financing of these services from social security resources will reduce the amount to be spent for these purposes from other funds.

Social security operations are also instruments for redistributing or transfering income among different sections of the community. They are either financed by progressive taxation or by progressive contributions; in either case there is a substantial transfer of income from rich to poor. The lower income groups pay less in taxation or contribution and receive more in benefits. This redistribution process also operates in favour of the inactive population, children, the aged and the sick, so that the purchasing power of these groups is maintained at a certain level.

In considering the effects of social security on the economy, social security levies are wrongly thought of mainly if not entirely as charges which are a burden on the economy, while the support afforded by social security to the economy is neglected. This arises because the support is less immediately visible and, as with the supporting effect of all social policy, difficult if not impossible to evaluate precisely: the effect is nevertheless considerable.

Production is the result of the individual's work. Social security benefits are one of the essential elements which contribute to the provision and maintenance of the human capital in the economy. Provision of medical

care for workers, enabling them to recover rapidly and fully their capacity to work after illness or accident, prevention of illness or accident; provision for families of incomes to ensure an adequate standard of living, even for dependents, and in sickness, invalidity, unemployment and old age; all these are ways in which social security benefits enable the individual to maintain or recover his place in the productive effort.

Economic growth is only possible through the effort of workers as a whole. It cannot be expected that this effort will come forth if the individuals concerned live in constant fear of tomorrow. Inhibition arising from fear of the 'morrow can only be lifted by confidence and hope for the future through social security provisions. The behaviour of the worker is directly influenced by the existence of an effective social security scheme which thus also favours economic growth and prosperity.

The contribution of social security to development is no less essential from the sociological standpoint. In the countries which are still in the process of industrialisation, it has often been noticed that the labour force is highly unstable because the workers who have been brought up in a social framework where security is assured by the values, rules and organisation of rural community life, find it difficult to adjust themselves to the requirements of a radically different enviornment. "There is enough evidence", says International Labour Office, "to suggest that the effects of migration into cities involve social stress and tension (in the developing countries) on a scale unknown in the advanced countries. In North America or Western Europe, leaving the land under present day conditions may mean no more than a change of job. But in the chiefly agricultural continents movement to the city may mean a complete

uprooting and a break with family, neighbours, customs and even religion."

...." Social stress is most evident in alternating movement, aggravating the wastage of manpower which this type of migration entails .... Such movement, where it is a chronic and not a transient condition, gives rise to the most serious problems and that its existence is in no sense a necessity of industrial development. It arises from the failure of agriculture to provide a livelihood and the failure of the industry to provide adequate living and working conditions for its employees".

This ultimately results into an endemic absenteeism or the seasonal return of the workers to their original rural environment which in turn impedes the process of building up of a permanent industrial labour force. Under such circumstances, social security is the most appropriate remedy for stabilising the working force which is so essential a prerequisite for economic growth.

It is necessary therefore that the misgivings which are often seen in these countries towards social security should be dispelled. The speedier growth is desired by all but in achieving it, if it involves some sacrifices and privations, it also requires a parallel acceleration of social progress at all levels of development. It is essential not only because it relieves tension involved in growth but also because it is in itself an effective instrument of economic development. The time has come in Asia to recognise this fundamental truth.

During the last two decades some progress has been made in Asia in the field of social security. Social Insurance schemes, covering mainly short-term work-connected contigencies, have been developed in many countries in this region.

India embarked on the first important measure of social security in 1948 and enacted the Employees' State Insurance (ESI) Act to provide for medical care and cash benefits in the event of sickness, maternity and employment injury. Since, then, continuous efforts are being made to improve the benefits and enlarge the coverage of the ESI scheme. Some progress has also been achieved both in improving the quality of the benefits as well as extending its coverage. There still remain, however, wide gaps between the existing standard of social security scheme in India and the norms laid down by the ILO in the form of Convention 102 on minimum standards of social security.

We do not intend, however, to analyse these gaps since the report of the ESIS Review Committee, 1966, appointed by the Government of India is a comprehensive document on the subject. The committee had not only reviewed the existing measures of social security in the country, but also analysed in details its present weaknesses both in policy making and in implementation. In its wide ranging recommendations, the Committee had attempted to outline the ways and means to achieve an overall improvement in social security scheme in India. Among these recommendations some of the most important are those which relate to 1) abolition of transitional provisions with regard to employers' special contribution1 2) improvement in cash benefits and 3) extension of ESI coverage to those categories of employees who are not yet covered under it.

1. Abolition of Transitional provisions with regard to Employer's Special Contribution

The provision of employer's special contribution has created an artificial situation where the employers are paying a rate of contribution roughly equal to that of employees and have been paying in earlier years

at a rate half that of the employees. It would be recalled that this provision was made in 1951 when the employers in the implemented areas raised objection against paying their contribution as per schedule I of the ESI Act which prescribes their contribution at the rate of 5 per cent of the total wage bill. Against this employers in the implemented areas paid from 1951 to 1962 a contribution of 1.25 per cent only. In 1962 it was raised to 2.5 per cent. In this connection it is important to note that in India the proportion of employer's contribution (even full) to employee's contribution is already substantially lower in comparison to that of other Asian countries. This could be seen from the following comparison of employer's and employee's contribution to the social security scheme in certain Asian countries:

Country	Contingencies covered	Insured person's contribution	Employer's contribution Employer's contribution
Burma	Medical care, sickness, maternity, employment injury	1% of earnings according to wage class	3% of payroll according to wage class
Republic of China	Hospitalisation, ordinary injury, maternity, employment injury, lumpsum for old age, invalidity, death	1% of earnings	3% of payroll
India	Medical care, sickness, maternity, employment injury	about 2.25% of earnings according to wage class	about 2.5% of payroll according to wage class
Iran	Medical care, sickness, maternity, employment injury, old age, invalidity and death	5% of earnings (may be raised to 6% if inadequate)	13% of payroll (may be raised to 15% if inadeuqate)
Japan	Medical care, sickness, maternity, employment injury, old age, invalidity, death, unemployment	about 6.1% of earnings in total	about 6.3 to 14.3% of payroll in total, according to industry
Philippines	Sickness, old age invalidity, death	2.5% of earnings according to wage class	3.5% of payroll according to wage class.

The ESIC Review Committee, therefore, strongly recommended to abolish this system of special contribution by employers. It was however conscious of the fact that this would increase the liability of the employers in the implemented areas. But at the same time it maintained that this liability had already been cast on the employers under the Act. The Committee was further of the view that there is hardly any need to go into the discussion of the employers' rightful share in financial social security schemes. They as a class derive definite advantage from such schemes.

2. Improvement in Cash Benefits

The Committee had also made valuable recommendations for improving the benefits that are given under the social security scheme. In one of its recommendations it has suggested the increase in the duration of sickness benefits from 56 days to 91 days as the first step with ultimate objective to increase the maximum duration to 26 weeks. The rate of employment injury benefit according to the Committee should be 30% over and above the sickness benefit rate which is presently at par (50%) with sickness benefit.

3. Extension of Coverage

At present the ESI scheme has a very narrow basis covering only workers in factories who employ 20 or more persons. For the extension of ESI coverage to those categories of establishments which are still not covered under the ESI scheme, the Committee formulated the following phased programme:

A. Immediately:

i) Factories using power and employing ten or more persons; factories not using power employing twenty or more persons.

ii) Running staff of road transport undertakings not at present covered;

B. During the Fourth Five-Year Plan period:

i) All factories, whether or not using power, employing ten or more persons;

ii) Shops and commercial establishments employing ten or more persons;

iii) Trade and commerce (banks, restaurants, theatres, places of entertainment and other business houses) employing ten or more persons;

C. Thereafter:

i) All undertakings in (B) above; employing five or more persons;

ii) mines and plantations, employing ten or more persons, whether or not power is used.

These and others are valuable recommendstions, the acceptance and implementation of which would greatly improve the social security scheme of the country. However, there are still a few questions which need the special attention of the Commission - the question of conversion of Employees' Provident Fund Scheme into an Old Age, Invalidity and Death pension insurance scheme and introduction of an unemployment insurance scheme within the existing framework of ESIS.

Old age, invalidity and death pension cum Provident Fund Scheme

Social security for the aged, invalid and surviving persons has become an economic necessity and imperative need of modern social life. In a developing country like India, the great majority of wage earners with low wages had little capacity to save during their working life and had nothing to fall back upon at the time of retirement or discharge from work or death. After many years of strenuous employment they are forced to lead a life of penury on ceasing to be gainfully employed. In the event of their death their dependants were reduced to utter destitution.

The scheme of Central Provident Fund has, however, been designed in India, as in many other developing countries in Asia, to make some provision for the future of industrial workers after their retirement and for their dependants in the event of their premature death. Although the role of Provident Fund in providing protection for old age and death has been significant and they have been of great value as preparatory measures for pension insurance, they still remain an inadequate means of social security in comparison with pension insurance.

A provident fund scheme does not constitute part of social insurance as there is no pooling of resources and sharing of risks. Owing to the very nature of such schemes based on the principles of compulsory savings, unless the period of contributory service is a relatively long one, only a small amount is accumulated in an individual account, and consequently the benefit payable is small. Furthermore the rate of benefits is not related to the actual need of the beneficiary and, the amount payable does not relate to the duration of contigency covered.

In case of invalidity or death of the worker at a young age, the benefit may be quite inadequate for his subsistence or that of his survivors. Another weakness of this system is that it does not allow adjustments against the changes in the cost of living or in the general level of wages. Thus under the provident fund schemes, the money accumulated for a rather long period may lose real value. Moreover, there is also real danger that the beneficiary, who is not accustomed to dealing with rather large amounts of money, may easily dissipate it instead of using it for his long-term maintenance. In this connection, the Study Group on Social Security in India had made some interesting observations. According to the Study Group

"lump sums", if they are to serve during old age, should be wisely invested and not many workers have the experience to do so. Cases are not unknown where even high placed officials who commuted the bulk of their pensions suffered in later years as a result of unwise spending of the commuted amounts, where the recipient of the provident fund is a worker's widow, there is every risk of her being exploited by male relatives."

On the other hand, under a scheme of Pension Insurance for old age, invalidity and death, there is pooling of resources and sharing of risks. The scheme provides for regular periodical payments, which secure a regular income through the contigency covered. The benefits paid under it can also be adjusted to the variations in the cost of living and level of wages.

For these reasons, the possibility of transforming provident fund scheme into a pension insurance scheme demands special attention of the Commission. However, while a socially efficient benefit system for old age, invalidity and death may more adequately be obtained under a pension insurance scheme, conversion of provident fund scheme into pension insurance would present some difficult problems, particularly in the Indian context.

Firstly, the Provident Fund scheme has the advantage of simplicity. Being based on the principle of savings, it is readily understood even by workers with little education, and the worker's faith in the scheme is strengthened as he sees that every penny be pays into it is strictly reserved for him and his family. On the other hand, pension insurance scheme is relatively complex in its operation. Further, since the benefit under it is deffered till a worker is retired, it may not inspite his faith in the scheme.

Secondly, the past experience of social insurance scheme has not been very encouraging particularly in the field of payment of cash benefits. Due to various administrative bottlenecks and complicated procedures, workers, very often have to wait for a long time before the payment is made. Particularly for workers who are illiterate, it is real harrassment. Quite often, they have to bribe the administration or pay substantial part of the benefit to self appointed intermediatories to expedite their case. This has created a feeling of distrust among the workers and they prefer to get whatever they can once for all.

Lastly, being rurally oriented, a majority of workers still have rural links and it is natural for them to be settled in their native village after they cease to be gainfully employed, particularly after retirement. As such they need some lumpsum amount at the time of their retirement so that they can purchase some piece of land or can build a house for living.

In the light of the above, it is imperative to evolve a pension insurance scheme which suits the requirement of beneficiaries in the best possible manner. While the first two above stated difficulties could be tackled by reforming the present administrative setup and by educating the beneficiaries about the comparative advantages of pension scheme over the provident fund scheme, the third one can be met by suitably modifying the conventional pension insurance scheme. For example, a Pension-cum-Provident Fund scheme may be a practical solution under which it may be possible to provide a regular monthly payment (as pension) throughout the contigency covered as well as a lumpsum payment (as provident fund) at the time of retirement.

Presently, the EPF scheme in India, is financed by a total contribution of 12.5 to 16.0 per cent of the wage bill equally contributed by the employer and employee*. This 12.5 to 16.0 per cent contribution covers only one risk - the risk of old age. It does not cover other long-term contigencies like invalidity and premature death. The high rate of contribution is necessary because under the EPF scheme there is no pooling of resources and sharing of risks. Since the contributions under EPF scheme have strictly to be creditedtc the individual acccunt, the rate of contribution should be high enough to provide a substantial amount to the beneficiary for his long term maintenance.

On the other hand, under a pension insurance scheme, as has already been pointed out there is pooling of resources and sharing of risks. The principle of pooling the resources and sharing the risks made it possible for the pension insurance scheme to pay higher benefits comparatively at lower cost. The experience of some Latin American, European and Asian countries where the pension insurance scheme is financed and administered by a "social fund" shows that by pooling resources and sharing risks, the cost of benefits and thereby the rate of contribution could substantially be reduced. For example, in Costa Rica, the old age, invalidity and death pension insurance scheme is run by a total contribution of 7.5 per cent of wage bill, equally contributed by the insured person, employer and the government. With such low rates of contribution, it is possible under the scheme to provide benefits upto the maximum of 70 per cent of the average earnings of the insured person differing with the length of employment,

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* The rate of contribution for smaller establishment is 12.5 per cent while in the case of larger establishments - employees 50 or more persons - it is 16.0 per cent.

wage class, and size of the family. Instances may also be quoted from certain European countries where higher benefits are provided with lower costs. For example, in Belgium with a total contribution of 9 per cent from insured person and employer and with a marginal subsidy by the Government, the scheme provides to a married person a monthly pension amount equivalent to 75 per cent of the average life time earnings. In the Philippines, the total cost of sickness, old age, invalidity and survivor's pension scheme is about 6 per cent of the wage bill.

How much contribution is needed in India to finance a pension-cum-provident fund scheme which would provide periodic payment in the case of old age, invalidity or death as well as a lump sum payment at the time of retirment is a subject for detailed acturial calculations. However, the experience of other countries seems to show that benefits under old age, invalidity and survivors' pension scheme could be financed by a total contribution of 10 per cent. It implies, therefore, that if the present rate of EPF contribution is uniformally fixed at 16 per cent, the scheme would not involve any additional burden for employer and employee. Out of a total of 16 per cent contribution, 10 per cent could be utilised for periodic payments and 6 per cent could be accumulated in the individual's provident fund account of the insured person.

In the light of above discussion, the following broad tentative suggestions may be given consideration:

1. The Employees' Provident Fund Scheme should be converted into a pension-cum-provident fund scheme organised and administered under ESIC.

2. The rate of EPF contributions should uniformally be fixed at 8 per cent of the wage bill for the employer and 8 per cent of earnings in the case of employee.

3. Presently the coverage under ESI scheme and EPF scheme differs widely. For the successful implementation of penion-cum-provident fund scheme, it is necessary to have common coverage. This could be done by speedier extension of ESI scheme. However, so long as this is not achieved, the scheme should start with those areas which are under ESI scheme as well as under EPF scheme.

4. In the initial and transitional period, it would be difficult to abolish EPF system altogether and hence both the systems have to continue together for some time. But the pension scheme should be made compulsory for all the new entrants. The relationship between the EPF and the pension-cum-provident fund scheme may be established on either of the two alternatives:

a) All subscribers to provident fund scheme are paid off their (as wellas employer's contribution as per rules) contributions to the Provident Fund. Thus, all workers insured under the new scheme would start out on the same basis.

b) The funds accumulated under the provident fund scheme would be transferred to the new scheme and the accounts of all subscribers covered under the former would be transferred to the latter, providing continuity or protection. The contribution period under the EPF scheme would be considered as contribution period under the new scheme.

5. In almost all countries which have adopted social insurance system, state bears a substantial part of the social security expenditure. For example, in Japan, the state bears 20 per cent of cost of pension insurance, 140 Yens per year per insured person for medical care insurance and

25 per cent cost of unemployment benefit. In Philippines the state takes the responsibility to meet any deficit in case the contributed resources fall short. In U.K. the state contributes about 25 per cent of total contribution received under the old age, invalidity and survivor's pension scheme, bears 85 per cent cost of national health service, whole cost of family allowance and contributes 20 per cent of total contribution received under work injury insurance.

In India, however, the state's contribution towards social insurance is very negligible. For example, state governments bear 12.5 to 25 per cent cost of medical care. The proposed Pension-cum-Provident Fund Scheme, as has already been stated earlier, though would not involve any additional financial burden, yet the government should undertake the responsibility to meet any deficit in case the contributory resources of the scheme fall short of requirements. Such state guarantee would also be helpful in inspiring the faith of insured persons in the scheme.

6. The retirement age for a pension scheme should be fixed carefully. Under the Provident Fund the minimum age for withdrawal of the credits ranges from 50 to 60 years. The age generally fixed for old age pension is 65 years for men and 60 for women. In a developing country like India age for pension may be fixed at 60 for men and 55 for women.

7. Organisational structure and administrative operations regarding registration of employees and employers, collection of contributions, award and payment of pension benefit and controls upon correct application of the law should be carefully laid down.

8. There should be inbuilt provision in the Pension Insurance Act for adjusting the amount of pension benefit with rise or fall of cost of living.

9. The actual amount of benefit though would be determined by factors like the size of family and length of contribution period, but there should be a provision of some "legal minimum" clause in the law.

Unemployment Insurance

Basically the need to have an unemployment insurance scheme stems from the fact that unemployment is one of the most serious risks which wage earners in a dynamic industrial economy face - the risk of losing their job and income. It is also one of the greatest risks to the economy of the nation - the risk of losing purchasing power of a large number of people. This risk assumes even greater importance in a developing country where the domestic market is already very small. In as much as unemployment insurance concerns itself with maintaining individual incomes and thus consumption at a given time, it serves not only to ease tensions within the social structure but also exercises an equalising and stabilising effect on the national economy.

In India, however, there is no unemployment insurance scheme yet in existence. The only provision, which gives some relief in case of retrenchment and lay-off, exists in the Industrial Disputes (Amendment) Act 1954 under which an employer is under legal obligation to compensate a retrenched or laid-off worker. But the amount of compensation prescribed under the Law is far from satisfactory. A laid-off worker under the Act shall be paid by the employer for all days during which he is so laid off except for such weekly holidays as may intervene, compensation

which shall be 50 per cent of the total earnings subject to a maximum of 45 days in a year. The compensation for the retrenchment is equivalent to 15 days average earnings for every completed year of continuous service, or any part thereof in excess of six months, subject to a maximum of three months.

Since these benefits are paid unilaterally by the employer, any substantial improvement in them seems to be difficult. It is necessary therefore that they are replaced by the social insurance system and constitute a part of the existing social security programme.

The main difficulty, however, in devising a general system that will deal effectively with unemployment is in estimating the number of persons it will have to provide for at any given time. The incidence of unemployment cannot be calculated as closely as the number of aged or widows for example. Therefore, any system for unemployment provision must be geared to carry light and heavy loads successively. This usually involves building up funds in good years to meet subsequent severe depressions, in order to avoid having to make hasty and inadequate improvisations when a crisis occurs. Consequently, any kind of "pay-as-you-go" method on an annual basis can be rejected too uncertain and unreliable. The chaos and hardships in Canada and the United States during the catastrophic economic depression of 1930s gave convincing evidence of the need for an extensive, soundly based system of unemployment insurance and for building up reserves in good years.

Difficulties also arise in attempting to devise a scheme that will be financially sound however severe the crisis with which it may be required to cope. Depressions are uncertain in magnitude and it is a

problem to decide how great a possible crisis may be, will it involve 12 or 15 or 25 per cent of employment and for how long - a few months or several years? If a very pessimistic view is taken, it will be necessary to collect high rates of contributions and to accumulate big funds. This may however not be feasible at this stage of economic development in India. A usual procedure therefore may be to take an intermediate course by setting up a scheme that can be expected to remain financially sound and solvent during substantial fluctuations in unemployment but not expected to cope with an exceptionally severe depression. Measures outside the contributory unemployment insurance scheme would be taken during such an emergency. They would include assistance based on means test for persons who, because of long unemployment, had exhausted their rights to insurance benefits, the necessary funds being provided by the state. Alternatively, the state might extend the period of unemployment insurance benefits and for this purpose make loans to the unemployment insurance service which would be repaid during years of good employment.

Though much would depend upon the detailed acturial calculations, the following some broad issues which may be considered while developing a plan for unemployment insurance scheme in India.

The scope and coverage of unemployment insurance scheme in India should be the same as the scope and coverage of Employees State Insurance Scheme. However, in the beginning the scheme should be introduced on experimental basis covering mainly larger establishments.

Unemployment insurance schemes in different countries of the world are mostly financed by the tripartite contributions from the employer, worker and the state. The rate of contribution is generally very low

usually ranging from 0.25 to 1 per cent each from employer and the worker with government undertaking to meet any outgo. In India where the paying of compensation for retrenchment and lay-off is the sole responsibility of the employer, the respective share of contribution from employer and worker may be fixed in the rates of ¾th and ¼th, i.e. 1.50 per cent and 0.50 per cent respectively. The state should however give guarantee to meet any deficit arising at any time.

Regarding qualifying conditions, the practice though differs widely from country to country, but commonly an insured person who has been continuously a member of the unemployment insurance scheme for 150 days (during the last ten months of his unemployment) becomes qualified for the benefit under the scheme. The other usual qualifying conditions are that the person should be eligible for the work as well as should be available for the work.

In India, therefore, the qualifying conditions should also be near 150 days of continuous membership of unemployment insurance during one year of employment. However, while making provisions for other qualifications such as eligibility and availability for the work, some exceptions must be provided. For example, a worker should not be considered disqualified for the unemployment benefit if he refused to accept a job which has become vacant as a result of a strike.

The benefits under the employment insurance scheme of the Western countries usually are very high ranging from 50 to 90 per cent of the earnings. The duration of these benefits is usually six months. In almost all the countries the actual amount of benefit is determined after taking into account the marital status and number of dependants of the insured workers, and a maximum limit is always prescribed.

In India, however, it may not be feasible to give such high unemployment benefit. But at the same time it should also be related to the basic minimum. In this respect it may be desirable to vary the amount of benefit according to the size of the family. For example, for an unmarried person with no dependants, the amount of benefit may be 40 per cent of his earnings, for married persons with no dependants, it may be 50 per cent and for married persons with dependants it should be 60 per cent. The duration of benefit, which is generally six months, may also be considered reasonable in Indian conditions. In addition to regular unemployment insurance benefit, provisions should also be made for providing retraining facilities as well as for supplementary benefit for rehablitation. The administrative responsibility of unemployment insurance scheme should rest with the ESIC.