# Report of the Study group

# on

# REVIEW OF LAWS

## Second National Commission on Labour

February 2002

The views expressed in this report are solely that of the Study Group constituted by the National Commission on Labour and are not necessarily that of the Commission.

# National Commission on Labour

## Report of Study Group on Review of Laws

T.S. Sankaran
President

15.11.2001

Dear

I attach herewith a copy of the Report of our Study Group, which I am submitting to the Chairman of the National Commission on Labour. A copy of my forwarding letter to the chairman, NCL is also enclosed and that explains why it was not found possible or necessary to have a formal meeting of the Study Group to sign the Report. The Commission has also proposed to consider our Report, towards the end of the month; I, as chairman of our Study Group, will be present at that time.

The draft law, which I had referred to in my letter to the Chairman NCL, may not be ready at least till mid-January 2002 and I shall send you a copy then.

Our efforts, extending over a year have come to an end and for me, it has been a rewarding experience. I trust that it has been so for you also. Given the nature of the subject, it is not surprising that we had sharp differences of opinion, which are reflected in the notes attached to the main Report. However, I think we can claim to have discussed the subject in a spirit of cordiality and good humour. I am personally grateful to every one of the members of the Study Group for the consideration shown to me and for the contribution each had made to make our deliberation relevant and purposeful. Kindly accept my grateful thanks.

With warm personal regards,
Yours sincerely,

T.S. Sankaran

To all members of Study Group

# National Commission on Labour

## Report of Study Group on Review of Laws

T.S. Sankaran
Chairman

15.11.2001

Dear Shri Varma,

I have pleasure in submitting the Report of the Study Group on Review of Laws, set up by the Commission. The Report is not unanimous, in the sense that quite a few reservations have been expressed by some of the members, all of which have been added to the main body of the Report. While it gives me a certain amount of unhappiness is not being able to present you with a unanimous Report, I can only rationalise and say that given the nature of the subject that we had to deal with it, differences of opinion are bound to arise. Even so, there is a measure of agreement among the majority of the members of the Study Group on the conclusions and recommendation in the main body of the Report. Each one of us has his or her own view of things and would want that to be reflected in the Report; I myself, if I were to write it as a one man committee Report, would, perhaps have not subscribed to some of the recommendations contained in the main report, but, then, as a member of the Study Group and its chairman, it was necessary to aim at the largest body of consensus that could be reached. To the extent that the main Report would leave everyone with a certain amount of dissatisfaction and, hopefully, some measure of satisfaction, I think we can claim to have done a worthwhile task. Shri Sanat Mehta, a leading member of our Study Group, hit the nail on the head when he said, in his letter of 11th October agreeing with an earlier draft that "The subject is so vast and it has to assimilate the wide range of views or various subjects. In this situation, one has to try to arrive at broad agreement leaving aside personal or sectoral emphasis or differences". That, in essence, has been our attempt.

In the circumstances stated, there was, I felt, no need to convene again another meeting of the Study Group, merely to sign the Report. So I am submitting it to you straightaway, with this covering letter. The Report is in two parts, one being the main Report with the comments of the members who have responded to the draft, and the other consisting of annexes. I am also submitting 19 more sets of the Report to the Commission, so that there is no further need for the Commission to get copies made as fresh.

We hope and trust that this Report will be of some use to the Commission in its larger effort.

As regards the draft law that you had desired the Study Group to submit, I am afraid that, for want of time, this has not been possible. However, I shall attempt that exercise, keeping in mind the conclusions and recommendations of the Study Groups, including ours. This is likely to take some time, may be till mid January 2002, and I hope that by than, the Reports of the Study Groups an Globalisation and Skill Development would also have been received. I trust that this time frame will not unduly upset the schedule that you may have in mind.

Let me complete this letter by thanking you and the Commission on my behalf and on behalf of all the members of the Study Group, for giving us this opportunity to deal with this challenging task. Our task had been made really exciting by our interaction with you, Dr. Sabade, Shri Sanyal, and the three officers of the Commission namely, S/Shri T.G. Girotra, Piyush Sharma, and D.K. Singh whose contribution to the discussions in the Study Group at its meetings have been weighty and persuasive Kindly convey to each one of them our very grateful thanks.

To you, Shri Verma, there is nothing more that I want to say except how rich and fruitful has been this experience to me.

Yours sincerely,

T.S. Sankaran

# National Commission on Labour

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T.S. Sankaran

To all members of Study Group

# REPORT

## I. Introduction

1. The (Second) National Commission on Labour has been set up by the Government of India with the following terms of reference:

   a) To suggest rationalisation of existing laws relating to labour in the organised sector and;

   b) To suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganised sector.

   In developing the framework for its recommendations, the Commission has been enjoined to take into account the following:

   i) Follow up implications of the recommendations made by the Commission set up in May 1998 for review of various administrative laws governing industry;

   ii) The emerging economic environment involving rapid technological changes, requiring response in terms of change in methods, timings and conditions of work in industry, trade and services, globalisation of economy, liberalisation of trade and industry and emphasis on international competitiveness and the need for bringing the existing laws in tune with the future labour market needs and demands;

   iii) The minimum level of labour protection and welfare measures and basic institutional framework for ensuring the same, in the manner which is conducive to a flexible labour market and adjustments necessary for furthering technological change and economic growth; and

   iv) Improving the effectiveness of measures relating to social security, occupational health and safety, minimum wages, and linkages of wages with productivity and in particular the safeguards and facilities required for women and handicapped persons in employment.

2. In terms of the above, the National Commission has constituted six Study Groups so far, the first two of which are directly related to its two main terms of reference.

3. The Commission has not indicated any terms of reference to our Study Group on the Review of Laws; presumably, our task is more or less co-terminus with the first term of reference of the Commission. If so, we also have to keep in view the four broad areas which have been indicated in National Commission on Labour's terms of reference. The Commission has also, in setting up the Study Groups, indicated that the Groups will make their reports in consonance with the terms of reference of the Commission.

4. We, therefore, broadly embarked on our task on the above basis. In doing that we had to take cognizance of two factors. **Firstly**, we recognised that a separate Study Group has been set up to look at the second term of reference of the Commission. While therefore, the detailed formulations in respect of workers in the unorganised sector will be the responsibility of the second Study Group, our Group could not completely shut its eyes to laws already in force which are relevant to both the organised and unorganised sectors, such as the Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Contract Labour (Regulation and Abolition) Act, 1970 and so on. Also, it became necessary to be clear as to what organised and unorganised sectors denote. It is relevant to point out that the terms 'labour in the organised sector' and 'workers in the unorganised sector', occurring in the terms of reference of the Commission have not been defined. However, the very fact that our study team has, as its members, individuals connected with Small Scale Industries and Khadi and Village Industries seems to indicate that our task is to look at all the laws covering the entire world of Indian Labour. This is as it ought to be and therefore the Study Group has attempted to look at all the labour laws.

5. **Secondly,** we also recognised that the Commission has set up four more Study Groups; the work of these Study Groups on Social Security, Women and Child Labour, and Globalisation and its Impact as also the sixth Study Group subsequently set up on Skill Development, Training and Workers Education will be relevant to our work. The question therefore, arose as to whether our Study Group will have to look in detail into the laws that will be the subject matter of close attention by other Study Groups. After discussion, it was agreed that while, no doubt, the other Study Groups will look at the relevant laws in great detail, we as a Study Group on Review of Laws cannot also afford not to look at these laws. In any event, we have to look at the laws at least for the purpose of deciding on what the coverage should be; in addition, if there are substantive points in the laws which call for comments, we should be able to offer them. Also it was felt necessary to keep in close touch with the work of the other Study Groups and with the Commission; accordingly a system of periodic meetings of the Chairpersons of the various Study Groups with Chairman of the National Commission on Labour was evolved. Also, the Chairman of the Study Group has kept in close touch with the work of other Study Groups through their Chairpersons and has also attended some of their meetings and consultations.

6. In its work, the Study Group examined whether its attention should be confined only to Central Laws i.e. laws enacted by Parliament or it should also look at State Laws including State level amendments to Central Laws. After discussion, the **Study Group came to the conclusion that all laws whether Central or State will have to be looked at by us and within the limitations of time, it should give priority attention to Central Laws**.

7. One of the points raised in the Study Group was whether we should gather evidence, hold consultations with invited persons, conduct seminars and so on. However, after discussions it was agreed that these are matters which the Commission itself is doing and we as a group of persons with intimate knowledge of the working of labour laws are expected to give to the Commission our considered advice on matters remitted to our charge. At the request of the Study Groups, the Commission makes available to members of the Study Group brief summaries of evidence tendered before the Commission during its visits to various state capitals. Also, financial considerations and limitation of time were crucial factors in our abandoning any such exercise. This, of course, necessitated our having to meet quite often. In all, we have had over a dozen meetings to complete our task.

8. The members of the Study Group expressed their dissatisfaction about attempts being made not merely by State Governments but also the Central Government to amend labour laws or to make pronouncements about changes to be made, as was done by the Union Finance Minister, in his budget speech, even when the National Commission on Labour is currently engaged in such a task. The Study Group felt that if the Central Government is anxious to have amendments carried out to any specific law urgently, they may ask the Commission to report on it expeditiously, by submitting, if necessary, an interim report. The Study Group also is unhappy that even while the NCL is engaged in its task, committees, task forces, and group of ministers are being commissioned to do the same kind of exercise that NCL has been commissioned to do. And things do not improve when all these august bodies keep repeating what has been heard over and over again during the last decade or so, namely, repeal section 9A, Chapter V B and amend section 11A of the I.D. Act, delete section 10 of the Contract Labour (R&A) Act, amend the definition of the term 'occupier' in the Factories Act, ban 'outsiders' in the executives of trade unions and so on. One gets weary of all this.

**II. Approach**

9. In dealing with its task it was necessary to understand the scope and functions of labour laws. It is worthwhile to record here what Prof. Otto Kahn-Freund had to say on the subject. **(see Annexure 1)**

10. It is equally relevant to look at labour laws in the Indian context and we cannot do better than to give long extracts from the inaugural address delivered by Shri R. Venkatraman, then Vice President of India at the Seminar organized by the National Labour Law Association in November 1985 on "Constitutional Law, Industrial Jurisprudence and Labour Adjudication." **(see Annexure 2)**

11. In addition to the wise thoughts indicated above, it is also necessary to keep in view certain other important parameters. The first, of course, is the Constitution of India which guarantees in Article 19 freedom of speech and expression, freedom to form associations or unions and freedom to practice any profession or to carry on any occupation, trade or business, subject to reasonable restrictions that may be imposed by law on the exercise of above freedoms. We also have Article 23 prohibiting traffic in human being and forced labour and Article 24 prohibiting employment of children in factories etc. These are Constitutionally binding; besides we have a very large number of Direcetive Principles of State Policy in Part IV of the Constitution—these principles though not enforceable by any court are nevertheless fundamental in the governance of the country and **it shall be the duty of the State to apply these principles in making laws.** Articles 38, 39 39A, 41, 42, 43 and 43A are principles which are relevant to the work of our Study Group and to the work of the Commission. It is also relevant to recognise that "right to work" which figures in Article 41 as a Directive Principle is being sought to be made into a fundamental right.

12. Apart from these, it is also necessary to refer to two or three other matters. The ILO declaration on **Fundamental Principles and Rights at Work,** adopted by the International Labour Conference in June 1998, declares inter alia that all Members **whether they have ratified the relevant conventions or not** have an obligation arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution the principles concerning the fundamental rights which are the subject of those conventions, namely,

    (a) Freedom of association and the effective recognition of the right to collective bargaining;
    (b) The elimination of all forms of forced or compulsory labour;
    (c) The effective abolition of child labour; and
    (d) The elimination of discrimination in respect of employment and occupation.

13. In the next year, i.e. 1999, the Report of the Director General to the International Labour Conference was on **Decent Work**. In his report, the Director General emphasised the following: The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO is concerned with all workers. All those who work have rights at work. The ILO is concerned with Decent Work. **The goal is not just the creation of jobs but the creation of jobs of acceptable quality**. The Director General also pointed out that:

    "We are in a prolonged period of adjustment to an emerging global economy ..... The standard policy response was formulated by the Breton Woods Institutions in the 1980s at the time of debt crisis and subsequently applied in the transition economies. It was based on two fundamental assumptions: That free markets are sufficient for growth and they were very nearly sufficient for social

stability and political democracy. The strategy for economic success basically consisted in **transferring responsibilities for regulations from the state to the market**. ..... These policies are influential because they were simple and universal. They brought necessary macro-economic discipline and a new spirit of competition and creativity to the economy. They opened the way for the application of new technologies and new management practices. But they confused technical means of action – such as privatisation and de-regulation – with the social and economic ends of development. They became inflexible and did not take the social and political context of markets sufficiently into account. Their impact on people and their families was sometimes devastating. **Increasing doubts about the efficacy of these prescriptions after a decade of experience in the transitional economies came to a head with recent crisis in the emerging markets. That crisis marked a turning point in public opinion**. The result has been both greater uncertainty and greater receptivity to a wider range of opinions, including the views of developing countries and of civil society."

14. In June 2001, in his Report to the International Labour Conference, the Director General said, *inter alia*,

"... The multilateral system must respond to persistent demands for new, better and more coherent international frameworks. We have made progress, but not enough. I believe that the multilateral system is still underperforming in this respect.

From the ILO we must push for greater unity of action. In turn, the ILO must stand ready to engage as a committed team player. This means not only working together but taking on board each others goals. Just as the ILO has to integrate the need for sound macro economic policies into its understanding, so the Breton Woods institutions should make decent work development objectives a part of their basic framework. I believe that a system-wide commitment to promoting decent work, as a major development goal and our instrument to reduce poverty, would not only benefit all our constituents but would also enrich the policy agenda of other organisations.

That does not mean that we will always be in agreement, and the ILO and the IMF or the World Bank may not come to the same conclusions in any given case. Each organisation has its own identity and constituents, and its own mandate. From our perception, **when it comes to the hard decision there is no reason why it should so often be the social goals that are sacrificed."**

15. Apart from these, it is also necessary to take note of the fact that the **Government in India ratified on 26.10.1998 Convention 122 on Employment and Social Policy** which had been adopted by the International Labour Conference in **1964**. It is relevant to reproduce in full the text of Article 1 of the above Convention:

**"Article 1"**

1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each Member shall declare and pursue, as a major goal an active policy designed to promote full, productive and freely chosen employment.

2. The said policy shall aim at ensuring that:
   (a) There is work for all who are available for and seeking work:
   (b) Such work is as productive as possible:
   (c) There is freedom of choice of the employment and the fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

3. The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices."

It is not without significance that this convention had been ratified by India at a time when unemployment levels were high even if reckoned purely in terms of employment exchange statistics. One therefore, presumes that the Government is now committed to pursue an active policy designed to promote full productive and freely chosen employment.

16. In the light of above, we see that the **following rights of workers are inalienable and must accrue to every worker under any system of labour laws and labour policy.** These are:

(a) Right to work of one's choice
(b) Right against discrimination
(c) Prohibition of child labour
(d) Just and humane conditions of work
(e) Right to social security
(f) Protection of Wages including right to guarantee of wages
(g) Right to redress
(h) Right to organise and form trade unions and Right to collective bargaining, and
(i) Right to participation in management.

17. If that were so, what exactly should the labour laws do? Should labour laws be confining their attention only to a section of the labour force which is a small part of the nearly 400 million work force or should labour laws have universal applicability? It is in this context that the distinction that we usually make in our country between

organised sector and unorganised sector becomes significant. As we, as a Study Group, have been asked to look at the laws relating to labour in the organised sector, the Study Group naturally took upon itself, as its first task, **the delimitation of the organised sector**. There is no accepted definition of this term or of its companion, namely, the unorganised sector; however, one can presume that there is a certain broad picture at the back of one's mind when one talks of organised sector in contradistinction to unorganised sector. It is relevant, to point out that in the **Trade Unions (Amendment) Bill 2000**, Bill XXX of 2000, which has subsequently been passed by both Houses of Parliament, explanation in clause 8 of the Bill states that for purposes of that section, **'unorganised sector' means any sector which the appropriate government may, by notification in the Official Gazette, specify**. Even so, should we delimit organised sector in terms of the number of persons employed in the establishment in that sector or in terms of capital invested in that establishment or in terms of the level of technology that obtains in that establishment or on the basis of any other criteria like turn over, wage cost as a proportion of total cost, etc. Also, should the availability of legal protection under the labour laws be a criterion for this? As already pointed out, legal applicability may not be a sole or even a satisfactory criterion considering that laws like the Minimum Wages Act, the Equal Remuneration Act, Contract Labour Act and so on apply to workers in both the organised and the unorganised sector; even the Industrial Disputes Act applies to large sectors of 'unorganised' labour. Likewise, the investment in an establishment may not always be the relevant criterion because investment is, in a manner of speaking, the function of the technology and the processes involved in the operation of that establishment. **Keeping all these in view, it would appear that perhaps the safest approach, in the context of coverage under labour laws, would be to define organised sector as consisting of establishments which have a minimum employment limit.**

18. A look at the various labour laws particularly Central Labour Laws show that **not all labour laws have any employment limit for coverage**. The Industrial Disputes Act 1947 has no such limit excepting for section 3 and Chapters VA or Chapter VB of the Act. The Minimum Wages Act, 1948 and the Equal Remuneration Act, 1976 also do not have any employment limit. Therefore, even if a minimum employment limit is prescribed for demarcating the organised sector, it is not as though the Industrial Disputes Act, the Minimum Wages Act or the Equal Remuneration Act will not apply to those establishments where the employment limit is less than the minimum prescribed. The need for universality of labour laws, therefore, appears to have a lot to commend itself. The Indian Labour Code 1994 (draft) prepared by the National Labour Law Association has adopted this kind of universal applicability. But the Study Group feels that that is perhaps too ambitious or too impractical an approach now and would therefore, like to fix a certain minimum employment limit for coverage under the organised sector.

19. What should be this limit? A study of the employment limits prescribed currently in various labour laws shows that the pattern is not really uniform. It ranges from covering establishments employing 5 persons as in the Motor Transport Workers Act and Inter-state Migrant Workers Act to 10, 20 or 100 as in the Factories Act, Building and other Construction Workers Act, Payment of Bonus Act, Contract Labour (Regulation and Abolition) Act, Industrial Employment (Standing Orders Act) and so on. That establishments having 20 or more employees (i.e., both workers and others) should be included in the 'organised' sector was a view that found favour with some members. There was, however, within the Study Group, a strong body of opinion that would like the minimum employment limit to be 50. Equally, there were members who consider even 20 a little too high and would prefer the limit to be 10.

Almost all the Small Scale Industries Associations demand that the limit must be 50 and more. The argument in favour of this is that an establishment of a smaller size can in no manner of speaking be described as 'organised'; they do not have any well conceived production plan, any access to institutional credit, the necessary economic size to look after all the multifarious responsibility relating to production, finance, accounts, human resource management, law and so on. Their small size itself makes them vulnerable, as they do not have the wherewithal to meet the diverse requirements of myriads of laws and thus, fall easy prey to the demands of the 'Inspector Raj'. It has also been urged that if these 'smaller' establishments, i.e. those employing less than 50 persons, were to be covered by a set of self contained simple legal provisions which is easily understood by the managements and easy to implement, then the entrepreneurs will be encouraged to expand their current small establishments by taking more hands and still keep their employment strength below 50; this, it is argued, will help generate further employment in this sector, which, even now, is both the main source of employment and also the generator of skills. These are fairly compelling reasons. **After considerable discussion, the Study Group agreed, necessarily not unanimously, that establishments employing 50 or more persons must be governed by the general law while the 'smaller' establishments will have a self contained set of provisions that will be applicable to them.** Even so, the Study Group was unanimous in the view that every worker, irrespective of the employment size of the establishment, must be assured minimum social security protection.

In raising the cut off limit to 50 employees, we are aware that this will account for a large majority of establishments and a very high percentage of workers being let out of the main law. At first blush, it may appear that these establishments are being let off the hook. But it is not so; we are providing for these establishments and the workers simple but adequate provisions to protect the interests of the workers satisfactorily.

Thus, **whatever be the employment limit, there are certain provisions like maternity benefit, child care, workmen's compensation, medical benefits and**

**other elements of social security which must, in the view of the Study Group, be applicable to all workers, irrespective of the employment size of that establishment, or the nature of its activity.**

20. If Labour Laws are essentially meant to be protective of the interests of the workers, the question then arises as to whether there should be any salary limit above which the protection of the labour laws will not be available. There are of course salary limits prescribed in the existing labour laws, as for example in the Payment of Bonus Act, the Employees Provident Fund and Miscellaneous Provisions Act, Employees State Insurance Act, Payment of Wages Act and so on; The Industrial Disputes Act also has a salary limit for coverage of supervisory personnel. The Study Group would recommend that no salary limit be prescribed for coverage of workers under the labour laws. The demarcation should be functional rather than based on remuneration. We must remember that in dealing with such issues, we are not writing on a clean slate. If a salary limit be prescribed for coverage of workmen, say, under the Industrial Disputes Act, we will find that persons similarly placed may fall on either side of this divide. In these days of increasing prices and a system of dearness allowance linked to consumer price index, we may also find that depending upon the extent of neutralisation, a person may be a workmen in one month and may cease to be one the next month should his total salary cross the limit; and, may be, if the index goes down, he or she will be again a worker! This kind of artificial delimitation is a divisive process and will not be conducive to healthy labour management relations in the establishment concerned. **It is therefore the considered view of the Study Group that salary limits should not be the criteria.** The Study Group is aware that there is a history of wage limits being prescribed in laws like EPF Act, ESI Act, Payment of Bonus Act etc.; even here the Study Group would recommend that the criterion for coverage should be functional rather than based on wage. One of the compelling reasons for this view is that any other criterion or criteria for coverage would be divisive; **The Study Group would like a feeling of togetherness being engendered among all workers, and this will be reinforced if there is a uniform functional definition of the term 'worker' in all labour laws. The Study Group sets much in store by this approach.**

21. If that were so, what should be the functional demarcation? The Study Group thinks that the definition of the term 'workmen' as given in the Industrial Disputes Act may be a starting point for dealing with this question. This definition has come in for interpretation on several occasions and can in a manner of speaking be stated to have stood the test of time. There is of course an ambiguity whether this definition would, for example, include sales promotion employees for whom a separate law had to be enacted consequent on the judgement in the *May and Baker* case. It should be possible to incorporate a suitable form of words that will cover this category also.

It would appear that when one mentions the expression 'sales promotion employees' the immediate picture that comes to mind is that of such a person in the pharmaceutical industry, the so called 'medical representatives'. Though the Sales Promotion Employers (Conditions of Service) Act, 1976 applied in the first instance to the establishments engaged in the pharmaceutical industry (Section 1(4) of the Act), the Act seeks to cover other such employees also. But the case of other such employers seems to go by fault-either they are not part of 'notified' industry (see section 1(5) of the Act) or are too dispersed and unorganised as to cause concern to the employer. Such persons also need the protection of labour laws and we feel that if such persons come within the purview of the term 'worker', they would get the protection.

22. The next point that will have to be considered is whether supervisory employees should or should not be clubbed with workers for purpose of coverage. The ID Act, as it now stands, excludes all supervisory personnel drawing wages in excess of Rs. 1600 p.m. This wage limit is so low in the present context that no argument is necessary to do away with this limit. The more basic point in the case of supervisory personnel is whether they ought to be treated as part and parcel of the work force or they should be considered to be part of the management. It is, in this context, necessary to note that Industrial Disputes Act distinguishes between the employees doing work of administrative or managerial nature and those doing work of a supervisory nature, for whom alone a salary limit is fixed. The Study Group thinks that **it would be logical to keep all the supervisory personnel, irrespective of their wage/salary, outside the rank of workmen and keep them out of the purview of the labour laws along with those who discharge the functions of an administrative or managerial nature**. The Study Group would also recommend that **this definition of worker could be adopted in all the labour laws**. It is likely that such a definition may keep out of the purview of certain laws like the Payment of Bonus Act, some employees who are now covered, based purely on a salary limit. This need not deter us, as one can expect managements to take care of the interests of supervisory staff as they will now wholly be part of the managerial fraternity.

23. The Study Group also felt that the **existing set of labour laws be broadly grouped into four or five groups of laws pertaining** to industrial relations, wages, social security, safety, welfare and working conditions and so on. The Study Group strongly recommends that the **coverage as well as the definition of the term worker should be the same in all groups of laws, subject to the stipulation that social security benefits must be available to all workers**. We propose that instead of having separate laws, it may be advantageous to incorporate all the provisions relating to employment relations, wages, social security, safety and working conditions etc., into a single law, with a separate part in respect of establishments employing less than 50 persons. The Chairman of the National Commission on Labour desires that the Study Group should present a draft law that will incorporate all our Recommendations; we shall endeavour to do this.

24. The Study Group also considered the question whether apart from having laws for the protection of workers, there should be any legislation for giving protection to managerial employees also. It noted that way back in 1978 a draft bill on the subject was also introduced in the Parliament. It was also noted that some kind of protection to such employees is available in Shops and Establishments Acts of certain States wherein there is a provision for an appeal to a specified authority, usually an official of the labour department, against orders of discharge, dismissal or removal from service of an employee who may not be a worker under the Industrial Disputes Act. Opinion on this in the Study Group was divided. It was pointed out that by incorporating such a provision, it is likely to create some dissension in an environment which currently is claimed to be based on trust and confidence as far as such employees are concerned. As against this, it was pointed out that against unfair removal from service, such employees do not have any legal remedy excepted by way of a suit which, experience would show, is not a very satisfactory method of redress, particularly when it is clear that the best that such a person can expect from a civil court is compensation and not reinstatement. Keeping all these issues in view, **the Study Group considers that it is necessary to provide a minimum modicum of protection to such employees also against unfair dismissals or removals by way of adjudication by a third party, such protection extending even to reinstatement, if the adjudicating authority so directs.**

25. In embarking on our task of rationalisation of existing labour laws, one of the important aspects that we had to bear in mind is that in the field of labour, we have not only central laws, *i.e.*, laws made by Parliament but also laws made by State legislatures which will include State level amendments to Central laws. This is so, because the **Constitution of India has included labour and related matters in the Concurrent List. The Study Group does not consider it necessary or desirable to change this.** Howsoever carefully and comprehensively a consolidated law of the type envisaged by us is drafted and enacted, it is likely that individual states may feel the need for making changes and/or additions to suit their local conditions and this should be permitted within the provisions of the Constitution, under which the State will have to move the Central Government for getting Presidential assent to such changes.

It is to be recognised that the enforcement of specific laws is either the responsibility of the Central Government or of the State Government concerned or of both. This is determined on the basis of the definition of the term 'appropriate government' that occurs in various labour laws. While for all State level legislations, the 'appropriate government' is the concerned State Government, the position varies in respect of Central laws. Some central laws like Mines Act, 1952 will have the Central Government as the sole authority in respect of that law; there are Central Laws like Factories Act, Plantations Labour Act and so on, where the authority is exclusively of the State Government where the factory or plantation is located; in between, we have Central

Laws like Industrial Disputes Act, Payment of Bonus Act, and so on, where both the Central and State Governments exercise jurisdiction depending on the definition of the term 'appropriate government' in that enactment. The question, which is the 'appropriate government' in a given case has come up for judicial determination in a large number of cases under different enactments including the recent judgement dated 30.08.2001 of the Supreme Court of India in *Steel Authority of India and Others Vs National Union of Waterfront Workers and Others* (Civil Appeal Nos. 6009-6010/ 2001), relating to the Contract Labour (R&A) Act, 1970. Be that as it may, the Study Group feels that **there is no need for different definitions of the term 'appropriate government' and considers that there must be a single definition of the term, applicable to all labour laws.** It therefore recommends that the **Central Government should be the 'appropriate government' in respect of Central government establishments, railways, posts, telecommunications, major ports, light houses, banks (other than Cooperative banks), insurance, financial institutions, mines, stock exchanges, shipping, aviation industry, mints, security printing presses, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Central social security institutions and institutions such as those under CSIR, ICAR, *ICMR* and NCERT; in respect of all others, the concerned State Government/Union Territory administrations will be the appropriate government. In case of dispute, the matter will be determined by the National Labour Relations Commissions.**

26. We had earlier indicated that in our attempt to rationalise labour laws, we could, with advantage, group the existing plethora of labour laws into well recognised functional groups. While the utlimate object must be to incorporate all such provisions in a comprehensive code, as had been done by the National Labour Law Association, covering all workers including those under Central and State Governments, we consider that such a codification may have to be done in stages and what we have proposed is, hopefully, the first step. What are the laws that will be included in each functional group will be indicated by us, as we deal with each of these groups.

**III Employment Relations**

27. We begin with what is perhaps the most important and consequently the most controversial, namely, law relating to industrial relations. The basic Central Laws relating to the subject are currently the Industrial Disputes Act 1947, Trade Unions Act 1926 and Industrial Employment (Standing Orders) Act, 1946. Mention must also be made of Sales Promotion Employees (Conditions of Service) Act 1976 and Working Journalists and other Newspaper Employers and Miscellaneous Provisions Act 1955. There are state level legislations also on the subject, important of which are the Bombay Industrial Relations Act 1946, Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, UP Industrial Disputes Act, MP Industrial Relations Act, etc; besides there are State level amendments to the Central Laws on the subject. **We recommend that the provisions of all these laws are judiciously consolidated into a single law, namely, the Law of Employment Relations**. We do not favour separate laws, at least as far as labour-management relations are concerned, for specific groups of persons such as sales promotion employees or working and non-working journalists. All of them will be governed by the same law as will be applicable to the entire corpus of workers; **however, we would carve out a section of these workers who are employed in establishments with an employment size of 49 and below, for a different kind of dispensation**. (as earlier indicated, this number will include besides workers, as already defined in para 20 above, all other employees, be they supervisory, administrative or managerial). In view of our approach, **we recommend repeal of the Sales Promotion Employees (conditions of Service) Act, 1976 and Working Journalists and Other Newspaper Employees (conditions of Services) and Miscellaneous Provisions Act, 1955; the Working Journalists (Fixation of Rates of Wages) Act 1958 may also be repealed, in the light of what we recommend later in respect of Law on Wages.**

28. While our attempt will be to make the law simple to understand and easy to implement and enforce, **our intention in having a separate dispensation for establishments with employment size of 49 and below** (and this is detailed out in para 66 below) **is to make self contained provisions for such small establishments in respect of all matters such as employment relations, wages, social security and the like;** this will, hopefully, meet the loudly stated demands, particularly from the small scale industry sector, as well as shops and commercial establishments and institutions like hospitals, educational establishments, charitable organisations and the like, for not being burdened with the 'arduous' provision of laws like the Industrial Disputes Act 1947 and Industrial Employment (Standing Orders) Act 1946 which in their view is designed only for large sized industrial and commercial establishments.

29. We begin by indicating **certain broad approaches we are adopting in drafting the law on employment relations** for the establishments with employment size of 50 and more.

**Firstly, the law will apply uniformly to all such establishments,** irrespective of the nature of activities carried on in that establishment; and, where such establishments have, within a specified local area, branches, the employment limit will be in respect of all the branches also. Thus where a municipality runs hospitals, dispensaries and schools at various centres within its jurisdiction, then, if the employment size of all the branches add up to 50 or more, this law will apply, even though individual units like a dispensary or a primary school may have less than 50 employees.

**Secondly**, as already indicated, **the employment size will be reckoned in terms of all employees and not of only workers.** We prefer the gender neutral expression 'worker' instead of the current use of 'workman' in the Industrial Disputes Act.

**Thirdly**, we recommend strongly that the workers in these establishments must be enabled to organise themselves into trade unions of their choice. We are of the view that employment relations are best regulated, not by provisions of law, but on the basis of agreed procedures and systems that the managements and unions are able to arrive at, on the basis of what is commonly understood as 'collective bargaining'. We recognise that the extent of unionisation is low and even this low level is being eroded, and **that it is time that this trend was reversed and collective bargaining encouraged**. Such a step will also, in its wake, reduce, if not altogether avoid, state intervention in employer-worker relation. Where, however, agreements and understanding between the two parties is not possible, then recourse to third party will not be through the state but through arbitration or where adjudication is the preferred mode, it will be by labour courts and labour relations commissions of the type we propose later in this regard. The Study Group also considers that the present distinction in the law on the extent of the binding nature of settlements entered bilaterally and those entered in conciliation must go and **a settlement entered into with a recognised negotiating agent must be binding on all workers**.

**Fourthly**, we consider that provisions must be made in the law for determining bargaining agents, particularly on behalf of workers; it is equally necessary to recognise that **collective bargaining could be at different levels**, say at the establishment level, at the corporate level, at the industry level, at the regional level, at the national level and so on.

**Fifthly**, the law must provide for authorities to identify bargaining agent, to adjudicate disputes and so on, and these are provided in the shape **of labour courts and labour relations commissions at the state, central and national levels**.

**Sixthly**, the Study Group, taking note of the orchestrated assertion that the rigidities in the Indian labour market arising out of lack of flexibility under the existing laws for the managements to adjust their labour force according to the changing needs of the industry stood in the way of Indian industry being in a position to compete in a world market opened up by the phenomenon of globalisation, was of the view that while there may be some force in that assertion, **it was not sure that mere changes in the labour laws will be the solution; the major remedies, in the view of the Study Group, lay elsewhere**. It becomes difficult to reconcile this kind of assertion on the one hand with the even more widely stated assertion in other quarters that the labour laws are not being implemented at all, which again is to be reconciled with the currently fashionable demand for doing away with 'Inspector Raj'. **Labour laws have always**

**been the favourite whipping boy of the management community and this continues**. Be that as it may, the Study Group considers it expedient to recommend some changes in the existing laws and one only hopes that with these, if and when accepted and legislated for, we will settle down **to a regime where labour laws do not become the preoccupations or excuses for the industry**. However, we suggest with all the force at our command that **these changes must be accompanied by a well defined social security packet that will benefit ALL workers**, be they in the 'organised' or 'unorganised' sector. In evolving such a social security packet, it is necessary to provide for both protective and promotional measures, the latter being particularly relevant for the unorganised sector workers. Without anticipating what the Study Group on Social Security on social security may recommend, **we strongly urge that until an adequate social security packet is put in place first, attempts at 'liberalisation' of labour laws must wait.**

30. One of the most important steps that one need take in rationalising and simplifying the plethora of labour laws is in the area of **simple common definitions** of terms that are in constant use; such terms include 'worker', 'wages' and 'establishment'. Negatively, by avoiding use of terms like 'industry' which has been the source of considerable litigation, one can strengthen the simplification process. The Study Group has approached this question from both ends. By making the law applicable to establishments employing 50 or more persons, irrespective of the nature of the activity in which the establishment is engaged, we have avoided the need to define 'industry' (The Study Group did in this context examine **whether domestic service be also included** in the coverage under labour laws and ultimately **decided against it in regard to employment relations**; they may, with advantage, be covered under the proposed type of umbrella legislation, particularly in regard to wages, hours of work, working conditions, safety and social security.)

Positively, we define 'worker' unambiguously by excluding from the definition all employees who are doing supervisory, administrative and managerial functions, by whatever designations they may be called. Likewise, we define establishment as a place or places where some activity is carried on with the help and cooperation of workers.

As regards 'wages', we are clear, keeping in view the endless litigation that takes place as to whether a particular allowance or payment is part of wages for purposes of deduction for provident fund or ESI and of calculation for purposes of bonus or gratuity, that it is **desirable to define two terms, 'wages' and 'remuneration'**, the former to include only basic wages, dearness allowance, house rent allowance, city compensation allowance, retention allowance in case of seasonal establishments and no other; all other payments including other allowances as well as over-time payment together with wages as defined above will be 'remuneration'.

The Study Group also discussed the question whether any distinction be made between 'strike' and 'work stoppage', as is the position in the Bombay Industrial Relations Act 1946 and decided that the **existing definition of 'strike' in the Industrial Disputes Act 1947 may stand**. It also is of the view that **actions like 'go slow' and 'work to rule' are best dealt with by standing orders, instead of trying to incorporate such actions as part of 'strike'.**

The Study Group also agreed that the **definition of the term 'retrenchment' must be defined precisely to cover only termination of employment arising out of reduction of surplus workers in an establishment, such surplus having arisen out of one or more of several reasons.** The present definition has, after the *Sundaramani case* judgement, proliferated to cover virtually every kind of termination of employment, which in the opinion of Study Group must be rectified. This is particularly so because the provisions in the law for a month's notice, compensation based on years of service already put in by the worker and provisions of sections 25G and 25H, are, in the opinion of the Study Group, inconsistent with any position other than that retrenchment is only in respect of surplus workers or in case of redundancy.

In the scheme of labour management relations that we propose, including a provision for a **strike ballot by the bargaining agent** which alone is authorised to call for a strike, we do not consider it necessary to distinguish between 'public utility services and the rest. **Hence, we do not propose to define the term 'public utility service'**, which in actual practice has resulted in all types of undertakings being declared as 'public utility services', obviously with a view to preventing the workers from going on strike. A look at the industries declared so shows that the list includes yeast and distilling industries, cement, dairy farming, leather, harvesting through combines, poultry farming, catguts, and so on. It must also be noted that there can almost be no legal strike in a public utility service in the present framework. Likewise, **we also do not propose to define the term 'unfair labour practices'**. A look at the items included as unfair labour practices in the Fifth Schedule to the ID Act shows that some of these are already offences under the existing law (for e.g. item 13 of part I) or offences under the Criminal Law of the land (eg. item 14 of part I). Some specific items like items 1 to 4 of part I, item 2 of part II, item 15 of part I and item 3 of part II can with advantage be incorporated in the law itself relating to registration of trade union and recognition of bargaining agent. If however, it is felt that unfair labour practices must be listed out, then there is need for pruning the current schedule and also to make in the law some provision for cease and desist order and so on as is provided in the MRTU and PULP Act. While doing so, it must not be overlooked that this Act is now said to be invoked essentially for matters relating to termination of employment.

31. As already indicated, we consider it desirable that the law of employment relations is so structured as to enable the workers to organise themselves and to play a useful and

constructive role in the growth and development of the establishment in which they work. The charge that there is inter-union and intra-union rivalries that not only weaken the trade union movement but also hurt the establishments in which the workers are employed, and so on, cannot be brushed aside, but at the same time we cannot ignore the fact that trade unions also function in a political and social milieu where such a state of affairs can and do thrive. The Study Group took note of the Bill introduced for making some amendments to the Trade Unions Act 1926, which has now been passed by both Houses of Parliament. **This is a minimal bit of legislation** in the context of all that is needed and misses out on the most important aspect of the whole question, namely, the recognisation of bargaining agent. Be that as it may, the above mentioned Bill, namely, **Trade Unions (Amendment) Bill**, 2000 (Bill XXX of 2000) does make provisions as would reduce multiplicity of unions, reduce the number of 'outsiders' in the executive of a trade union, prohibit a union or state minister from being a member of the executive of a trade union, etc. Even so, **it would have been desirable if the Bill also provided for a ceiling on the total number of trade unions of which an 'outsider' can be a member of the executive bodies**. One hopes that if the new system of law were to progressively diminish the role of the state in employment relations matters, then the number of outsiders will also progressively diminish. We also recommend that provision be made in the law to the effect that no individual is allowed to hold any specific office in a trade union for more than two consecutive terms or five years at a stretch, though he may be eligible to hold the same office after a break. This is essentially with a view to enable more and more workers to get a chance to hold the reins of such office.

32. A wider and deeper look at the Trade Unions Act 1926, than what has been attempted in Bill XXX of 2000 mentioned above, will demand a closer look at a large number of important issues. To begin with, do we seek to make trade unions to be only organisations of workers or should they be, as the law stands at present, organisations of all employees, and also whether employers' organisations should also be allowed, as at present, to be eligible for registration as trade unions? Given the divergence of interests of workers and managements, it would, in the opinion of the Study Group, be desirable to **define trade unions as organisations of only workers**. Managerial, administrative and supervisory personnel can form themselves into appropriate organisations but should not be permitted to call themselves trade union. Likewise, employers' organisations also need not be governed by the same provisions as would apply to trade unions of workers. We recommend accordingly. Such demarcation between organisation of workers on the one hand and of other employees on the other will also facilitate the process of appointing representatives of these two sections of employees in respect of arrangements for participative management. The question whether some sections of workers like security and watch and ward staff, confidential staff and so on be exempted will be relevant only for purposes of collective bargaining

and not for purposes of membership of trade unions, and therefore does not call for any provision in the law. The Study Group also took note of low level of unionisation as also the fact, that all benefits which accrue to the workers as a result of collective bargaining does not distinguish between trade union members and others. We feel that it is desirable to provide in law a provision according to which a **non trade union member will have to pay an amount, equal to the subscription rate of the bargaining agent and these amounts may be credited to a welfare fund.**

33. Flowing from the above, the Study Group considers it necessary to provide for resolution of what may be termed **'trade union disputes'** which will include any dispute between:
    (a) one trade union and another;
    (b) one group of members and another group of members of the union;
    (c) one or more members of the union and the union; and
    (d) one or more workers who are not members of the union and the union. Any such dispute, which currently goes under the appellation of inter-union or intra-union rivalries, should be capable of being **resolved by reference** of the dispute to the labour court having jurisdiction, **either *suo moto*** or **by one or both the disputing parties** or **by the state** in case it considers it expedient to do so. The present unsatisfactory practice of dealing with such issues, namely, filing a suit and so on, should be done away with. Similar provisions may be incorporated in law, in regard to employees organisations and if necessary, in respect of employers' organisations also.

34. We also recommend that all **federations of trade unions as also Central organisations of trade unions and federations should be covered within the definition of trade union** and subject to the same discipline as a primary trade union. The same dispensation will also apply to employers' organisations and employees' organisations.

35. **We do not favour craft based or caste based organisations of workers or employees or employers.** The law must specifically provide that any trade union or employers' organisation or employees' organisation which restricts its membership on the basis of craft or caste will not be allowed to be registered and an unregistered organisation shall not be entitled to any privileges, immunities, and rights.

36. Subject to what we have stated in the preceding paragraphs, we consider that the **other provisions of the Trade Unions Act 1926 including the provision for a political fund may be appropriately included in the proposed integrated law. We now come to the crucial question of recognition of bargaining agent.** We have indicated earlier that collective bargaining will be the preferred mode of dealing with all aspects of worker-employer relations and this dispensation requires that the law spell

out clearly who are to be the bargaining parties; also, the law must clearly spell out the level or levels at which bargaining can take place. This is a subject that has been under discussion and debate for over three decades, if not more; there is no need to recapitulate all that has been said, except to say that the main, if not the only, point of disagreement has been on the manner or method of identifying the bargaining agent. Time was when the two options were secret ballot and verification of membership; now, **the debate appears to be between secret ballot and check off.**

In fact, the amendment by section 7 of Act 38 of 1982 and which came into effect on 15.10.82 providing, *inter alia*, for insertion of sub-clause (kkk) to sub-section 2 of section 7 of the Payment of Wages Act 1936, reflects this change. The sub-clause referred to above provides that 'deduction made, with the written authorisation of the employed person, for payment of fees payable by him for the membership of any trade union registered under the Trade Unions Act 1926', will be an authorised deduction under the Payment of Wages Act, 1936.

37. The Study Group has carefully considered the pros and cons of the two options, and **in parenthesis, may add that any other option was not considered as being one too many**. In dealing with this issue, we had to keep in view our desire to ensure that collective bargaining implies a strong trade union movement which, in its turn, predicates an increasing degree of unionisation. **Any formula which militates against increasing unionisation should *ab initio* be avoided.** Secret ballot, as a method of identifying the bargaining agent raises the following questions:- should the electorate for choosing the bargaining agent be the entire corpus of workers in the establishment/ industry/region or should it be limited to only members of registered trade unions? If the latter, then in a situation where the total unionised strength is less than 50 percent of the work force, and this is the average scenario in our country, then a minority will be bargaining for the entire establishment/ industry/region; on the other hand, if the entire workforce were to participate, then there is no urge or inducement for the non-unionised workers to become a member of one or other of the trade unions. Also, secret ballot even on a restricted basis is logistically and financially a difficult process in industries like railways, banks, post offices and so on. A check off system has the advantage of ascertaining the relative strengths of trade unions based on continuing loyalty reflected by regular payment of union subscription, even if such subscription is deducted from the wages as permitted under the Payment of Wages Act, 1936. Also, check off system by and large avoids the incidence of dual membership under which, for a variety of reasons, a worker may become member of more than one union. Be that as it may, given the low level of unionisation in India, neither the check off system nor secret ballot confined to members of registered union is likely to throw up a bargaining agent which commands the support of the majority of workers, excepted in those industries and establishments where the degree of unionisation is very high.

38. **The Study Group has carefully balanced the two points of view and is of the considered view that a combination of the two methods in the following manner may result in a worthwhile and acceptable solution.** In this, the check off system is the starting point and if the check off shows any union as having 50 persent or more of the workers in the establishment/industry/region etc. as its members, that is to be declared as the bargaining agent. On the other hand, where none of the unions has 50 percent or more of the workers as their members, then the union/unions are arranged in the decreasing order of their membership strength and a secret ballot is conducted among the two of the largest unions and the union or unions that get the support of at least 50 percent of the **total** workers who cast their votes will be declared the bargaining agent. **The entire responsibility for this process will be vested in the appropriate Labour Relations Commission,** which may also be given the authority to determine in a given case to decide on check off method or secret ballot on the basis of the history of collective bargaining in the establishment/industry, the logistics of conducting secret ballot in terms of cost and administrative feasibility, the nature of the activity, the extent of unionisation and so on.

39. In the context of the provision of the Trade Unions (Amendment) Bill 2000, which is likely to result in reducing the number of trade unions in an establishment/industry, the Study Group hopes that what is recommended in para 38 above for identifying the bargaining agent will further help reduce multiplicity; **unrecognised unions will not have any powers conferred on them under the law, except to appear on behalf of their members in disciplinary cases or in respect of their individual problems relating to promotion, transfer, training and so on. Even this may be made applicable only to unions having a membership strength of at least 15percent of the workers or 150, whichever is less;**

40. The Study Group will further like to recommend that where the bargaining level is that of an **individual establishment, the bargaining agent should only be a single union** and not a composite bargaining agent consisting of more than one union. However, where the bargaining is at a higher level, say industry/region/national, and where **a system of bargaining by several trade union centres has become the practice**, say as in the steel/coal/port transport etc., should that practice be given up in favour of only individual unions/federations being the bargaining agent? If the long term objective of trade union movement is to do away with multiplicity of unions and the emergence of a single unified trade union throughout the country, then the simple answer could be that the dispensation of composite bargaining agent must be given the go by. **But this is not a matter in which solution can be based on mere logic.** May be, the composite bargaining agent system will have to be continued but even here one may evolve patterns such as the following: where at the industry/regional/national level, there emerges a single trade union centre or federation having as its members 50 percent or more of the workers in that activity, then there need be no composite

bargaining agent; that federation or centre having 50 pecent or more of the workers as its members will be the sole bargaining agent. In other cases, a composite bargaining agent can be evolved, its membership being in proportion to the membership strength of individual federation/trade union centre, so however, no trade union centre or federation with a membership strength of less than 15% will be entitled to representaiton on the composite bargaining agent. **The Study Group would recommend accordingly.**

41. It is needless to stress that for the above proposals to be implemented, **check off system must be made compulsory for members of ail registered trade union;** each of them will have to indicate to the employer the name of the trade union of which he/she is a member and the worker will also have to issue a written authorisation to the employer to deduct his subscription from his/her wages and pass it on to his/her trade union.

42. It is necessary to recognise that in a system of collective bargaining at levels higher than that of an individual establishment, **it may so happen that at the levels of individual establishments, there may be trade unions which have much greater following than is the case at the higher bargaining level** where a single federation/ centre or a composite bargaining agent may hold sway. **What then should the powers of the individual trade unions be at the level of an establishment?** A solution to this is best found in dealing with the question of levels at which bargaining can take place and in respect of which matters. We would like to believe that it is **expedient if all matters relating to wages, allowances, general conditions including total number of hours of work, leave and holidays, social security, safety and health are best decided at the higher level, while at the individual establishment level, issues like productivity bargaining, manpower adjustment, local holidays, change in shifts and things like that may be negotiated and settled; may be, the settlement at the higher level may even indicate the broad parameters to be adopted at the local level in negotiating these 'micro' issues.** In case of dispute or difference of opinion, the question as to the level of bargaining and issues to be taken up for bargaining at different levels may be left by law to be decided by the Labour Relations Commission.

43. We would also recommend that **recognition** once granted, will be **valid** for a **period of three years**. No claim by any other trade union/federation/centre for recognition will be entertained till at least 2 years have elapsed from the date of earlier recognition.

44. All **establishments employing 50 or more persons** (and not merely workers) **should have standing orders or regulations** which shall cover all areas of working conditions, employment, social security, misconduct, procedure for disciplinary action, suspension, payment of suspension allowance, facilities and protection to be provided

to workers sexual harassment, age of retirement and so on. There is no need, in the opinion of the Study Group, to delimit the issues on which alone standing order can or need be framed. **Nor is there any need for certification by a prescribed authority**. As long as the parties agree, all manner of things including multi-skilling, production, job enrichment, productivity, and so on can also be added to what we have listed above. These standing orders will be prepared by the employer(s) in consultation with the recognised unions/federations/centres depending upon the coverage, and where there is any disagreement between the parties, the disputed matter will be determined by the labour court having jurisdiction, to which either of the parties may apply. The decision of the labour court will be final but any amendments to the standing orders can be asked for by either party and agreed to by both parties or refered to labour court for determination, so however that no demand for amendment can be made until at least a year has elapsed.

45. **The appropriate government may also frame model standing orders**, including classification of misconducts as major and minor and providing for graded punishments depending on the nature and gravity of the misconduct, and publish them in the Official Gazette. Where an establishment has no standing orders, or where draft standing orders are still to be finalised, the model standing orders shall apply.

46. Any worker who, pending completion of domestic enquiry, is placed under suspension, by orders in writing giving reasons for his suspension and the charges framed against him, should be entitled to 50 percent of his wages as subsistence allowance and if the period of suspension exceeds 90 days, for no fault of the worker, then for the remaining period of suspension, he shall be entitled to subsistence allowance calculated at 75 percent of the wages, **so however the total period of suspension shall not, in any case, exceed one year**. If as a result of continued absence of the worker at the domestic enquiry or if the enquiry and disciplinary action cannot be completed in time for reasons attributable wholly to the workers default or intransigence, then the employer will be free to conduct the enquiry *exparte* and complete the disciplinary proceedings based on such *exparte* enquiry.

47. Every establishment to which the general law of employment relations applies, i.e. those with 50 or more employees, shall establish a **Grievance Redress Committee consisting of equal number of workers' and employers' representatives,** which shall not be larger than ten members or smaller than two members depending on the employment size of the establishment, as may be prescribed. The Grievance Redress Committee shall be the body to which all grievances of a worker in respect of his employment, including his non- employment will be referred for decision within a given time frame. Where the worker is not satisfied with the decision of the Committee, he shall be free to seek arbitration of the dispute by an arbitrator, to be selected from a panel of arbitrators to be maintained in the manner prescribed, or seek adjudication of

the dispute by the labour court. The decision of the labour court or arbitrator shall be final.

48. One of the contentious issues in the existing Industrial Disputes Act, 1947 relates to **Section 9A**, more particularly items 10 and 11 of the Fourth Schedule which read as follows:-

"10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control."

It is being strongly urged on behalf of employers and not without justification that this effectively prevents the employer from adjusting the strength of his labour force from time to time due to exigencies caused by genuine economic reasons and in the best interests of the undertaking. It is no doubt true that consequent on the current situation of globalisation and increasing competitiveness, all economic activities become subject to market pressures, compelling the employers to do different levels of adjustments, including the size of his labour force, if he wishes to continue in business. We are informed that some of the court decisions include even VRS (Voluntary Retirement Schemes) as actions that would attract the provisions of section 9A. We have carefully considered this issue. We have earlier recommended that the definition of the team 'retrenchment' should cover only reduction of surplus labour or redundancy. We also notice that while the first 9 entries in the Fourth Schedule relate to conditions of service, items 10 and 11, in a manner, deal with very employment of persons and in the present situation, the size of employment is a matter which can be best decided by the employer himself or herself keeping in view various attendant circumstances. If an entrepreneur starting an activity afresh has the right to decide as to the number of person he will employ in various sectors of his activity, there is no reason why this option cannot be exercised by an existing employer in respect of his continuing activity. A prudent employer will, no doubt, not act capriciously, and in the pattern of industrial relations we envisage, he will be ill advised not to consult the bargaining agent on such matters even as he might consult financial institutions, technical experts and others; but, yet, the decision will be his. No doubt, the resulting action may lead to a dispute needing arbitration or adjudication but the main point is that **there need be no statutory obligation for the employer to give prior notice, in regard to items 10 and 11 of Fourth Schedule, as is the position now under see 9A.** We would recommend accordingly.

49. Arising out of the above is the need for the employer to foresee and arrange for **appropriate training to the workers** so that they are equipped and ready for different kinds of jobs that restructuring may need. In fact, there is continuous need for this kind

of training and only by equipping themselves with the new skills that technological changes demand that workers may be able to adapt themselves successfully, if for nothing else, at least for retaining their jobs. We are told that there is reluctance among workers to undergo such training. This is unfortunate and we expect the trade unions to use their influence and good offices to inform the workers to grab such opportunities, which ultimately is not merely in the interests of the undertaking but of themselves. We would suggest that **refusal to go for such training, which must be at the employers cost and in employer's time, may be included as a misconduct under the standing orders.**

50. Along with section 9A of the Industrial Disputes Act 1947, **Chapter V B of the Act** also has come in for heavy criticism. Time was when this was about the only thing that employers thought necessary, namely, the repeal of chapter VB, and this got the popular appellation of an 'exit' policy. It had been argued that this provision in the law which was enacted during the Emergency must go, as have most other manifestations of the Emergency. The announcement of the Union Finance Minister in his Budget Speech of 2001 that the ID Act will be amended by which only establishments with 1000 or more workers will be covered by chapter V B, had given further fillip to the demand. The Study Group has carefully considered this issue. While it is of the view that **prior permission or post-facto approval is not necessary in respect of lay-off and retrenchment in establishments of any employment size**, the case of closure may have to be looked at rather differently. **Closure of establishments**, either because of sickness or for other reason like pollution and so on, is quite wide spread and the present era of economic reforms, globalisation, competitiveness and so on has also aggravated the situation. The Finance Minister in his Budget speech had indicated the cut-off limit in chapter V B at 1000. We feel that this limit is too high and **would recommend restoration of the original limit of 300.** We would also recommend that **provisions in regard to Chapter V A and Chapter V B must be made applicable not only to factories, mines and plantations,** as is now the case, **but to all establishments. Every employer will have to ensure, before a worker is retrenched or the establishment is closed, irrespective of the employment size of the establishment, that all dues to the workers, be it arrears of wages earned, compensation amount to be paid for retrenchment or closure as indicated in the next paragraph, or any other amount due to the worker, are first settled as a precondition to retrenchment or closure.** These provisions will not bar industrial disputes being raised against a lay off or retrenchment or closure.

51. Arising out of the above, we recommend that while the lay off compensation could be 50percent of the wages as at present, in the case of retrenchment the law may be amended to provide for sixty days notice and retrenchment compensation at the rate of one months' wages for every year of completed service. In the case of closure, the notice period may be 90 days and compensation at the rate of two months wages for

every year of completed service. We also recommend that **provisions may be made for compulsory unemployment insurance to cover all establishments employing 50 or more persons.** A fund may be constituted to which all establishment make a contribution at a specified percentage of wages, with workers also contributing 50 percent of employers' contribution. Such a fund may provide for unemployment assistance for specified periods to workers who are retrenched or whose establishments have closed down; besides, this fund could also be used as a **Wage Guarantee Fund** from which arrears of wages and other items of remuneration in respect of a worker could be paid, leaving it to the Fund to recover the amount from the employer concerned. As already stated, **these and other protective measures have to be put in place first before liberalisation** on the lines indicated above to See 9A and Chapter V A and V B of the ID Act **is legislated**.

52. We have, at several places so far, referred to arbitration or adjudication for determining disputes between management and labour. We set much store by arbitration as the better of the two, for the reason that the procedures will be simple, the proceedings will not be tardy and the decision is rendered by a person in whom both parties have confidence. We would like the system of arbitration to spread and over time become the accepted mode of determining disputes which are not settled by the parties themselves. In fact it would be desirable if in every settlement entered into between the parties, (and we would urge that the **duration of each settlement be three years**), there is a clause providing for arbitration by a named arbitrator of all disputes arising out of interpretation and implementation of the settlement. The law may even provide that such a provision be deemed to be part of every settlement. By having a named person as an arbitrator during the currency of a settlement, the arbitrator is able to familiarise himself with all aspects of the activity in the establishment and to get to know the parties better; also, the fact that the person will be the arbitrator, for better or for worse, during the entire period of the settlement will, hopefully, make him impartial and also act in the best interests of the establishment.

53. Arising out of the above, we would like to suggest that **a panel of arbitrators is maintained and updated** by the Government or the LRC concerned which could contain names of all those who are willing and have had experience and familiarity with labour management relations; the panel may consist of names of labour lawyers, trade union functionaries, employers, managers, officials of labour department, both serving and retired, academics, retired judicial officers and so on. Some ground rules could also be framed in consultation with representatives of employers and of workers and these could include procedures for selecting an agreed person from the panel, **cost of arbitration and so on**.

54. We recognise that, in the area of determination of industrial disputes in our country, adjudication is still the prevailing mode. We do hope that, over time, collective

bargaining and in-built arbitration will result in bulk of the disputes between parties being settled. However, there will be at least some instances where adjudication is preferred, where bipartite negotiations do not bear fruit. We envisage a system of labour courts and labour relations commissions as the integrated adjudicatory system in labour matters. This system will not only deal with matters arising out of employment relations but also in respect of wages, social security, safety and health, welfare and working conditions and so on. The broad contours of such a system is contained in a paper prepared by chairman of the Study Group for inclusion in the book "Labour Adjudication in India" brought out in 2001 by the Indian Law Institute. A copy of this paper with enclosures is attached (**Annexure 3**). The idea of having a single authority at the lowest levels in the form of Labour Courts, which will deal with all matters and not merely employment relations cases, has been taken from the Indian Labour Code (Draft) 1994 prepared by the National Labour Law Association. The Annexure to the paper referred to gives details **regarding the constitution of labour courts and labour relations commissioners. We recommend such an arrangement as given in the Indian Labour Code (Draft) 1994.**

55. While on the subject of resolution of disputes between employers and workers, we recommend that all matters pertaining to individual workers, be it termination of employment or transfer or any other matter, will have to be determined by recourse to grievance redress authority and arbitration/ adjudication by labour court. These need not be elevated to the rank of 'industrial disputes' which should be only collective disputes. In this view, section **2A of Industrial Disputes Act 1947 may be done away with**. We considered in this context **whether section 11A of the ID Act 1947 will have to be retained, and came to the conclusion that it should be**. However, the law may be amended to the effect that **where a worker has been dismissed or removed from service after a proper and fair enquiry on charges of violence, drunkenness, sabotage, theft and/or assault, and if the labour court comes to the conclusion that the charges have been proved, then the labour court will not have any power to order reinstatement of the delinquent worker.**

We have also had a look at **Section 17B** of the Industrial Disputes Act, 1947 and would suggest that **the question of payment of full wages** to a worker who has been ordered to be reinstated by the labour court **may be left to be decided in each case by the High Court or Supreme Court** before whom the employer has preferred any proceeding challenging the award of reinstatement.

56. As an alternate and perhaps speedier system for resolution of industrial disputes, the State Government of Punjab is reported to have been experimenting with **the system of Labour Lok Adalats** and it is claimed to have been a great success. If so, this is an experiment worth pursuing by other State Governments and Central Government. It is of course necessary to ensure that these Adalats are not used to 'browbeat' workers

into accepting payments which may be only a fraction of what they may be entitled to under the law. Perhaps a set of do's and dont's can be thought of which may be binding on the Labour Law Adalat. Can such Adalats be Tripartite bodies or is it better they are manned by functionaries of labour judiciary? A panel of advocates or persons well versed in labour laws and labour administration may be maintained, and one or two such person be deputed to the hearings of Labour Law Adalat to ensure 'fair play'. We are not in a position to make any positive recommendations on this in view of our lack of knowledge. But **the system of Lok Adalats on labour matters appears promising and should be pursued.**

57. We also recommend that a **system of legal aid to workers and trade unions**, either **from public funds, and/or at the cost of the employer concerned will** have to be worked out, to ensure that the workers and their organisations are not unduly handicapped consequent on their inability to hire legal counsel on their behalf. In this context, we also recommend that trade unions must be helped financially by public funds in meeting cost of arbitration.

58. While on the subject of disputes and adjudication, we also recommend that **jurisdiction of civil courts be banned in respect of all matters for which** provision is contained in the relevant labour laws. We also recommend that **no restrictions be placed on the appearance of legal practitioners in any proceedings** before labour court, labour relations commission, arbitrators and other authorities under the Act, excepted conciliation and perhaps, Lok Adalats. We would also recommend **levy of a token court fee in respect of all matters coming up** before labour courts and labour relations commissions.

59. It has been brought to the notice of the Study Group that there is a law in England, popularly called the **'Whistle Blowers Law'** under which workers are protected from being dismissed or penalised for disclosing information, which they reasonably believe exposes financial malpractices, miscarriage of justice, dangers to safety and health, risks to environment and so on. This law, it is learnt, has the support of government, opposition parties, the Confederation of British Industry and Trade Union Congress. The Study Group would suggest that in India also, we enact a law of that kind or in the alternative provide in the Standing Orders that such action by the workers will not be construed as a 'misconduct'.

60. While discussing the need for retaining a separate category of establishments to be declared as 'public utility services', we had indicated that there would have to be a strike ballot before a strike is launched. Elaborating this. we recommend that a **strike could be called only by the recognised bargaining agent** and **that too only after it had conducted a strike ballot amongst all its members, of whom at least 51percent support the move to strike.** Correspondingly, an employer will not be

allowed to declare a lock out except with the approval at the highest level of management. The appropriate government will have the authority to prohibit a strike or lock out by a general or special order and refer for adjudication the issue leading to the strike/lockout. The general provisions like giving of notice, not declaring a strike or lock out over a dispute which is in conciliation or pending adjudication and so on will be incorporated in the law.

61. The Study Group took note of the consequences of globalisation, liberalisation etc. and recognised the need that may arise for restructuring of some establishments. Where restructuring of an establishment is not due to financial reasons, and the establishment is able to meet the cost of reconstruction from its own funds or borrowed funds in the normal manner, the management can be left free to act on its own, howsoever, such restructuring does not lead to retrenchment of workers. If in such cases restructuring leads to retrenchment and in all other cases where the financial position of the establishment does not give it the freedom to carry out restructuring, we recommend **that a high powered Regulatory Commission** may be set up to deal expeditiously and finally with such issues and give early decisions. The Commission, and its benches may be empowered to decide matters finally, including adjustment of the work force and such decision must be binding on both the parties as also on others such as government, financial institutions, creditors and so on. We would also recommend that such a Commission must be manned by experts in the field. We understand that there is already a proposal to repeal the Sick Industrial Companies (Special Provisions) Act 1985 and abolish the BIFR and the Appellete Authority and replace them by Tribunals, under the Companies Act. Not having studied these proposals, we would only recommend that what we have stated above in this paragraph be also kept in view, and a system be evolved which would lead to quick and fair decisions for all parties concerned.

62. There is an emerging area which is causing legitimate concern to workers and this is the Damocles sword of **Disinvestment in public undertakings** hanging over the heads of workers. The Study Group has considered this matter in some depth. It is understood that arising out of the Disinvestment in Modern Food Industries Ltd., a Writ Petition has been filed in Delhi High Court in which even the setting up of Disinvestment Commission and the sale of 74percent in MFIL to Hindusthan Lever Ltd. are under challenge. Apart from this, the controversy over the privatisation of BALCO and the uncertainty hanging over the Air India Case, all show that disinvestment of public property, particularly where it affects the future of the workers, cannot be permitted excepted through a process of law. For this, there must be an empowering law. Further, it has been rightly argued that these public undertakings, being instrumental or agency of the state, are also 'state' for the purposes of Article 12 of the Constitution. Stemming from that, the workers and others have the fundamental right to challenge any decision of the undertaking, if, in their opinion, such decision is in conflict with their

fundamental rights; however once these undertakings become privatised, they lose their character of being state under Article 12 and with that goes the right that the workers and others had earlier. To what extent **can an executive decision even without the backing of law be considered valid is also** a matter that arises out of disinvestment decisions. Keeping all of them in mind, the **Study Group would strongly recommend steps be taken early to put all these on a stable statutory basis.**

63. Another area which the existing laws do not cover but which in the opinion of the Study Group must be statutorily provided for relates **to workers participation in management**. The provision in section 3 of the Industrial Disputes Act 1947 is a pale version of what is contemplated in Article 43 A of the Constitution of India. We feel that time has come now to legislatively provide for a scheme of workers participation in management. An earlier Bill introduced a decade back on this suffered from certain inadequacies and had generated a lot of debate. We would recommend that a Bill is introduced early incorporating the provisions of the earlier Bill with such changes as proposed in the debate on the Bill; the **Bill may be initially applicable to all establishments employing 300 or more persons. For the smaller establishments, a non-statutory scheme may be provided.** Now that we have recommended that supervisors as a category be clubbed with administrative and managerial personnel, the demarcation is clear between workers and management. Also, the system of recognition for the bargaining agent, as also the information available under the check off system will furnish enough data to select representatives of workers at each tier of participation.

64. There are a large number of small issues for which provision can be found in the existing laws. The Study Group is broadly in agreement with such provisions and to the extent they are not inconsistent with what we have recommended above, all of them may be suitably incorporated in the consolidated law.

65. We hope we have covered in the above paragraphs all the important issues and we hope that if all these recommendations are accepted and acted upon, we will embark on an era of sound labour management relations, giving the workers the pride of place in the establishment and at the same time provide the management with the necessary freedom to function. We would also urge that in making the above recommendations, we have striven to maintain a proper balance between the interests of workers and those of the managements, all within a paramount consideration for the health and the growth of the establishments concerned, and would therefore **urge that these recommendations are taken up as a whole, and not in a piece meal manner.**

We would also refer to an opinion expressed in the Study Group that in the enforcement of labour laws, there is discrimination between private sector and public

sector, the latter allegedly being handled with kid gloves. The provision in the Criminal Procedure Code that prior permission or sanction is needed before a prosecution can be launched against the senior functionaries of public sector establishments has, it is urged, contributed to this differential treatment. **We as a Study Group, would strongly urge that no such discrimination should be permitted either by law or practice, as the purpose of labour laws is generally protective of workers' interests and a failure in this regard ultimately affects the workers.**

We would also refer to another matter brought to the notice of the Study Group. This is the practice in certain areas and in certain situations where a permanent worker does not actually do the work for which he is employed but farms out the work to someone else, may be at a percentage of his wages and becomes some kind of absentee worker. Perhaps there are other kinds of abuses also and it is necessary that such practices are put an end to peremptorily and for this purpose, may be, a **Trade Union Council**, some what on the lines of Press Council of India **can be thought of, so that corrective action is taken from within.**

66. In para 28 above, we had indicated our intention to have a separate dispensation for establishments having an employment size of 49 or less number of persons. In coming to the conclusion that such 'small' establishments need a different and self-contained set of provisions, we were persuaded by the fact that in such establishments, the managerial capabilities are limited and more often than not, the entrepreneur is himself discharging myriad functions of finance, production, sales, personnel management and so on. Also, it is learnt that the evil effects of what has come to be known as 'Inspector Raj' are more pronounced in the case of such small establishments. We have therefore decided that all such establishments, be they manufacturing units, service providing units or hospitals, educational institutions, charitable institutions,shops and establishment, cooperatives, consultancy out-fits, lawyers' firms and the like will be governed by simple legal provisions covering all aspects of employment. Where an establishment in its entirety is made up of branches, such as a local body having dispensaries or schools in a large number of locations within its jurisdiction, that will be governed by this dispensation only when the combined strength of all branches is 49 or below. The provisions in respect of such establishments can be in the form of a separate law named Small Enterpreneurs (Employment Relations) Act or **be included in the general law as a separate chapter**. A draft of such a law has been attempted and is at Annexe 4 to this Report. As may be seen from the Annexe, the law seeks to cover all aspects of employment including wages, social security, safety and health and so on. **A system of self certification** has been introduced to offset the criticisms of 'Inspector Raj'. An obligatory provisions for social security, with contributions from the employer and from the worker as also a compulsory annual bonus at $8^1/_3$ percent of the wages (a month's wage) are also features of the law.

**IV Contract Labour**

67. We are devoting a separate section in our Report to the question of Contract Labour, both because of its size and the topical nature of the problem. The Study Group was aware of the recent five - judge judgement of the Supreme Court in the case of *Steel Authority of India* (delivered on 30.08.2001) over ruling the three judge judgement in the *Air India* Statutory Corporations Case. We do not want to enter into a critique either of the *Air India* judgement or the SAIL judgement. We are also not making any comments on the decision of the SAIL judgement in respect of 'appropriate government' or the quashing of the December 1976 notification abolishing contract labour system in respect of sweeping, cleaning etc. jobs in all establishments for which the Central Government is the appropriate government.

68. In essence, the SAIL judgement has overruled the Air India judgement, thus leading to the position that on the abolition of contract labour by the appropriate government unser section10 of the Contract Labour (Regulation and Abolition) Act 1970, the principal employer is under no obligation to absorb the contract labour concerned as his regular employee, though the judgement enjoins the principal employer to give preference to the erstwhile contract labour while recruiting fresh workers for the jobs in respect of which contract labour system stands abolished.

69. We have examined the present position, in respect of issuing notification under section 10 of the Act abolishing contract labour system in any process, activity and so on. This is a self contained section and because of the *non-obstante* clause with which the section starts, abolition of contract labour can be ordered even in respect of establishments to which the rest of the Act does not apply. We feel that the decision to abolish contract labour should not be an executive one, based on the recommendation of the Advisory Contract Labour Board concerned but must be a judicial one. In the scheme of industrial adjudication that we have proposed, we think that demand for abolition of contract labour must be adjudicated by the Labour Relations Commission having jurisdiction, considering that LRCs are to be 'Tripartite' bodies and that in an adjudicatory process, both sides will be able to present their cases in full with documents and proofs, enabling a judicious order to be passed. We would also strongly recommend that law be amended also to empower the LRCs to order absorption by the principal employer as regular employees such number of contract labour as the LRC considers just and reasonable; the LRC can also, while doing this, keep in view the qualifications and experience of such contract labour which in its opinion will be deserving of absorption by the principal employer. It must be remembered that prior to the enactment of the Contract Labour (Regulation and Abolition) Act 1970 and more particularly prior to the decision of the Supreme Court in the Vegetables Oils Case (1971) 2SCC 724, demands for abolition of contract labour could be raised as an industrial dispute and adjudicated upon by labour courts and

industrial tribunals. We believe strongly that **industrial adjudication over such matters will be a more desirable system than the present practice.** In this we are fortified by what the Supreme Court said in the SAIL Case, though in a slightly different context. The court said "We have used the expression 'industrial adjudicator' by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases, the appropriate authority to go into these issues will be industrial Labour/Court whose determination will be amenable to judicial review."

70. As far as **regulation of contract labour** is concerned, which incidentally is the subject of bulk of the existing law, we would urge stringent implementation of the provisions, particularly the conditions of licence issued to the contractor under the law and rules. We refer to Rule 25 of the Central Rules 1971 under the Act and more particularly to Rule **25 (2)(v)** of the Act and recommend that where the contract labour is engaged in work which is not the same or similar kind of work in the principal employer's establishment, the rule may be amended to provide that in such cases, **the wage rate shall not be less than the minimum that a regular employee of a comparable category will be receiving in the principal employer's establishment.** We would go even further and recommend that this should be the dispensation in respect of all contract labour, i.e. even in those cases where minimum rates of wages have been fixed under the law by the appropriate government. We are again fortified in our view by the fact that the Central Government has made this a condition in cases where contract labour system is allowed to continue. Such a provision would in our view minimise the incidence of contract labour in those instances where recourse to contract labour is predominantly, if not exclusively, for financial reasons. **Perhaps these could be more appropriately incorporated in the law itself, instead of incorporating them in the Rules.**

**V Law on Wages**

71. Next only to employment, wages and remuneration are the most important of the issues one has to contend with when dealing with labour management relations. The reasons are obvious. While generally employers view wages and remuneration as an item of cost and hence must be kept in check even if not reduced, these are the wherewithal for the worker to maintain himself/herself and his/her family at least at a level of living that is consistent with human needs and human dignity. As the ILO would have it, 'the goal is not just creation of jobs but creation of jobs of acceptable quality' and in the Indian context, level of wages is an index of the acceptability or otherwise of the quality of the job. That is why the Study Group is anxious that the **minimum wage payable to anyone in employment, in whatever occupation, should be such as would satisfy the needs of the worker and his family (consisting in all of 3**

**consumption units) arrived at on the Need Based formula of the 15th Indian Labour Conference supplemented by the Judgment of the Supreme Court in the *Raptakos Brett & Co. case.*** We strongly believe that a reasonable wage, keeping in view the needs of the worker and his/her family, will repay itself in many ways to the employer by way of increased productivity, commitment, better labour management relations and all in all, a satisfied and cooperative work force. Also, it is only that kind of wage that will also set the wheels of trade moving, by putting in the hands of worker the money that will enable him to purchase the bare needs and a little more. Needless to add, what we state here is applicable to all situations, irrespective of the size of the establishment or the nature of its activity.

72. The Study Group looked at the problem of bonus and the endless disputes regarding calculation of bonus, more particularly the prior charges. The Study Group is of the view that in Indian social conditions, there is a necessity to enable the worker to have some ready cash to enable him to celebrate the festival season, with some satisfaction and pride; an ordinary worker will not be able to put away small amounts periodically from his wages for this purpose. In view of this, the Study Group **recommends that every employer must pay each of his worker one month's wage as bonus before an appropriate festival,** be it Diwali or Onam or Ramzan or Christmas or Dusshera. **Any demand for bonus in excess of this upto a maximum of 20 percent of the wages will be subject to negotiation**.

73. The Study Group also considers it necessary to have a **national minimum wage** notified by the Central Government, which will be revised from time to time, with not more than two years between intervals; this will be a wage below which no one who is employed anywhere, in whatever occupation, can be paid. Each State/Union Territory should have the authority to fix minimum rate of wages, which shall not be, in any event, less than the national minimum wage; where a state is large, it may, if it chooses, fix different rates of minimum wages for different regions in the state but no such wage can be less than the national minimum wages. The Study Group also recommends the abolition of the present system of notifying scheduled employments and of fixing/revising the minimum rates of wages periodically for each scheduled employment.

**VI Price Rate Wages**

In quite a few of the employments that are covered under the Minimum Wages Act 1948, the workers are paid wages on piece rate basis. It so happens that apart from other shortcomings, the piece rates may be fixed so low that a diligent worker even after 8 hours of work may not be able to earn what would amount to the notified time rated wage for a day. In the case of home based work, where apart from the main workers, other members

of his/her family also contribute significantly to the production, the piece rate earnings of all of them put together adds up to only a fraction of notified time rated minimum wages for a single worker. **We, therefore recommend that fixation of piece rate wages must be so done as would enable a diligent worker to earn after 8 hours work what would be the time rated daily rate**. Also, where the employer is unable to provide work for 8 hours in a day, the minimum wages must not be allowed to fall below a **guaranteed minimum wage**, which shall not be less than 75 percent of the notified time rated minimum wage.

In fixing minimum rates of wages, the **Study Group recommends that in respect of home based work, a 10 percdent increase in the minimum wage** may be provided, keeping in view the fact that the employer does not spend any money on accommodation, lighting and in quite a few cases on some part of the raw material; that bulk of the work force in home based activities is women, is another reason for this.

74. By way of simplification, we have attempted a draft law on wages which is **Annexe 5** to this Report. If this kind of law gains acceptance, it will result in the repeal of existing laws like Minimum Wages Act 1948, Payment of Wages Act 1936, Equal Remuneration Act 1976 and Payment of Bonus Act 1965. In addition to this, the Study Group **does not consider any need for statutory wage boards that we now have in respect of working journalists and non journalist newspaper employees**. There is no need why this relatively better organised set of workers should not use the method of collective bargaining in getting their wages fixed from time to time. Also, the Study Group is not sure that the successive Wage Boards have really solved the problem. In fact, the Study Group is of the view that **there is no need for any wage board, statutory or otherwise**, for fixing wage rates for workers in any industry. Instead, the Study Group would **recommend examining a system of adoption of an occupational wage for different categories of employees and workers** in various industries/ activities so that workers and employees having similar qualifications/experience and doing more or less the same kind of work do not get widely different levels of wages, differences arising merely out of whom they work for and not what they work at. Arising out of this, the Study Group would also advocate the **adoption of a wage policy** for the country as a whole. This calls for wide ranging consultations and considerable effort in evolving a consensus but we consider the effort worthwhile and necessary. A comprehensive wage policy would also demand the adoption of an **income policy as also a policy on prices**. This is a stupendous task but, in our view, will have to be attempted if some of the Directive Principle of State Policy in Part IV of the Constitution are to be subserved.

**VII Law Relating to Working Conditions, Welfare, and Safety and Health**

75. These issues, namely working conditions, welfare and safety and health, account for bulk of the labour laws. Broadly, these laws can be classified into two groups, one

dealing with specific activities, such as Factories Act 1948, Mines Act 1952, Building and other Construction Workers Act 1996, Plantations Labour Act 1951, Beedi and Cigar Workers (Conditions and Employment) Act 1966, Motor Transport Workers Act 1961, Shops and Establishments Acts and so on; the other relating to activities across the board, as for example Contract Labour (Regulation and Abolition) Act 1970, Child Labour (Prohibition and Regulation) Act 1986, Dangerous Machines (Regulation) Act, 1983, Inter-State Migrant Workmen Act 1979, and so on. Besides these, there are also specific welfare legislations providing for a levy of cess on the activity at a prescribed rate and constitution of welfare funds out of which welfare activities for the benefits of the workers and their families are taken up; it is in the nature of such funds that they seek to provide welfare outside the work place, unlike the earlier acts mentioned above where essentially the welfare is provided only to workers in the work place, except for creches which is meant for the children of workers (An exception to this will be Plantations Labour Act 1951 where welfare of the extended type is statutorily provided for). Examples of the genre of welfare fund acts in the central sphere include Beedi Workers Welfare Fund Act 1976, Mica Mines Labour Welfare Fund Act 1946, Iron Ore Mines, Management Ore Mines and Chrome Ore Mines Labour Welfare Fund Act 1976, Limestone and Dolomite Mines Labour Welfare Fund Act 1972 and Cine Workers Welfare Fund Act, 1981 with their accompanying Cess Acts. There are even a larger number of welfare legislation enacted by the states for different categories of workers; Kerala state perhaps takes the lead in the number of welfare funds, both statutory and non-statutory.

76. The list of laws seems to be never ending and is growing. But yet it is not clear **why one needs so many laws**, if the basic idea of all these laws is to provide safe and humane working conditions, health and safety and welfare both at the work place and outside, welfare also both at the workplace and outside. May be, in respect of safety, the dispensation may have to be different for different work situations but surely this does not call for separate laws. The safety requirements and precautions including protective equipment can be suitably incorporated in manuals, drawn up by experts well versed in the technology used, in the nature of activities carried out by an establishment, in its effect on work situations and on human beings who work at these places and so on.

77. We **would recommend consolidation of all laws of the kind described in para 75 above and have a general law relating** to working conditions, safety and health and welfare, both inside and outside the work place. Basically what should such a consolidated law contain? It should apply to all establishments where 50 or more persons (not merely workers) are employed, irrespective of the nature of activity carried on, be it manufacturing, mining, transport, services and any other.

- It should provide for certain basic rights of the workers; indicate a minimum age (**say 15 years**) below which no person can be employed; issue of letter of appointment along with a copy of Standing Orders of the establishment (in the local language); issue of a photo identity card giving details of name of worker, name of establishment, designation, and so on.
- The law may also provide that a person employed as a worker on a **casual** basis should be made a **temporary** worker, if he has put in a total of 90 days of work in a total continuous period of 180 days and a temporary worker who has worked continuously for a period of one year shall be made permanent worker.
- The law must provide for maximum number of working hours in a day/week, payment of overtime at double the rates of wages and limitation on employing workers on over time. While the industrial worker, whether he or she works in a factory, or service sector usually works for 8 hours a day or 48 hours a week, the white collar worker generally works for a much lesser number of hours. This obtains even in establishments which observe a 5 day working week. We do not see much justification for this differentiation. The total number of working hours in a whole year should not be very different for different sets of workers. We would like this matter to be examined thoroughly, keeping the international experience also in view.
- Likewise, law must provide for restrictions on employment, such as reduced working hours for adolescents, prohibition of underground work in mines for women workers, prohibition of work by women workers between certain hours and so on.
- **On the question of night work for women**, the Study Group would urge that **there need not be any restriction on this if the number of women workers in a shift** in an establishment **is not less than five and if the management is able to provide satisfactory arrangements for their transport, safety and rest after or before shift hours**.
- At the same time, the **Study Group is totally opposed to any exemptions in respect of establishments in export promotion zones or special economic zones.**
- Likewise, the Study Group **does not favour grant of exemptions from any** of the provisions of the law in respect of any establishment, except where, in a grave emergency such exemption for limited period is warranted, that too after consultation with the workers and their representatives.
- Each establishment having an employment size (including all the shifts) over a specified limit must provide for a canteen.
- Normal provisions as now obtaining in several laws regarding washing facilities,

lavatories and urinals (separate for men and women workers) and rest rooms may also be incorporated in the law.

- As regards **Crèches**, the Study Group **sets much store on the availability** of this facility and this **should not be dependent on the number of women workers or the number of children** between the ages of 0 to 6. Child care is of great social importance and where both husband and wife go out to work, arrangements must be available for parent(s) to leave the child in the care of a crèche. Also, the provision of crèches facilitates the elder sibling (usually the girl) to attend school instead of having to stay at home to look after the young ones. In this view, the Study Group recommends that every establishment employing 50 or more persons must run a crèche, properly manned and equipped. In the case of smaller establishments, it must be possible for them to jointly provide crèche facilities.

- The law must provide for holidays, earned leave, sick leave and casual leave at an appropriate scale to the workers, apart from maternity benefits for women workers. **On holidays, we would urge the formulation at the national level of a clear policy**. We would suggest that apart from the three existing National Holidays, namely 15th August, 26th January and 2nd October, May Day may also be a national holiday, all these fully paid holidays. **We do not approve of the practice of declaring a holiday, with or without wages, and usually at very short notice on the death of a person, howsoever eminent he or she may be. Likewise, we do not also see the need to declare polling days as holidays. A clear national policy is called for** in respect of such matters.

78. All that we have said above is nothing new, except perhaps what we have said about crèches; these are found in the various laws and we are merely emphasising that these can all be consolidated into a single legal framework. These are **minimal provisions** and **can be improved in individual** establishments **through negotiations**.

79. When we come to welfare outside the workplace, the position is not so simple. As already pointed out, the Welfare Fund Acts enacted by the Parliament provide for a levy of cess on the product of the industry/activity. There is no contribution made by the workers towards such funds. Even here, it is pointed out that some of larger establishments provide far more benefits than what the funds provide. As against this, there are general labour welfare funds set up by statute in several states which cover factories and other notified establishments and the fund is created out of contributions made by the employer, by the worker and by the government, normally in the ratio of 2:1:1. Such funds, which do not add up to much for each state, is essentially utilised for recreational and educational purposes, including some craft training to wives of workers. There is the third type of welfare fund, very popular in Kerala and some other

states; these funds are set up for each category of workers like coir workers, motor transport workers, construction workers, headload workers and so on, and the funds are made up of contribution by employers and workers at stipulated rates per worker per month. Some of these funds have very large corpuses of money, sometimes running into tens, if not, hundreds of crores of rupees. Quite a large number of welfare, including a modicum of social security, activities are carried out by the funds each of which has an administrative set up to carry out these functions. It is increasingly being recognised that such funds may be the most suitable vehicles for providing social security coverage to the workers, particularly those in the unorganised sector. However, it is also seen that the size of the funds depends very much on the nature of activity concerned, with the result that while some funds are affluent, the others are not so, leading to differences in the levels of benefits provided. And it is not easy to persuade different categories of workers to pool the resources of their welfare funds with a view to providing uniform benefits. At the same time, there is recognition of the need to integrate at least the administrative structures so that the cost of administering the fund is kept at a minimum.

80. **If welfare funds are to be vehicles for social security**, how is this to be effectuated? What are the elements of social security that can be reasonably expected to be provided by welfare funds, either directly or by taking out group insurance policies for their workers in respect of certain contingencies like medical expenses including hospitalisation, maternity benefit, disability and sickness benefit? The Study Group is sure that the Study Group on Social Security as well as the Study Group on Umbrella Legislation for Unorganised Workers would also have dealt with this in great detail. Our Study Group will rest content with delineating the contours of the problems and issues relating to welfare funds; **we have not had the time to discuss these matters in** greater detail and will therefore have to rest content with what we have said above.

**VIII Law Relating to Social Security**

81. As indicated in the previous para, we do not venture to say anything further about social security protection for the unorganised workers, except to point out that it is **futile to talk of social security for this large mass of workers without taking steps for their economic security**, which essentially consists of minimum number of days of assured employment/work and assured payment of minimum wages for the work; in the case of self employed persons and also home-based workers, such economic security will also consist of protection of their productive assets, be it land, well, cattle, poultry, handloom and so on, loss of which due to natural and other causes creates untold misery for them. To what extent can insurance, micro-credit and self help programmes help in this regard is beyond the competence of our Study Group to investigate and report. But yet, we mention these, lest they should be lost sight of.

82. As regards social security for the workers in the organised sector, which we have assumed to consist of workers employed in establishments having 50 or more employees, the position is relatively easy. Laws such as the Employees Provident Fund and Miscellaneous Provisions Act 1952, Employers State Insurance Act 1948, Maternity Benefit Act 1961, Payment of Gratuity Act 1972 and Workmen's Compensation Act 1923 already provide a modicum of social security, though coverage under Maternity Benefit Act 1961, EPF Act and ESI Act may not extend to all establishments. But this is not an irremediable defect. Integration of all these laws, providing for universal coverage of the organised sector can be attempted, at least in stages. The Task Force on Social Security set up earlier by the Ministry of Labour had made certain recommendations. The Study Group on Social Security has also made exhaustive recommendations. One of us, Shri Sanat Mehta, has at our request, submitted a paper entitled "Social Security – Key to Economic Reforms". A copy of this paper is at **Annexe 6**. We generally agree with Shri Sanat Mehta. We suggest that an integrated contribution of 20-25 percent of the wages by the employer and 15 percent of the wages by the worker would be adequate to meet all the social security requirements including provident fund, pension, medical benefits, sickness benefits, gratuity, workmen's compensation, and perhaps unemployment insurance and if the entire social security programme is entrusted to a **National Social Security Authority** with state level and lower level authorities to formulate and implement schemes, administrative cost can be reduced, delivery system provided as close as possible to the recipients and quality of service improved. An integrated law setting up appropriate structures and authorities, with as much participation by employer's and worker's representatives in decision making and implementation will go a long way in providing reasonable social security protection to these workers and where appropriate to their families.

83. Before we take leave of the subject of social security, there is one small matter which we would like to bring to the notice of the Commission. This is about the **Workmen's Compensation (Amendment) Act 2000**, which came into effect on 8th December 2000. By this amendment Act, the words' other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business' have been omitted in section 2, in subsection (1), in clause (n) of the Act. We are not able to appreciate the implication of this amendment and considering that Schedule II of the Act is a very long list, one is not sure whether the deletion of words 'and who is employed otherwise them for the purpose of the employer's trade or business' will not cause unintended hardship; also, all the entries in Schedule II refer to person "employed ....." in some specific activity and therefore the need for deleting the above mentioned words is not clear. We leave it to the Commission to look closely at this issue, if it considers it necessary.

While on the subject, we would also like to suggest **that Schedule II to the Act though long is not complete**, in so far as it leaves out a lot of other situations where bodily injury leading to loss of earning capacity or death may be occasioned arising out of and in the course of employment; is there any virtue in only singling out those situations covered by Schedule II? **Can it not be wider?**

Also in the context of WC Act 1923, we do not see why we should still have on the statute book laws like **Employers Liability Act 1938** and the ancient **Fatal Accidents Act 1855**; if necessary, the relevant provisions of these acts may be suitably incorporated into the WC Act 1923.

**IX Laws Relating to Miscellaneous Matters**

84. Besides the laws that we have so far looked at, there are still some laws, even among those enacted by Parliament, that are remaining; there are also other matters, not necessarily statutory, on which we would like to comment.

85. To begin with, we take the Apprentices Act 1961. We expect the **newly set up Study Group on Skill Formation and Allied Subjects**, to deal with that in some detail. We want to take the opportunity to point out that while the needs of the industry for crafts persons is met in a measure by the apprentices under the above Act, and some of the apprentices are at the diploma and degree levels, the main source of craft persons has been the Industrial Training Institutes spread throughout the length and breadth of the country, even if not uniformly. While employers who have apprentices in their establishments do incur expenditure by way of stipends and other costs, the industry does not meet the cost of crafts persons through I.T.I. The feasibility of constituting a **Skill Development Fund** to look after the needs for vocational training and vocational guidance, through a small levy on employers of establishments above a certain employment size, **say at 0.5 percent of the wage bill**, may be examined and the fund administered under the guidance of a Committee or Board which will have representatives of the government(s), employers, workers as also academics, experts in vocational training and in vocational guidance and others. **The Fund** should have provision to authorise it to apply the funds in such a manner that smaller and weaker states are enabled to get proportionately more assistance than the bigger and stronger states. The trades and the curriculum for each trade will have to be carefully selected for each region, keeping in view the demands for skills in new and emerging trades.

86. All these require a considerable amount of decentralisation of functioning. We have seen the provisions in sections 183 to 191 of the Indian Labour Code 1994 (Draft) dealing with the setting up of National Council of Employment, National Council of Vocational Training and Guidance and Central/State Boards under these councils **Annexure 7**. Such a set up will be of advantage in a large federal country like ours. The Study Group notices that the above code has proposed similar set up at the National/

Central/State levels in respect of other aspects of labour such as safety, health and work environment, and asocial security. The proposed set up for adjudication with National/ Central/State level Labour Relations Commissions is also of the same pattern. **We see merit in this kind of set up where the National level bodies are distinguished from Central level bodies. In a federal country dealing with a subject which is in the Concurrent List of the Constitution, such distinguishing is necessary and not merely desirable; Otherwise, there is a tendency for 'Central' to be considered coterminous with 'National'.**

87. Having strayed into the above line of reasoning, we would at this stage, also refer to **tripartite consultations**, other than what the above specialist bodies deal with. Here again we go back to the Indian Labour Code 1994 (Draft) prepared by the National Labour Law Association, and more particularly to sections 177, 178, 179, 180, 181 and 182. For ready reference we attach the text of these sections as **Annexure 7** to this Report. These are vastly different from what we have on ground in our country now in the shape of Indian Labour Conference, Standing Labour Committee, State Labour Advisory Boards, Industrial Committees and so on. **A legislative form to these bodies as given in Annexe 7 will, hopefully, result in regular meetings of these bodies and effective follow up.** We particularly welcome the provision contained in section 178(8)(c), namely, 'consider the legislative proposals of the Central Government before they are moved in Parliament'. Such prior consultations are considered necessary, as the Indian Labour Conference by its very composition will be the most representative and well informed body to deal with legislative proposals in the labour field. Equally important in this regard is the function listed out in section **178(8)(d) and (e)**. We commend these proposals contained in the Code for adoption by Government and for speedy action to effectuate them.

88. We come back to our earlier task of looking at those Central Laws, which we have not so far considered in the earlier paragraphs. We begin with the following enactments namely, Personal Injuries (Compensation Insurance) Act 1963, Personal Injuries (Emergency Provisions) Act 1962, and Public Liability Insurance Act 1991, which are contained in the publication 'Industrial Law' by P.L. Malik, Eastern Book Company 2001. The Ministry of Labour does not seem to be involved in the implementation of these laws. Also, the first of these two laws seems to apply only when there is an emergency and the third law applies to persons other than workman (section 3(i) of the Act). We therefore do not make any comments on these. Likewise there are a large number of environmental laws which also find place in the above publication and we are not making any comments on these either.

89. However, there are a large number of laws which indisputably are labour laws which we have not dealt with so far. Reading from the laws included in the above publication, we deal below with those remaining laws briefly:

(i) Bonded Labour System (Abolition) Act, 1976. In a manner of speaking, it can be argued that this is not a labour law but only a welfare legislation. While all the other labour laws relate to situations where there is an employer-employee nexus, this is about the only law where the reverse takes place, i.e. even the existing relation of master-servant is snapped, the affected person released from bondage and provision sought to be made for his/her rehabilitation. Be that as it may, **the Study Group regards the implementation of this law by Ministry of Labour as appropriate**, as it emanates from Article 23 of the Constitution and deals with working people.

(ii) Child Labour (Prohibition and Regulation) Act 1986. We have said elsewhere in our Report that no child (ie one below the age of 15 years) should be employed in any activity any where for wages. The Study Group on **Women and Child Labour** has, we understand, prepared a law by which prohibition of child labour is combined with compulsory primary education. A presumption is sought to be made that a child not attending school is a child labour. Besides, we also see reports in the newspaper recently that right to education will be made a fundamental right and the Constitution is sought to be amended by a 93rd amendment Bill. Laws and Constitutional amendment will not solve the problem of and incidence of child labour. Nor is it necessary to enter into a learned debate whether child labour leads to poverty or poverty leads to child labour. We are generally prone to view child labour in terms of 'industrial' activities - matches and fire crackers in Sivakasi, carpet weaving in Bhadohi, glass industry in Firozabad and so on, forgetting that the bulk of the child labour is in the rural areas and predominantly in agriculture. We would like to believe that if the adult men and women workers are provided with adequate employment opportunity for at least 250 days in the year and they are assured that they will be paid a wage for their work on the basis of their requirements, as exemplified in the 15th Indian Labour Conference and supplemented by the Supreme Court Judgement in the *Raptokas Brett Case*, then the problem of child labour in our country will be a thing of the past. That is the direction in which our policy and programmes will have to be aimed. This would call for **local planning** and implemen-tation by the Panchayats and Nagar Palikas. Control over local resources must be invested in such authorities at the local levels; effective measures for optimal land use and a bold programme of land reforms will help in generating the volume of employment/ work opportunities that the situation demands. A penal law against child labour can work only if the above is done; or else, we will be only debating whether child labour in our country accounts for 17 millions or 40 millions or even more.

(iii) Children (Pledging of Labour) Act 1933. We are not sure of the need for such an act and even if a situation of pledging of child labour obtains, surely that can be incorporated as part of the general law. Also, we are not happy at the **proviso to**

**the definition of 'an agreement of pledge of the labour of child'** which reads as follows: "Provided that any agreement made without detriment to a child and not made a consideration of any benefit other than reasonable wages to be paid for the child's services and terminable at not more than a week's notice, is not an agreement within the meaning of this definition". This proviso would amount to approving child labour if reasonable wages are paid. We think that, given this proviso, the entire purpose of the law is vitiated. Pledging of child labour can be made a crime under the criminal law of the land. The punishment proposed in the existing law is also inadequate, considering the nature of the offence and modern thinking on the subject. We are in the era of Convention of the Rights of the Child and what have you, and **would therefore recommend the repeal of this law**.

(iv) Dock Workers (Regulation of Employment) Act 1948, Dock Workers (Safety, Health and Welfare) Act 1986 and Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act 1997.

These Acts, other than the last, are applicable to both major and minor ports, but in effect, the first two laws have been applied only to major ports. The state governments which are the appropriate governments in respect of minor ports do not appear to have taken any recourse to these laws. Even in major ports, to the extent that Dock Labour Boards are being abolished and the entire workforce merged with the port trust workers, the application of the third law comes into operation and may be, over the next few years, the first law namely Dock Workers (Regulation of Employment) Act 1948 will cease to have any relevance for major ports. We are also not sure how far state governments will be willing to adopt this 1948 law in respect of minor ports in their jurisdiction. So, perhaps, the **repeal of the 1948 law, may be only a question of time**. However, the other law namely Dock Workers (Safety, Health and Welfare) Act 1986 should be of much importance to workers of minor ports also. We would recommend that Director General (Factory Advisory Services and Labour Institutes) under the Ministry of Labour, who looks into these matters as far as major ports are concerned, be enabled to advise suitably state governments also, at least in respect of some of the larger minor ports, to deal with the problems of safety, health and welfare of dock workers in minor ports.

(v) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. This Act is essentially designed to know the nature of vacancies that may arise in establishments to which the Act applies and to facilitate the Employment Exchange Organisation to sponsor suitable candidates for filling up such vacancies. Also, the act helps to generate information relating to the Employment Market in a region, state and the country as a whole, and incidentally will enable

to identify pockets of scarcity in stipulated trades and alert the training authorities to provide for training in such trades. In the context of likely requirements of workers with specified multiple skills, we feel that a strict and imaginative implementation of this law will help in the long run. We, therefore, **recommend that the provisions of this law be made applicable to all establishments to which the general law of employment relations will apply,** i.e. these employing 50 or more person. This should include Central/State government offices also, as at present. In passing, we would also like to point out that the **salary level of rupees sixty per month**, above which alone vacancies will have to be notified, is raised suitably keeping in view the current levels of wages and emoluments.

(vi) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993.

We see that the Act applies in the first instance to the States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to all Union Territories, and that it shall also apply to such other state which adopts the Act by resolution passed in that behalf under clause (1) of Article 252 of the Constitution. We do not know whether any other state has passed the necessary resolution in this regard. Nor are we aware of the extent to which the implementation of the law in states already covered, namely, Andhra Pradesh, Goa and so on, has been effective. In this era of 'decent work' as adumbrated by the ILO, we strongly **urge the law be made universally applicable very soon.**

(vii) Equal Remuneration Act, 1976.

In our suggested law on wages, we have incorporated the provision of equal pay for equal work. We reiterate the same and would particularly emphasis in the context of the above law, the need to ensure total absence of discrimination in the level of wages, based only on sex. In this context we would refer to the ILO Convention 100 on Equal Remuneration and like to point out that whereas the concept in the ILO Convention is equality of remuneration in respect of **work of equal value**, the Equal Remuneration Act 1976 adopts the concept of equality of remuneration in respect of **same or similar nature of work**. There is also the emerging concept of **comparable worth.**

**We would recommend that the feasibility of adopting the concept of work of equal value be examined closely with a view to incorporating, if necessary, an appropriate concept in place of same or similar nature of work.**

Be that as it may, we are glad to note that Equal Remuneration Act 1976 is the only labour law that is universal in its application; all activities are covered, including domestic work; all establishments irrespective of the size of employment are covered. Also, the law provides for a mechanism in section 6 for suggesting

means for increasing employment opportunities for women. Considering that in certain employments the extent of employment of women is coming down, should the law perhaps provide for prior permission by a designated authority before retrenchment of a women worker is resorted to? this may be in respect of select employments as may be notified by the appropriate governments from time to time, based on the recommendations of the advisory committee. In this era of reservation of jobs for women in some states and of seats in Panchayats and Nagar Palikas under the Constitution and so on, we suppose there can be no constitutional hurdle to the above. On the other hand, it is likely that such a provision, howsoever well intentioned, may result in jeopardising the employment of further women workers, making a bad situation worse. One is not sure where the balance of advantage would lie. We therefore, merely refer to this and leave it at that.

(viii) Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979.

This is a well intentioned piece of legislation but implementation is not easy because of the involvement of both the state governments-the state of origin of the worker and the state in which he works. We have not had the time to look into the working of this Act and hence are unable to offer any suggestion.

(ix) Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

This is an enactment intended to provide for the exemption of employers in respect of small and very small establishments from furnishing returns and maintaining registers under certain labour laws. 'Small establishment' has been defined to mean an establishment in which not less than ten and not more than nineteen persons are employed or were employed on any day of the preceding twelve months; 'very small establishment' has been defined to mean an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months. The laws in respect of which the law provides for exemption from filing returns and maintaining registers as prescribed are: Payment of Wages Act 1936; Weekly Holidays Act 1942; Minimum Wages Act 1948; Factories Act 1948; Plantation Labour Act 1951; Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act 1955; Contract Labour (Regulation and Abolition) Act 1970; Sales Promotion Employees (Conditions of Service) Act 1976 and Equal Remuneration Act 1976.

The law thus, will cover all those establishments for which we had proposed a separate simple law (see para 66 above). However, the 1988 law does not extend to all labour laws but only to those listed above. There is no reason why the

simplification of returns to be sent and registers to be maintained cannot be extended to all aspects, including social security. In fact, we would **suggest that simplification can be extended to all establishments irrespective of the employment size**. We would suggest the setting up of a high power group which can deal with this question and come up with recommendations. After all, it must be recognised that the **returns are being required, essentially for statistical purposes**. But considering the delays, the gaps and unevenness of data, these returns in the aggregate serve not much purpose. It may be desirable to rely on periodic sample surveys which will furnish the data necessary for policy formulation. **We would urge that this matter be pursued vigorously.**

90. Some of the laws mentioned in the earlier paragraphs contain in their title the phrase 'Regulation of Employment'. The Building and other Construction Workers' (**Regulation of Employment** and Conditions of Service) Act 1996, Cinema Theatre Workers (**Regulation of Employment**) Act 1981 and Dock Workers (**Regulation of Employment**) Act 1948 are examples. Of these, regulation of employment in the real sense of the term is done only under the Dock Workers (**Regulation of Employment**) Act 1948 and as we saw in para 86 (iv) above, this law will be on the way out as far as major parts are concerned and the chances of it being taken up for implementation in respect of minor posts are remote. The provisions in the other two laws mentioned above do not regulate employment but merely makes registration of employees compulsory under the first law and entering into an agreement with the employee, in the case of the second law. In respect of unorganised sector, including agriculture, the employer - employee relationship is very tenuous and generally of short duration. Building and Construction industry is a classic example of this. This tenuous, short term relationship makes provision of social security also not easy for these workers. The need therefore for tripartite Construction Labour Boards at various levels which will register both workers and employers (normally contractors), regulate the employment of workers, if need be on a rotational basis to ensure equitable distribution of available work, ensure payment of wages, administer the social security and welfare programmes and so on, has been urged over the last several years by the National Campaign Committee for Central Law for Construction Workers. The existing law is only a pale substitute for what is needed. **We would therefore urge that for the unorganised workers, such tripartite boards can be thought of.** The experience of Mathadi Boards in Maharashatra makes one feel confident of the success of such a measure.

91. The Study Group examined a suggestion that there must be an **'infancy clause'** provision in labour laws by which all new establishments are exempted from the operation of labour laws for the first few years, say 5 years, of its operation. Section 16 of the Payment of Bonus Act 1965 has been referred to, in this context. We are not

sure that there is merit in this request. We have repeatedly pointed out earlier that **social security protection, including economic security, is a *sine qua non* and also the starting point of labour protection and in such a scheme of things, infancy clauses have no place.** Any prudent entrepreneur starting a business should take note of all the legal provisions he will be subjected to and plan his operations accordingly. We therefore do not consider it necessary or desirable to incorporate an infancy clause in respect of any matter covered by the labour laws. If the state is so solicitous about new enterprises, it may consider assisting them in other ways. Some of us, however, do consider that there is need for such an 'infancy clause', for a variety of reasons, including induction of new entrepreneurs who otherwise may feel nervous about venturing out.

92. There is another matter regarding labour laws, or for that matter, all laws, which we want to refer to. This is about grant of exemptions from the application of all or any part of an enactment, with or without conditions and for specified periods of time. Quite a few labour laws do contain such provisions. We are of the view that by their very nature, there should be no occasion either for seeking or granting of exemptions to any or any class of establishments, with or without conditions. We are aware that there may arise situations where for compelling emergent reasons, it becomes necessary to grant exemptions either from the entire law or from certain provisions of the law. **The law may therefore provide for such exemptions in grave and emergent situations and this too should be restricted to six months at a time, so however, the total duration of continuous exemption does not exceed, in all, two years.** The law may also indicate broad legislative guidelines for grant of even such exemptions.

93. Of course, there is no question of exemption when the law does not apply to an establishment or class of establishments; such may be the case in respect of Central or state governments which are discharging **'sovereign' function**. What are 'sovereign' functions may be the subject of contentious debate. We do not propose entering into such a debate. We would broadly exclude from the coverage of labour laws that we propose, all functions and functionaries, including defence forces, para military forces, police, fire services and prison services, connected with law and order, tax levy and tax collection, internal and external security, law making, administration of justice, and external relations. Where in a case, the functions are not so very discreet and includes other activities which do not fall in the above mentioned categories of 'sovereign' functions, then we may stretch the point a little and designate all such as 'sovereign'. We may leave this matter to be decided by the appropriate government, whose decision will be final. At the same time, **we strongly urge that persons employed in these 'sovereign' tasks are also adequately protected, including their 'right to associate'. We recommend accordingly.**

94. A substantial area which may claim exemptions, or even exclusion from the purview of labour laws, at least in so far it relates to minimum wages, relates to activities of the Khadi and Village Industries Commission and the Khadi Village Industries Boards. It is pointed out that these activities are carried on under the general auspices of KVIC or KVIBs but the immediate responsibility is with charitable organisations and cooperative societies recognised by KVIC and KVIBs under a well regulated system of certification and financing. It is argued that even the existence of employer - employee relationships is doubtful in such cases, and what is more, the remuneration paid to the 'workers' is lower than even the currently notified minimum rates of wages and will be far below the minimum wages that the Study Group has recommended, based on the 15th Indian Labour Conference and Supreme Court Judgement in the *Raptakos Brett Case*. This raises serious questions regarding generation of employment and concept of 'decent work'. Consistent with our general approach, we are unable to find a solution to this massive problem. In this connection we would like to point out that 'khadi and village industries' is one of the excluded categories in the definition of the term 'Industry' in Act 46 of 1982 - Industrial Disputes (Amendment) Act 1982 - but this amended definition has not been brought into force. In any event, **we will recommend that steps must be taken by the Government to ensure that these large number of workers - both men and women - are not engaged on what may be described as exploitative conditions**.

95. We still have on the statute books of several states the Essential Services Maintenance Act. **We do not consider it either necessary or desirable to have such legislations on the statute book**. The main reason for such a law appears to be a feeling that the Industrial Disputes Act 1947 does not have enough teeth and also proceedings are cumbersome and time taking, and above all, this law is of no avail against 'outsiders' and others who may instigate a work stoppage. It is argued that the provision in the Essential Services Maintenance Act to declare a certain activity as essential and to prohibit the continuance or starting of a work stoppage, making such action a cognizable offence has helped in maintaining or restoring 'industrial peace'. We already have recommended a provision for strike ballot and have also restricted the right to call a strike only for the recognised bargaining agent. If the law, on those lines, is strictly implemented, the incidence of wild cat or impulsive strikes will come down considerably. **We do not, therefore, consider it necessary to arm the state with such draconian law** like ESMA and will recommend its repeal wherever it is now available for use by the state. Needless to say, the use of other such laws in labour matters must be totally eschewed. Let us try to develop a system of mutual restraint and mutual trust, leading to solutions of problems, issues and impasses on the basis of the law on employment relations.

96. We have not, in the earlier parts of our Report, indicated our recommendations on the penal part of the laws. We recommend that any violation of a law or rules thereunder

will be an offence, which **must be made triable by a labour court which will have to be empowered for the purpose**. We also recommend that **any offence that is not merely a violation of labour laws but also violation of basic human rights be visited with more stringent punishment**. This category of offences will include engagement of child labour, discrimination between men and women workers in matters of wages/remuneration, opposition to the formation of trade union by workers in the establishment, recourse to bonded labour and others, i.e. all those where basic human rights are infringed.

97. On the other hand, there are 'technical' offences, such as non maintenance of registers, non furnishing of return and the like for which **law may provide for compounding; such compounding may be permitted**, provided it is approved at an appropriately senior level in the administration. We will also recommend that at least 75 percent of the proceeds of such 'compounding' be credited to an appropriate welfare fund for being used for the benefit of workers. It may also be provided that **a subsequent offence of the same type by an employer will not be allowed to be compounded**.

98. We also recommend that in all cases, **the burden of proof will be on the employer, even where the case has emanated as a complaint by a worker**. This will compel the employer to maintain regular, up-to-date authentic records. Where a vexatious, malicious or flippant complaint has been made, then the complainant may be visited with a stringent fine.

99. We also recommend that where in the case of an offence coming up for hearing it becomes necessary for the complainant worker to attend hearings more than once, the **worker must be reimbursed for loss of wages and expenditure incurred by him for travel etc., in respect of the second and subsequent hearings**, unless the complainant-worker is at fault. Such payments may be either recovered from the employer and paid to the worker, or in the alternative, the expenditure may be borne by the state; we prefer the former.

100. We have looked at the provisions in several labour laws regarding sanction of prosecution and taking cognizances of offences. Generally it is the inspector alone who can file a prosecution and only a magistrate of First class who can take cognizance of the complaint. Latterly we see a certain relaxation of such provisions. In the Equal Remuneration Act, 1976, it is provided in section 12(2)(b) that cognizance can be taken of a complaint made by the person aggrieved by the offence or by any recognised welfare institution or organisation. In Child Labour (Prohibition and Regulation) Act 1986, section 16 (1) enables any person, police officer or inspector to file a complaint of the commission of an offence under the Act. The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, in section 54

provides for cognizance to be taken only on a complaint (a) made by or with the previous sanction in writing of the Director General or the Chief Inspector; or (b) made by an office bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or (c) made by an office bearer of any concerned trade union registered under the Trade Unions Act, 1926.

Thus, we see that there is a progressive liberalisation in the law and we would recommend that **the right to file a complaint in the court of competent jurisdiction may be vested, in addition to an inspector or an officer authorised for the purpose, in the person aggrieved or by an office bearer of a trade union of which the aggrieved person is a member.**

101. We also recommend that all **Rules and Regulations** under the law must be **first published as draft Rules** or draft Regulation, calling for comments, giving a period of ninety days, and must be finalised only after the comments, if any, received within the stipulated period are examined.

102. We have so far dealt with the issues with reference to only Central laws. Except for some passing references to Shops and Establishments Acts and Welfare Fund Acts of states, we have not examined the state laws in any detail. While, no doubt, such an examination would have enhanced the value of our Report, we are unable to do so for want of time. Even so, we consider that having looked at all issues - employment relations, wages, welfare, safety and health, working conditions and social security - in a 'macro' context, i.e. at the level of the whole country, we feel that our recommendations can validly apply to situations in all the states. Also, where a state considers it necessary to legislate for an issue or problem which it considers unique and peculiar to itself, it can have a legislation on the subject, subject to what is contained in the relevant articles of the Constitution. **We would only urge that when a state goes in for special legislation, it observes all that we hold dear and necessary which we have briefly incorporated in Para 16 of the Report.**

103. It has been suggested to us that we devote some attention to **the subject of labour administration**. Essentially, labour administration in India consists of implementation of labour laws, though we recognise that the labour administration may consist of non-statutory activities like workers education, craftsman's training other than the Apprentices Act, and so on. Though labour administration is the executive arm of the state, we would like to see the administration as a guide, philosopher and friend of both workers, their organisations, employers and their organisations, rather than be a policeman, going round finding faults and prosecuting the parties. It becomes necessary therefore not to judge the performances of a functionary in labour administration based merely on the number of inspections carried out, number of defects noticed, number of prosecutions lodged, percentage of 'success' in these

prosecutions and so on. This calls for appropriate orientation and training to the functionaries at all levels. Equally it becomes necessary to expose the functionaries at various levels to the changing situation, occasioned by globalisation, liberalisation and privatisation, all of them demanding a high level of competitive performance and ever increasing productivity. Despite the emphasis we have laid in our Report on diminishing the role of the State *qua* state, what we have stated above *vis-à-vis* labour administration is valid. We therefore, **strongly recommend that every large state and groups of small states set up institutions for training and research in labour matters** to which labour administration functionaries can be sent from time to time, for inservice training, refresher training and so on. We emphasise the need for such institutions to develop research capabilities also, as such research will aid the training programme, and *vice versa*. These institutions should also develop into resource centres with a sound statistical base. We do not want these institutions to be a mere arm of the government but want them to be endowed with sufficient autonomy. Such institutions already exist in some states but we want them in all states or groups of states, equipped with a good library, up-to-date computer equipment and computerised data and so on, and manned by persons with both academic credentials and labour administration experience. We are sure that the V.V. Giri National Labour Institute and other institutions will be more than willing to assist state governments in this effort.

While on the subject, **we would also recommend that the law may provide for bipartite committees or tripartite committees to be setup in areas of industrial and/or commercial activities who may be encouraged to function as watchdogs to ensure implementation of labour laws by the establishments and to bring to the notice of the administration in case of violation**. As a watchdog from within, we think that these bodies would be in a good position to know which establishments do or do not follow the laws and to what extent. Such a step would also, in our view, facilitate the formation of strong and viable organisations of workers and employers at various levels.

104. We have earlier recommended an integrated labour judiciary system, with labour courts at the base and with State/Central/National Labour Relations Commissions at the top. In our scheme of things, the labour relations commissions have multiple duties including the important task of identifying collective bargaining agents. We have also suggested that all matters in the labour field needing adjudication, be it a labour-management dispute or a workman's compensation claim or disputes arising out of and relating to coverage of labour laws or disputes relating to social security and what not, will have to be determined by the labour courts at the lowest level, with appeals to the Labour Relations Commissions. This will need considerable increase in the number of labour courts in the first instance, particularly when we have recommended that labour courts be vested with magisterial powers to try cases relating to offences

under the labour laws. The setting up of Labour Relations Commissions also increases the demand for high level labour adjudicating functionaries. All these compel us to recommend an **All India Labour Judicial Service** which in the new dispensation will be viable and necessary. We recommend accordingly.

105. Equally important in our view is the need for constituting an **All India Labour Administrative Service**. Labour being in the Concurrent List of the Constitution, the advantages of such a service, which will also enable exchange of officers between the Centre and the States, are obvious. We recommend the setting up of such an All India Service.

106. Lastly, we refer to the paramount need for generating employment, employment of the 'decent work' type. Labour laws have always been accused of being stumbling blocks in the creation of employment and we hope that what we have recommended in the above paragraphs will not be the subject of such an accusation. Even so, we would urge that the feasibility of encouraging employment additions in existing establishments through **a system of tax incentives be examined**. Such incentives may take other shapes and forms also. We feel that creation of additional employment in existing establishment will be at a cost much lower than doing so *ab initio*. Anyway, we would like this to be examined seriously.

Comments received from some of the members of the Study Group on the above Report are attached herewith.

Offr. : 331-1481
Secretary : 331-1495
Chairman's Res. : 469-7775
S'y's Resl. : 331-8318
Admn. Off. Resl. : 641-7019

Gram : GANDHINIDI
गांधी निधि

# गांधी स्मारक निधि
GANDHI SMARAK NIDHI

अध्यक्ष :
Chairman :

उपाध्यक्ष :
Vice-Chairman :

मंत्री :
Secretary : S.K. Bandopadhaya

प्रशासनिक अधिकारी :
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राजघाट, नई दिल्ली-110 002
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पत्रांक/No. GSN/2001-02/650 दिनांक/Date 29-10-2001

Dear Shri Sarkaran,

Many thanks for your kind letter of 21-10-2001, along with the Draft Report of our study group on Review of Laws and two annexures thereof. Since there is a mention of annexure 4 also in the draft report, I presume the other two annexures would follow in due course along with the draft laws.

Needless to mention that I agree with the draft. I feel a good work has been done under a trying situation.

In case we do not get any further occasion to meet, kindly permit me to convey my deep sentiments of regards to you for your very able and at the same time accommodating role, while functioning as the Chairman of our group. Personally I have learnt a lot from your vast knowledge in the field of labour laws as also from your commitment towards the weaker section of our society. Secondly through you I would like to convey my regards also to the other members of our group for the opportunity I got to pick up friendship with them. It was a real pleasure to work with them under your chairmanship.

Lastly I would like to draw your kind attention towards some printing mistakes in the draft,

..2/-

which I believe would be taken care of during the final print, including the figure of 520 in the 4th line from bottom, appearing in p. 34 of the draft.

Hope you are well.
With kind regards,

Yours sincerely

J.K. Bandopadhaya
(S.K. Bandopadhaya)

Shri T.S. Sankaran
Chairman
Study Group on Review of Laws (National Commission on Labour)
C/o NATRSS, Govt. of India
30-31, Institutional Area
Opp. J.N. Block, Janakpuri
New Delhi-110058

*SANAT MEHTA*
Former Finance Minister, Gujarat
Former Member of Parliament (L S )

October 11, 2001

Dear Shri Sankaran,

I had your phone call and then letter dated 3.10.01.

I have gone through both the notes. I think I am in agreement of the contents of the note. I hope now group will decide to send it to Chairman of the Commission. The subject is so vast and it has to assimilate the wide range of views on various aspects. In this situation one has to try to arrive at broad agreement leaving aside personal or sectoral emphasis or differences.

I had almost decided to come for a day, but I could not do so. I am sure you will excuse me.

I am happy that my note on Social Security is found useful.

With warm regards,

Yours sincerely,
Sanat Mehta

(Sanat Mehta)

Shri T.S. Sankaran
Chairman, Study Group on Review of Laws
(National Commission on Labour
New Delhi 58

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*SANAT MEHTA*
Former Finance Minister Gujarat
Former Member of Parliament (L. S.)

October 30, 2001

Dear Shri Sankaran,

I have your letter dated 21.10.2001 along with final version of the report with changes in the different font and also note by Shri S.M. Dharap.

I am sorry, I could not attend the meeting of 13th and 14th October. But sometime I had felt that we were repeating our views again and again in our discussion. As rightly mentioned by you, there could be only broad agreement.

You know, I have my strong views on liberalisation, economic reforms and WTO. I have a very strong feeling that in implementing economic reforms, we have missed the human face. With the result, at the end of a decade of economic reforms, we have still so-called Hindu rate of growth of economy.

Let me in the end quote Dr. Manmohan Singh who introduced economic reforms. On 26th July 2001 in an interview to Times of India with regard to exit policy he said as follows:

> "You can't sell an exit policy to the trade unions in a situation where employment in the organised sector is not increasing. An exit policy was on our agenda. But I thought it should come after we have created an investment boom over a sufficiently long period of time, so that even if some people lose their jobs, it is not an aggregate loss of employment, but a loss in one sector more than made up in other sectors."

I hope protagonists of exit policy will at least appreciate the views of Dr. Manmohan Singh, more so in the present recessionary economy and not expect 'exit policy' or 'hire and fire' from study group on Labour Laws. In India unemployment is today 'Dark side of the Moon'.

With regards,

Yours sincerely,

Sanat Mehta

(Sanat Mehta)

Shri T. Sankaran
Chairman
Study Group on Review of Laws
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श्री

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S. M. DHARAP
B. A., LL. B.
Advocate, High Court

Ref. :

Date : 1.11.2001

To
Shri T.S.Shankaran,
Chairman,
Study Group on Review of Laws,
National Commission on Labour,
Ministry of Labour,
Government of India,
National Acadamy for Training & Research in Social Security,
(NATRSS),
30-31 Institutional Area,
Opp.D.Block,
Janakpuri,
New Delhi 1100 58.

Dear Shri Shankaran,

I am in receipt of the draft report of our Study Group and I thank you for the same. I received the same only on 28th-29th October,2001,requiring me to submit my comments on or before 31st October'01. I, therefore, conveyed my inability to do so within the time limit and requested you to allow me certain more time which you have readily agreed.

Though I have not been able to go in details of the said drafts,I have studied the recommendations made in the report in respect of various subjects. It appears that there is a deviation on some matters from the earlier draft report which was prepared on the basis of the earlier discussions. Probably it is possible that in the meeting of 12th and 13th October, some discussions may have taken place, which made you to change your earlier suggestions. I am, therefore, referring only to those issues on which I am not in agreement. I hope that you will consider it and record the same.
I, therefore, enclose my comments on the report.
Thanking you,
Yours faithfully,

(S.M.DHARAP)
ADVOCATE
D.T.:AS above.

Reply at Residential Address only. ☐ पत्र व्यवहार फक्त घरच्या पत्त्यावर करावा.

-2-

1)CC to Shri Ravindra Varma,Chairman,National Commission on Labour,with a copy of the Note, 30-31 Institutional Area,Opposit 'D' Block, Janakpuri,New Delhi 110058,for information.

D.A.:Note.

2)CC to the General Secretary,Central Office, B.M.S., Ram Naresh Bhuvan,25-26 Tilak Galli, Pahad Ganj,Old Delhi-110055, with a copy of the Note,for information.

D.A:Note.

OBSERVATIONS/COMMENTS ON THE FINAL DRAFT REPORT OF THE STUDY GROUP ON REVIEW OF LAW.

Page 11.Para 19: LIMIT OF NUMBER OF EMPLOYEES FOR THE APPLICATION OF THE NEW ACT OR MODIFICATIONS.

Initially there was total opposition to separate the industry into two classes such as Small Scale Enterprise and Large Scale Enterprise as the said idea defeated the very purpose of the Act of giving protection to the employees. In large scale industries the workers are organised or are capable of organising due to the sizeable number whereas in small establishments,lesser the number, of lesser disparity of unionising themselves. With this difficulty in their way separating out the establishments having less than 50 employees was not appreciated. It was, therefore, suggested that the minimum number should be 10 if at all we insist on having any minimum number of workers in the industry and ultimately we had come to the conclusion that it should be 20. After considering from all points of views I still feel that the limit should not be 50 or less but it should be atleast 20 or less, the reasoning being that other Acts also consider 20 as a proper figure for coverage(sudh as Factories act etc.). I feel that if we recommend 49 or less as a limit, a large section of the workers who are employed in the establishment having 49 or less than 49 will be thrown in to unorganised labour having no security. Another point of

worry is that in respect of these employees even if we suggest a total security cover as a condition precedent, the Government may not accept the same or may accept our suggestion partly and even though we place it as a condition precedent, the implementation of the same would be doubtful. Therefore, I feel that any change detrimental to the existing circumstances reducing the protection of the employees should be suggested very carefully. I, therefore, dis-agree with the view figure 50 and feel that figure 20 should be retained.

Page & 13 para 22:- It is recommended or suggested that the wage limit sofar as covering a person within the ambit of the term 'workman' is not necessary. I support the said suggestion. At the same time taking out the 'supervisory' employees out of the coverage of 'worker' will have to be given a second thought. Catena of cases on the point of supervisor are known to us. We also know the approach of the Courts right from the case of Burmashell Refineries till todate. If we are to suggest taking out the ~~word~~ 'supervisors' out of the definition of the term 'worker', then we have to clarify as to whether what we meant by "Supervisor", as any Mukadam working in the Municipal Council or a Corporation with a team of 3-4 workers also can be called Supervisor. I, therefore, suggest that while taking out the 'Supervisor' out of the definition of the term 'worker', we must make it clear that such of the Supervisors who perform the similar functions that of administrative functions or managerial

functions having some power. We should also make it clear that such of the persons who exclusively supervises with the above conditionality would be out of the perview of the term worker.

Page 17,para 27: In support of the suggestion that the limit of employment to 49 or less, it appears that we are suggesting to include all kinds of employees in the establishment in 49. We should appreciate that the number of such persons who would not be falling within the definition of the term worker would not be such large to give advantage as they would be hardly 4,5, or 10.

Page 22,para 30:- Definition of the term"Retrenchment".

In case we clarify as to what 'retrenchment' means thereby suggesting only reduction of surplus labour arising out of several reasons , we will have to also suggest provision for the cases of termination of services who would not be governed either by retrenchment or by the concept of dismissal,superannuation, termination on account of continued ill health or voluntary retirement as it is experienced that the employees are terminated without taking the disciplinary action on the ground that such as loss of confidence etc. If the suggestion of the term retrenchment with modification is to be made, then cases like loss of confidence will have to be provided in the suggestions of the report that we make.

Page 28,para 40:- The suggestion of proportionate representation for constituting a bargaining agent needs consideration.

Page 29 para 41:-I agree that the check off system must be made compulsory for members of all registered trade unions. But we may visualise the basis of where a person gives an authority for check off and subsequently withdraws within a period of 6-8 months. A restriction , therefore, must be suggested that once an authority is given it will be valid atleast for a period of one year and if even if it is withdrawn such person will be deemed to be a member of that particular union in whose favour the check off authority has been given by him.

Page 30,para 43:- With the suggestion of a recognition being valid for a period of three years,it will have also to be suggested that if the recognition is obtained either by fraud,mis-representation or mistake, such recognition should be cancelled or the number of members fall below the minimum requirement for getting a recognition (akin to Section 13 of the MRTU & PULP Act).

Page 31 Para 46:-SUSPENSION:- It is a matter of common experience that the suspension continues for years together especially in case of Government employees without holding or completing the enquiry, and sometimes the employees retire during the period of suspension. It is,

therefore,necessary that a specific time limit should be suggested for completion of the enquiry and if the enquiry is not complete within the prescribed time limit, the employee can be taken back in the employment on some other post as suggested by the Hon'ble Supreme Court in the resent case so that the suspension cannot alone be a punishment during the pendency of an enquiry. Similarly after completion of 9 months ,the employee should be entitled to full salary irrespective of pendency of enquiry.

Page 32 para 48:-ITEMS 10 & 11 OF SCHEDULE IV-SECTION 9A

On reading of para 48 and on reconsideration of the issue, I felt that items 10 and 11 has a nexus with other items from 1to 9 . Though it is a right of an employer to rationalise,standardize or improvement of complaint,technique ,for the days when we are sponsoring or heading towards participative management, the employees are equally entitled to have say whether such be in the ultimate benefit of the industry including the employer and the workmen . As there is a trend to adopt a new technique without giving full consideration to the effects thereof and it is experienced that by adoption of new techniwues in a short period the industries have been closed and, therefore,I feel that the employees should have a right of hearing and, therefore, items 10 of Schedule IV *of* be retained. As regards item No.11 it is also necessary to be retained with certain modification that anyincrease or reduction should not adversely

affect the existing employees. All the suggestions that the report is trying to make is on the basis that the employer is prudent ,I honestly feel that laws would not be required if the parties are prudent. It is only in cases where the parties try to go out of their moral material responsibility, the question of laying down the limits arise.

Page 33 para 50 :CHAPTER V-B:- The reporting appears to suggest that the case-s of lay off and retrenchment, neither prior permission nor the post-facto approval is necessary, and seeks to distinguish these cases from that of closure. In my opinion lay off, retrenchment are the first steps of closure and if no restrictions are placed on either lay of or retrenchment, the closures would be very easy and once the establishment is factually and effectively closed,the dhallange to such closure would be not serve the purpose as the Appex Court has ruled that closure whether bonafide or sham cannot be challanged . I, therefore, feel that no distinction is necessary between the lay off, retrenchment on the one side and the closure on the other side, and the provisions should be

10 years during the introduction of existing policy of 1991,there are very few aspects establishments having even 300 employees because basically only employer attemots to divide the establishment and try to allow any one establishment to go beyond the restricted number. I, therefore, feel that even the limit of 300 is on higher side which will not serve the purpose of introduction of

Chapter V B. In any case what Chapter V B contemplates is that its limits would come into operation only if there is no agreement between the employer and the workers. Therefore, what the Section has given to the workers is a right of hearing and such a right of hearing is a necessity as the aim of the Act is to maintain the industrial peace. What is contemplated is right of the workers to look into the affairs of the employer's honesty in taking action. Therefore, I do not think that any change would be necessary.

Page 37 para 55:- I dis-agree with the suggestion that the cases of allegation of violence, drunkenness, sabotage theft and/or assault should be taken out of the perview of the powers of the Labour Court or the Industrial Court under Sec.11 A from granting reinstatement to such worker. Once several acts or omissions are marked out as mis-conducts , then no distinction in the nature of mis.conduct is necessary. The question is that in distinguishing between mis-appropriation and drunkenness, dishonesty and drunkenness, as it is a matter of experience that it is the habbit of employers to level charges and it is the disability of the employee to bring in witness who are in the employment because of fear of action. I, therefore, feel that no distinction as suggested is necessary. As regards Sec.17 B, in view of the recent Appex

Court Judgement holding what is "last drawn wages" and holding that the last drawn wages would be the amount which was drawn by the employees before the dismissal or termination. It is necessary to suggest a modification to the term "last drawn wages" to mean that on a order of reinstatement when a person is deemed to be in service , a calculation on the basis of progressive effect of the reinstatement will have to be made and the last drawn wages would, therefore, mean that the wages which the worker would have drawn had he been continued in the employment on the date of issuance of stay order by the High Court or the Supreme Court.

Page 50 para 77:- In support of the suggestion please consider the suggestion of Kalelkar Award made by Mr.Kalelkar in respect of public works Dept employees of the Government of Maharashtra . He suggested ~~that~~ to create three classes of employment. Casual or temporary,converted temporary establishment (CRT), Regular Temporary Establishment and Permanent Employment suggesting thereby that from one stage by way of seniority and completion of number of days, the worker goes to a higher stage and then further higher stage. I suggest that such a suggestion may be incorporated.

Page 52, para 77:- HOLIDAYS: I would suggest that instead of 'May Day' a National Labour Day may be suggested as in many parts of the Country a 'Godess of Labour' being 'Vishwakarma', Vishwakarma Day is observed.

The suggestion made by me hereinabove in respect of amendment to Labour Laws on the following issues such as 'limitation on the number of employees on the establishment for coverage, (b) the definition of the term worker, (c) amendment to Section 9 A reg. Items 10 and 11 of Schedule IV, Chapter V- B suspension and reduction of power of Labour Court or the Tribunal under Sec.11 A by specifically deleting the power of reinstatement in cases of drunkenness or violent behaviour, if not agreed to, may be taken as my note of descent.
dissent

(S.M.DHARAP)
ADVOCATE

7th November, 2001

Mr. T. Sankaran

Dear Sir,

This has reference to the draft report regarding the Study Group on Labour Laws. At the outset I regret my inability to attend all the meetings of the Group. I have gone through the report and regret to say that it has given a virtual go by to all the recommendations made on behalf of the employer.

One of the primary purpose of the Study Group was to give recommendations for amending the Labour Laws bearing in mind the criticism which is being faced from the industry as well as foreign investors about the rigidity of the labour laws and its overwhelming tilt in the favour of labour which has been one of the factors leading to inability of the employer to make optimum use of his resources, development of an extremely poor work culture leading to a "chalta hai" attitude in the unions and workmen towards production, productivity, discipline, need to continuously improve. All these have already had a severely adverse impact on our economic scenario.

The proposals contained in the Draft Report instead of improving the situation will further degenerate. I therefore cannot accept these proposals and am giving below my broad objections to the Report.

1. a) Paragraph 11 page 5, the Government realizes that in the current situation it is impossible to make "right to work" as a Fundamental Right and therefore it continues to be a Directive Principle.

b) Even the Convention 122 on Employment and Social Policy referred to on page 8 of the Draft mentions "The said policy shall take due account of the **state and the level of economic development** and **mutual relationships between employment objectives and other economic and social objectives** and shall be pursued by methods that are appropriate to national conditions and practices."

c) In view of the above, starting the Report on the above premise, reflects a mindset that labour must be protected irrespective of the economic needs. Termination of employment must be made virtually impossible, begs the question **what are the changes in labour laws to be made** to meet the changing scenario which was one of the **primary purpose** for **setting up the Taskforce.**

2. a) Paragraphs 13 to 15 pages 6 to 8 even at the worst scenario of the South East Asian melt down these economies **had** stronger **economies** than the Indian economy and these have jumped back to vibrancy. The Thai currency which even till mid 90s was equal or below the Indian rupee was stronger by **10%** in 1999 i.e. virtually the trough of the melt down. This shows the fallacy of attempting to continue to regulate in different forms the economy of a country. Regrettably, the approach through out the Report reflects the desire to reimpose the controls, whose strangle hold has been slightly loosened since 1991.

b) Mr. Anklesaria Aiyer has repeatedly stated that the reasons why foreign direct investments in India are not coming is because these **rampant corruption** in all fields of activity, **inconsistency** in the **government policy**, changing of policies with **changing Governments, lack of effective judicial mechanism** for recovering debts, **for penalizing** debtors, poor infrastructure and **rigid labour laws** heavily tilted in favour of the workmen.

c) **All these lacunae have to be set right at the earliest and there is no time to wait to change labour laws till the other factors are set right.**

3. Paragraph 16 (i) page 9 "right to participation in the management" necessarily implies the obligations and the duties, which are cast upon a party while managing a business. Regrettably when labour laws are so heavily tilted in favour of the labour. There is no incentive for the labour to act responsibly while participating in management nor is there any penalty prescribed for irresponsible trade union activities, let alone acting irresponsibly in management if and when there is workers percentage is high.

4. Paragraph 20 page 12 by having no salary limit on all labour laws where reference has also been made to the **Payment of Bonus Act.** If the salary limit in that Act is removed then by one stroke of pen crushing financial burden will be placed on Organisations. It was for this reason that one management representatives wished to do away all together with the payment of bonus and the other had said that atleast the wage limit in the Payment of Bonus Act should not be **tampered** with.

a) Paragraph 20 page 12 while the union representatives did mentioned that there should be no salary limits for covering workmen under employment related laws such as the ID Act, BIR Act, MPIR Act and the UP ID Act. The management representatives were in favour of placing a limit of **Rs.10,000/- p.m.** which finds no reference in the Draft report.

b) There is no reference even to the via media offered by the employers representatives that after a salary limit is crossed the concerned employee may be given a **one time option** of electing to stay in the workmen category or opt for being covered as a management staff. Once the option is exercised the employee cannot claim the benefit or the burden of the labour laws and must be governed by the benefits and the burdens as applicable to the managerial person.

6. a) Paragraph 21, page 13 the Sales Promotions Employees by the very nature of their work outside of the Organisation with very limited direct supervision and control. They have to be the cutting edge of selling for the goods of the Company it is for this purpose that even today they are not covered under the definition of "workman" under the various legislations. I am enclosing as Annexures A & B respectively the representation made by OPPI to the National Commission on Labour on 12.10.2001 and the letter dated 22.10.2001 IDMA and OPPI on the same subject which shows the status of a Medical Representatives (MR) the opportunities he has if he diligently performs and how his function is a key to manaerial work rather than that of a workman.

b) However, the pressure groups of MR do not wish to strive for performance and do not wish to be held responsible for their acts of omission or commission and through lobbying have been able to get the Sales Promotion Employees Act passed. Having been virtually assured of the impossibility of termination some militant MRs today have formed organizations of which all MRs are forced become members. The militant MRs physical force against managerial staff to destroy the **very right to supervise**. Thus a manager cannot even go in the field without getting the permission of such Organisation to visit the field, **cannot work the market alone** unless a MR is working with him. Often a MR deliberately goes on leave / remains absent when joint work with his Manager has to be done and the **entire day of the management staff** is wasted as he cannot work alone in the field and even if he goes to the next town or city the MR working in that town or city will not work with him as it was not the date on which the joint work had to be done alongwith that MRs. Inspite of the fact that by the very nature of the work there are no

fixed hours of working for medical representatives, many of them stop working after they have completed a fixed number **calls or after 3 p.m. in Punjab and 5 p.m.** in many other cities. The modus operandi followed for preventing the operations of the management staff of a Company is for a group of MRs belonging to other companies physically preventing the managerial staff from working in the market and if he refuses to "Obey Orders" he is humiliated, assaulted, battered and put on to a train or a S.T. bus and forced to leave the station. It is therefore essential that the Sales Promotion Employees Act be rescinded and the question of extending it to other Sales Promotion Employees or including Sales Promotion Employees in the definition of workman should not even be considered.

7. a) Paragraph 22 and 24 pages 13 and 14 while the concept of excluding supervisory cadre from coverage of the labour laws irrespective of the salary limit is welcome, the reference of mak provision for **adjudication of reinstatement of managerial employees is not at all accepted**.

b) The **bane** of the industrial adjudication and the service is providing for **reinstatement** workmen and for Governmental servant which has led to the current situation of indust indiscipline, laid back attitudes and this should **not** be extended to the managerial cadre.

c) In fact the management representatives have repeatedly stated that **even for labour** and serv exemplary damages must be the rule and **no reinstatement should be ordered.** No reference this suggestion finds place in the Report.

d) It is pertinent to note that the extension of coverage of managerial cadre is being recommen by the **union representatives and not by the management representatives.** This is beca there are rarely cases disgruntlement let alone of litigations by managerial staff who accept, t their career path has to be struck by themselves on their **merits** as an individual and **not throu collective bargaining** by a group. The unions will welcome with open arms a few disgrun managerial staff who have either not been rewarded or punished for non-performance. T recommendation of reinstatement of management staff will **ruin** the work culture even amon the management staff and is **strongly objected by the management** representatives in Taskforce.

8. a) Paragraph 25 page 16 : The recommendation of treating Central Government as the appropri Government only for certain establishments is **not** acceptable because there can be a **category** employees who are employed **all over India** and therefore the Central Government and Central Labour Machinery under the I.D. Act has to be invoked.

b) Thus till the Sales Promotion Employees Act is rescinded the appropriate government to make reference on all matters pertaining to all the medical representatives will be the Cen Government and the appropriate LC/IT will deal with these industrial disputes rather than e State Government making a reference of an industrial dispute in each State.

c) Similarly where a reference has to be made of a **dispute** which is on an **industry** wide b: spread on a different State the appropriate will have to be the Central Government and reference will have to be to the Central Machinery.

9.a) Paragraph 27 page 17 : For reasons already stated including MR in the definition of workman worker under the ID Act or BIR Act or MPIR Act or the UP ID Act is not acceptable.

b) I also reiterate that so far the attempts to **combine** various labour legislations have **not proved successful** and it will be a Herculean task to first envisage the **implications** of combining such legislations on **pending cases** as also on the future **industrial relations** scenario. (The implication of removing salary limit in the Payment of Bonus Act is reiterated to substantiate the statement).

10.a) Paragraph 29 page 18: If the intention of this paragraph is only to make a separate law for establishments having less than 50 employees I have no objection.

b) However, the concept of merging various establishments **cannot be extended**, if reference is to be made for the purposes of **coverage under Chapter VB of the I.D. Act** without inviting further adverse implications on the industry. If this is the intention **I disagree with it in totality**.

c) For the same purposes as mentioned in 10 (b) above I disagree with the concept of **including non-workmen** while counting the number of employees if the intention is to grant **coverage of Chapter VB** to the establishments having **50 employees** and not **50 workmen**.

11. Paragraph 29 continuing Page 19: It is not understood as to what is meant by having a collective bargaining agent at a "Corporate Level". If the intention is to give the same terms and conditions of the service to workmen employed in different establishments **of a company** throughout the country by moving away from the region cum industry or industry cum region principle the same is **not acceptable**.

12 a) Paragraph 29 continuing page 20: The management representatives totally disagreed with the view that the "major remedies" lied outside of the amendment to labour laws. **Amendment to labour laws is in fact a major remedy**, which should be brought about at the earliest.

b) It was recommended by the union representatives that since some of the companies are defaulting in making payments of even gratuity and provident fund to their workmen a social security scheme such as unemployment insurance scheme be made applicable in all establishments. The management representative **categorically disagreed** with this suggestion because it amounted to **penalizing the law abider to compensate for the law-breaker**.

c) This suggestion is also rejected because the purpose is to **reduce** the **laws** and **reduce** the involvement of **State and its administrative** machinerywhile this suggestion increases the number of laws and **the State involvement**.

d) The management representatives **completely disagree with the** recommendation "we strongly urge that until an adequate social security packet is put **in place** first, attempts at liberalization of labour laws must wait". This is nothing else a stratagem for maintaining status quo.

13. Paragraph 30 page 21: The management representatives are not inclined to have the domestic workmen covered under any legislations.

14.a) Paragraph 30 continuing page 21: It is sad that the Taskforce (other than management representatives) wishes to continue protecting the workmen to carry on with of go slow, and work to rule which the **Supreme Court** has categorized as being **worse than strike**.

b) Prior to introduction of Chapter VB if any lay off had to be resorted to because of go slow or strike in another department **no payment** was to be made to the laid off workmen. Today even this right is not available to the management in establishments with 100 or more workmen. Consequently the workmen with impunity resort to go slow and departmental strike thereby crippling the industrial activity and leaving the employer with no choice other than to declare a lock out and justify its introduction and every day of its continuation.

c) It was for this reason that the recommendation was made by the management representative to **include similar provisions in Chapter VB** but they have also been given a go by saying that "`these matters are best left in standing orders".

d) **I therefore reiterate that not only this provision be incorporated de hors of the Chapter V-B (which must be deleted) as a statutory provision in the ID Act or in the Standing Orders Act that for acts of go slow and work to rule no payment will be made to the workmen. The fact of whether or not there was a go slow of course will be justifiable.**

15 a) Paragraph 30 continuing page 22: If the intention in defining the retrenchment only as removal of surplus labour is to thereafter to **do away with the existing exceptions** as set out in Section (a) to (c) to Section 2(oo) then the recommendation is **not** acceptable.

b) In fact the exception to retrenchment should **clarify** what is meant by continued ill-health and should include termination of services by way of **loss of lien** or abandonment of services as also **termination of a workman, who is unable** to equip himself for new work even after being provided with **adequate training.**

16 a) Paragraph 30 continuing page 22 : THE FIFTH SCHEDULE to the ID Act which is bodily lifted from MRTU and Pulp Act is totally **skewed in favour of the workmen.** Even **breach of a settlement** by the union or a workman is **not an unfair labour practice.** Similarly while a threat of a lock out or a closure by an employer is an unfair labour practice. **Participation even in unjustified strike is not an unfair labour practice.** Recruiting contractors workers even to break an illegal strike is an unfair labour practice but the employer has no remedy Company workmen of other companies or agents of the union preventing even the managerial staff from

attending to their duty. Similarly while making discharge or dismissal of workmen in false criminal cases is an unfair labour practice. **Filing false criminal cases against employer** or writing **false articles** in the newspapers about the employer is **not the unfair labour practice by the union.**

b) In all fairness it was expected that recommendation was made either to totally do away with THE FIFTH SCHEDULE and the MRTU and Pulp Act or to add to the last of unfair labour practices by the union and the workmen. **Instead the recommendation is only to make items of ULP by the employers, to be made part of the ID Act removing all references to the unfair labour practices committed by the union.**

17. a) Paragraph 32 page 24: A confidential staff and watch and ward staff if they are members of the union will obey the orders of the union and **not** that of the management. This has been found to be the root cause of preventing not preventing violence the security staff during industrial agitations and **leaking of confidential information** by the confidential staff. It was for this reason that the change in the current status was asked for by the management representatives.

b) Making a workman to compulsorily pay union fee is against a democratic right of a workman and is only a method of **increasing the hegemony** of the unions. Therefore this recommendation is not acceptable.

18. Paragraph 37, page 26 the recognition should be **per establishment only**. This is because if the recognition is by clubbing of more than one establishment or an industry it leads to an anomalous situation where the union recognized either by combing more than one establishment of the same employer for the industry is different from the union having majority in an establishment then the troubles of inter union rivalries are faced by an employer at the workplace.

19. a) Paragraph 41 page 29: Before a check off system can start, there should be a **mechanism for the management to decide whether or not to deal with a union.** Merely because a union holds majority it cannot be forced upon the management to deal with the union even if the union has committed or instigated commission of misconducts, unfair labour practice etc. therefore without **appropriate mechanism for weeding out unions** from representing the workmen the check off system is not acceptable to the management representatives.

c) Even in a check off system the worker must have the right to change his membership and having changed the membership, give another letter authorizing payment to another union. If this is not done the union which started with the majority can never be dislodged even if the majority of the workmen do not want it.

20.a) Paragraph 43 page 30 there appears to be a contradiction in so far as the recognition is supposed to be valid for three years but an application for recognition by another union can be entertained after two years. Is it intended that an application can be made after two years so that recognition can be given at the time third year is completed? If yes, this may be specified.

b) In any case it reiterated that there can be no provision for compulsory recognition irrespective of the membership of the union without there being provisions for disqualifying a union for getting recognition or having granted recognition, the de recognition of the union.

21. Paragraph 44 page 30 Currently the wordings in the Standing Orders are that the Standing Orders or the Settlement or Award whichever is better shall prevail. This leads to an anomaly in so far as that the Settlement which is a package deal can have a conditions which in same areas which are less favourable. If that happens to avoid any conflict the Standing Orders must also be amended. However, at the time of making amendment the certifying officer may refuse the amend the Standing Orders. Thereafter either another union or an individual workman can raise an industrial dispute or move under Sec.33C(2) of the ID Act. To remove the current anomaly the Standing Orders must provide that in the event of a conflict between the Settlement and Standing Orders the Settlement shall prevail.

22. Paragraph 46 page 31. The subsistence allowance clause must be such as to allow the Enquiry Officer to review the payment of subsistence allowance every quarter so as to ensure that neither the management nor the workmen can take advantage of the clause. the allowance can therefore vary from quarter to quarter. The recommendation of the Taskforce for subsistence allowance are not accepted as once again they are more against the employer than as existing in most States and therefore not acceptable to management representatives.

23. a) Paragraph 47 page 31. The recommendation regarding individual being able to approach grievance redressal committee and thereafter to the arbitrator or the labour court will lead to provide for **plethora** of industrial disputes being raised and will **work against the concept of bargaining agent**. Even today an individual can raise an industrial dispute only U/S. 2-A of the ID Act or make an application U/S. 33C of the ID Act.

b) If every individual can go for arbitration for personal grievances what will be the **sanctity** of a Settlement of a **bargaining agent**, Standing Orders and what will prevent the union, which has signed the Settlement to have it **reopened** through **individual grievances. Therefore this recommendation is not accepted.**

24.a) Paragraph 50 page 34. The management representatives do not agree that the Chapter V-B should apply to units having employment of 300 workmen only.

b) **The Chapter VB is the only legacy, which has been left over of the Emergency is loudly applauded by the unions and must go, irrespective of the number of workmen employed in an establishment.**

c) Once Chapter VB is deleted the question of distinction between lay off, retrenchment and closure will automatically disappear.

25.a) Paragraph 51 page 34. While the provisions pertaining to the notice period and the compensation for layoff, retrenchment and closure are accepted. The provisions for **creating unemployment insurance is strongly objected** to. This is merely an additional burden on the employer and for maintaining status quo.

b) The reason why the employer in some **cases** is unable to pay the dues of **layoff** retrenchment or closure compensation is because he is not allowed to do so in time. If the Chapter V-B is removed this problem will diminish if not disappear.

c) The question of removal of Items 10 and 11 of the FOURTH SCHEDULE and removal of Chapter VB being **delayed till the alleged protective measures are in place is not accepted.**

26.a) Paragraph 52 page 35. There is no reason to restrict a Settlement for three years. More so when there is a system of DA prevalent in a Company.

b) The provision regarding naming an arbitrator in a Settlement is incomplete insofar as the parties may not be able to agree to an arbitrator. The arbitrator may not wish to be an arbitrator or the arbitrator may die after he has been named. Therefore the arbitration if at all agreed to between the parties, should be in terms of Arbitration and Conciliation Act, 1996.

27. Paragraph 54 page 36. Cannot comment, as Annexure 3 has not been enclosed.

28. a) Paragraph 55 page 37. Paragraph as worded indicates that in cases other than violence, drunkenness, sabotage, theft and assault **reinstatement will have to be ordered even if the charges are proved.**

b) The **consequences** will be that a workman or a group of workmen or a union can instigate **illegal and unjustified strike, abuse and gherao management** staff, resort to **pernicious go slow,** blithely **disobey lawful and reasonable orders** and continue to indulge in such activities for days and week on end and **can statutorily claim reinstatement.**

29.a) Paragraph 57 page 38. In an **adversarial system** of litigation the question of the employer bearing the **legal cost** of the workmen or the union does **not** arise. Today infact there are many affluent unions who can and do bear the cost of litigation. It is reiterated that the legislation is already heavily tilted in favour of the workmen and does not have to be further tilted in their favour.

b) Even today the courts have the right to order costs and the **ends of justice will be served if full costs are ordered in appropriate cases and exemplary costs are ordered for vexatious litigation** both against the management and the unions.

30.a) Paragraph 59 page 38. If there is a recommendation for the "Whistle Blowers Law" against the employer then there should be an equal opportunity to the employer to blow the "whistle on the union". The employer should have access to the union's balance sheet and minutes book so that the employer can also "blow the whistle" against unscrupulous unions and their office bearers.

b) If newspaper reports are to be believed and dissertation papers are to be accepted as evidence, then it appears the large number of unions do **not even maintain accounts** let alone file them with the Registrar of the Trade Unions. Further to prevent false accusations being raised when the charges are disproved not only the workmen will become **liable for punishment** but the union will be **made to bear the exemplary costs. The same principle should also apply to the management if they have wrongly "blow the whistle** .

31.a) Paragraph 61 page 39. This paragraph **totally negates** even the **partially** good intentions mentioned in paragraph 49 and 50. At **no stage** the management representatives ever **accepted any limitations for removal** of Items 10 and 11 of the FOURTH SCHEDULE and the removal of Chapter VB.

b) The introduction of the so-called high-powered regulatory commissions is nothing else but the **back door restrictions** on the **right of the employer** to run his business and prevent the employer from exercising his rights if the Items 10 and 11 of the FOURTH SCHEDULE and Chapter V-B are removed. **This suggestion therefore is not accepted**.

32.a) Paragraph 62 page 40. It is unfortunate that even today the unions believe that the primary **function of the industry is to give employment**. The function of the industry is to make **best use of the economic resources** with a view to generate **optimum profits** to meet then **needs** of the **customers, shareholders, the employees** and the **society** as a whole. It is only when the industry is free to operate within the parameter of law that it benefits the society as a whole. The 50 years of licence permit raj and the 26 years of the Chapter VB has only **succeeded in making India being economically pushed backwards every year as compared to other nations.**

b) With regard to disinvestment from Public Sector I say that running a business is not a sovereign function of the State. It is therefore, a paradox that a **loss of "Fundamental Right"** is claimed by the workmen on privatisation of a Company, only because such a company is a State under Article 12.

c) It is a sad state of affairs that every time disinvestment of a public sector unit is to take place, charges of "corruption" and "under valuation" fly thick and fast so as to **scuttle** the

disinvestments. While making these charges the assets of a Company are touted to show how the Company is "under valued" without considering the state of assets, the depreciation already claimed, the encumbrances if any on the assets, the liabilities of the Company, the declining returns which have already set and which will accelerate every year because of competition (Maruti Udyog for example).

d) **All these claims and allegations are once again stratagem resorted to maintain status quo, which benefit vested interests while continuing to erode the national wealth.**

33. Paragraph 63 page 41

a) The relations between the management and the union today are adversial. As stated in para 3 of my note the talk is only of right to participate in management. There are no **obligations** on the participating party nor are there any **penalties** on trade union leaders who do not participate responsibly if and when appointed in the management.

b) Today the unionization is fragmented and the problems of multiple unions are being faced by the employers even when there is no participation of labour in management. How much **more** will be the **problems** when such **right** to participate in management is given.

c) It is also paradoxical that workers are considered to be an integral part of an organisation and therefore should be conferred rights to **participate in management**. However, formation and running of the union, (some of whom, with their irresponsible behaviour have ruined companies, have held societies at ransom, provided abysmal level of service resorted to yearly strikes, used force to garner membership, break away membership from other unions and even use force on members of the public) are considered to be an **exclusive preserve of the labour**. Any " **interference** " in the establishment or working of the union is labeled as an unfair labour practice.

d) Therefore if there are any **rights to participate** to be given then they should be given equally. Regrettably the one sided view continues that management is always bad and the unions are always good that the management has only the duties and the unions have only the rights that has led to the current scenario of an ever regressing position in the world economic race for our country. This is even more regrettable because the country has some of the **best brains, which today run business across the world and have several resources, which lie untapped because of the rigid and antiquated thinking which leads to continuance of rigid and antiquated labour laws.**

34. With regard to Paragraph 65 page 41 and 42 my comments are as follows:

a) My entire note shows that far from taking care of the management's interests this Report is recommending **further dilution** of the management's rights and interests.

b) Even the reference about need to do away with the requirement of getting permission to prosecute public sector functionaries, though by itself is welcome as a suggestion, reflects the same attitude that the problem lies with the **management** who run the public sector undertaking. There is no reference to the over protection to the labour, no reference to the political inference and no recommendation for removing these problems affecting the overwhelming mass of the employees in these undertakings.

c) The recommendation of appointing Trade Union Council to do away with the practice of **breaching** the contract of employment by a workman "**appointing**" another workman to do his job again reflects the same attitude. Such practices must be **crushed by summarily dismissing all individuals whether management staff or workmen who are involved in creation and propagation of such practices.** Instead the Report by suggesting appointment of Trade Union Council recommends a person to become a **judge in its own cause** with a view continue with status quo of a patently illegal and pernicious practice.

35. a) Paragraph 66 pages 42 and 43 cannot be responded as there is no Annexure 4 attached for the separate Chapter to be included in the general law, concerning establishments employing 49 or less workmen.

b) I reiterate that the implications will have to be studied in totality before any response can be made.

c) I reiterate that if the intention is to club different establishments as one unit for the coverage under the Chapter VB the same is **unacceptable.**

36 a) With reference to paragraph 67 to 70 on page 43 to 45 it is necessary to note that in many cases permanent workmen refuse to do the job that they are required to perform or perform them with very low efficiency or create daily problems in perform such jobs. With virtual impossibility under the current law, for terminating large number of workmen these become the areas where the "contract labour system" begins often with the encouragement of the union. The case of Mahindra and Mahindra citation : 2 CLR 1996 page 423 is a classic case where the unions asked the management to transfer workmen from house keeping to the plant and appoint contractors for house keeping. Having done that they asked for the abolition of housing keeping contract system. Thus even in appointment of contract labour only the "faults" of the managements are seen. The real genesis of the problem which is the poor work culture **created by the labour laws is lost sight of.**

b) The management representatives are not at all in favour of any LRCs. These bodies will not look at situation from a judicial angle but from partisan angle of the trade unions and the administration and the "remedy" will only make the situation worse.

c) In the current situation with the extreme tilt in favour of the union not only in the laws but even in the administration a tripartite body like an LRC will once again **out number the employer's representative and make the decisions even more pro labour rather than rational** and therefore not acceptable.

d) The suggestion of making a provision in the Act of absorbing the contract labour looses sight of the fact that the Act was to regulate and only if necessary abolish contract labour. The suggestion once again reflects the approach that maximum number of workmen should be thrust on to an organisation irrespective of the work requirements and **without improving the poor work ethos** which led to recruitment of contract labour in the first place.

e) Even the Section 10 of the contract labour abolition act merely prescribes that before abolishing contract system it must be seen whether the process of work is incidental to or necessary for the business, is perennial nature, is of the type which can employ substantial number of workmen and is generally done in similar establishments through departmental employees. Nowhere does it prescribes to **find out whether there is already a surplus labour** in the establishment, why the **permanent** workmen are **not doing** such jobs and if the **contract workers** are to be **absorbed** how many of the **permanent** workmen **should be terminated.** Thus once again the **statute builds concept is of increasing number of workmen without attacking the root cause of problem.**

f) Finally the recommendation that the wage rate to a contractor's workmen should not be less than the minimum paid to that category of workmen in an establishment is a suggestion will lead to labour problems for the contractor to transfer his workmen from one establishment to another because the wages will differ. Therefore the rate of wages should not be lesser than the minimum wage and the minimum wage paid in the grade in an establishment.

37. My comments with regard to law on wages in paragraph 71 to 74 pages 45 to 48 are as under:

a) While reasonable wages are always welcome and will lead to increased productivity etc. **only** if the labour laws are **not tilted** in favour of the workmen. This in fact was the corner stone of Henry Ford concept of economy of **high wages.** He subscribed to the concept by saying that his workmen out perform the others because they knew that if they **lost their jobs** they will not get a similar emoluments in the other companies. Thus the bed rock to this concept was **not only the carrot but also the stick.** Unfortunately in our country we think only of the carrot and have given a total go by to the stick thereby **converting the labour democracy into licence for labour** allowing the labour to do what they wish to do.

b) With reference to 8.33% of bonus being paid before an appropriate holiday and thereafter payment upto 20% by negotiations has the following problems. Does the Report recommend maintaining of the current salary limit or not ? I reiterate that increasing the ceiling will lead to crushing financial burden without any contribution from the labour. Does this recommendation mean that it is an inherent right of a workman not only to get 8.33% bonus but **irrespective of the provisions of the Bonus Act have a right to claim bonus upto 20%. If the answer is in the affirmative then once again there will be a plethora of bonus disputes.** This is because currently the Act provides that if a profit sharing bonus is paid as per the Act Formula no dispute can be raised thereon, except to determine whether or not the payment has been arrived at by following the Act Formula. The Act also provides that generally the Balance Sheet of a public limited company is deemed to be correct.

c) With regard to minimum piece rated work while the concept is acceptable provisions should be not only for 8 hours per day but 48 hours a week. This will enable an employer to have upto 9 hours of work on 5 days and lesser hours of work on the 6$^{th}$ day.

d) With regard to fixation of wages, while working from home once the **piece rate is correctly fixed whether one person or his or her family member also contribute to work becomes irrelevant** because either the person will get higher wages for giving higher output or will not give output beyond the specified limit if the piece rate wages has a monetary ceiling irrespective of the number of units produced.

e) On the other hand if the wages are on daily rate basis then there is no requirement even giving a fixed quantum of output.

f) Though not relevant from the standpoint of the industry in the organsied sector it is not correct to take only one sided view of making a recommendation of 10% higher wage while working from home. If the employer gets the benefit of not providing space (equipment will rarely be required in working from home), the workmen gets the benefit of flexi timings and working without supervision except on the quality and quantity of work. In fact unless the **work done at home is piece rated or has atleast a fixed quantum of output to be given per day, a workman can get minimum wages plus 10% for far lower output than those working in a space provided by the employer.** Thus this recommendation conceptually is not accepted.

g) Comment on Draft law of wages as Annexure 5 is not attached. However, conceptually the management representatives are against having a law on wages except to provide for **minimum wages**. The objection is because if unions can negotiate and demand higher terms and conditions of service, there **cannot be any legislative limit on the managerial remuneration which appears to be the intention in suggesting an income policy**. The Directors of the Companies for years received princely sums of Rs.5000/- p.m. and the Managing Directors Rs.7,500/- p.m. till late 1980s. Such concepts must be steered clear of.

h) Further the minimum wages concept came in for sweated industries. Today almost **all** industries are getting **covered** under the Minimum Wages Act and in some cases positions, which are clearly **supervisory and managerial** in nature also have minimum wages prescribed. **Managerial and supervisory positions must be kept out of minimum wages.**

i) The concept of **occupational** wages based on **categories** of occupation is not accepted because different companies have **different capacity to pay**. Further different individuals in the same category of occupation have different skills and according to their skills will be absorbed in different companies who have the ability to pay higher amount.

j) The adoption of wage policy for the country as a whole is attempting to bring back a concept which for decades have failed to see the light of the day. This is infact one area where both the managements and the union have objected to the concept because there are differences in technology of an organisation, the quality of employees, the quantum of capital investment, nature of industry, the ability to pay, the location of the industry, its exposure to world market etc. This recommendation in effect means setting up several **Wage Boards** for the **entire country** and therefore runs **counter** to the recommendation of **removing** Wage Boards.

k) For the reason stated above the income policy has never seen the light of the day and limit on managerial remuneration beyond what currently exists in the Companies Act should not be tampered with. The pricing policy have often strangulated entire industries and progressively the pricing mechanisms have been removed even in the pharmaceutical industry which is still one of the most heavily price regulated industry and which at one stage was moving towards sickness till the 1987 DPCO was brought in is also progressively be regulated.

l) In recommending wages, income and pricing policies, the Report is asking for bringing back the licence permit raj and a controlled economy which have been given a go by even in countries like the erstwhile USSR and China.

38. My recommendations pertaining to law relating to working conditions, welfare in paragraphs 75 to 80 pages 49 to 50 are as under.

a) If there is going to be a general law say for safety, then the provisions pertaining to this aspect should be **removed** from the **current legislations** such as the Factories Act. Otherwise there will be **duplication, conflict** between two laws, **creation of additional administrative machineries**. The same concept will apply to general law to welfare, working conditions, health etc.

b) Care must also be taken that while combining the laws a rational approach keeping in mind the economic scenario and requirement is taken and **"the best"** terms in favour of the workmen in **each** of the individual law is **not** built into the general law. A simple example in this regard is the difference between the Factories Act and the Shops & Establishments Act. While in the former 7 days working, staggered weekly off, round the clock working on shifts are provided for, in the latter each of these require **special permission** from the appropriate Government. Similarly in the Factories Act only one type of leave is provided, many Shops and Commercial Establishments Act provide for Privilege leave, Sick leave, Casual leave etc. The wordings in some of the Shops and Commercial Establishments Act are such even if an employer gives **overall** higher leave package, if in a particular **category** of leave (casual leave) the provision is less then inspite of the higher over all leave package the workmen also gets the **additional** casual leave **statutorily** provided. Therefore if the general Act on working condition incorporates the highest benefit under each item of each State Shops & Establishments Act in the above matters covering also the factories the implications are self evident.

c) The recommendation pertaining to temporary workmen becoming permanent on working for 90 and 180 days is categorically rejected. Temporary workmen are taken for **high absenteeism**, which is often seasonal. There is no provision for limiting the number of workmen who can go on **leave** after the same has been approved and there is no **statutory right** for **dismissing** workmen whether individually or **en masse** if they go on leave inspite of the same being rejected. Large numbers of workmen frequently remain absent allegedly on medical grounds and there is a great deal of difficulty even for terminating the services on grounds of **continued ill health**. Temporary workmen are also taken to meet **sudden increase** in work of **permanent** nature or alternatively of **temporary** nature. Such work is not merely of 90 or 180 days. Similarly large numbers of workmen **in succession** stay away from duty, which cumulatively extends well beyond 90 or 180 days. It is bearing in mind this **reality** of life that the provision of Section **2(oo)(bb)** of the ID Act has been introduced and the purpose of this recommendation is to make this provision a **nullity**.

This provision coupled with inability to layoff, retrench or close an undertaking will make the Indian industry even more ineffective. It is a myth that Indian industry is **low cost or has low wages**. With the inefficiency of Indian labour (which refuses to give even a normal output that a foreign female labour gives in India on Indian equipment) and cannot be terminated on the grounds of go slow under the current laws because it has always given low productivity with high amount of rejects leads to a high burden of wages in India. It is trite to talk of percentage of wages as a total cost. This is because if the capital investment is high the wages as a percentage will be low. However, the inefficient labour does not lead only to high cost of labour but the **below optimum utilisation of the high cost capital invested. This part of loss is never considered in this country either by the unions or the administration or the judiciary and only the alleged low cost of labour is proclaimed a proclamation which no one else other than the Indians believe.**

e) Considering the low productivity of the Indian labour the management representatives accept that the hours of work in all establishment should **compulsorily be 48 hours per week** in all establishment for all workmen irrespective as to whether they are blue collared or white collared, in public or private sector or ministerial employees and there should be **no** compensation for the extra hours worked.

f) The provisions of canteen under the Factories Act is already creating enough complications and increasing costs. The recommendation for extending the same to other establishments is not accepted by the management representatives. What the taskforce **forgets** is that in provision of a canteen there is a requirement of **space,** which is very high cost and will **not** be available in existing establishments. Further, the cost of space, fuel, electricity, furniture, fixtures, utensils, crockery, cutlery, wages of canteen employees are all to be borne by the employer under the Factories Act before he can charge the workmen for the items of food even on "no profit no loss" basis. The **subsidies** in many factory canteens run into **several lakhs** of rupees because of these factors. Therefore, the **first step** to be taken is that under the Factories Act statutory provisions must be made for **full recovery of the actual cost.**

g) The enlargement of the provisions for the crèche is **not acceptable** by the management representatives for the same reasons as mentioned in (f) hereinabove. In fact the rules pertaining to the provisions of the crèche have to be drastically amended as they provide for **gross overstaffing.**

h) The management representatives fully support that there should be only 4 national holidays per year. Namely 26th January, 1st May, 15th August and 2nd October and **all other holidays must statutorily stand abolished.**

i) With regard to reference to welfare funds outside of the workplace the management representatives have no comments to make except that there should be **no increase in the financial burdens of the employer.**

39. With reference to paragraphs 81 to 83 in pages 54 to 56 covering social securities my comments are as under.

a) I reiterate that n the given economic scenario there is **no possibility** of ensuring minimum number of **days of employment** and it is for this reason that the right to work continues to be a Directive Principle.

b) I also reiterate that at all stages the management's representative strongly **objected** to having any unemployment insurance let alone agreeing to defer the removal of items 10 and 11 of the FOURTH SCHEDULE and the Chapter VB till the social security provisions are in place.

c) The recommendation that the integrated contribution by the employer towards welfare should be **20% to 25% of the wage bill is totally unacceptable to the management's representatives**. The current cost to the employer for Provident Fund and Gratuity is 16%. The **additional cost** will only lead to further erosion of the worth of the Company and the **remedy** for **protecting** the **workmen** will in fact be the cause of bringing about the economic **down fall** of **many units** which today are able to **survive**.

d) I am informed and The Taskforce can find whether the information is correct, that in China the **State provides work for all**. However, the individual has **no choice** of what work he will do, **where** he will work, **what** will be his terms and conditions of service. The **penalties** for **refusal** I am told are very severe. Before recommending **Right to Work** the Taskforce must decide whether it would also recommend similar condition in India. The management representatives reiterate that at this juncture it is not possible to provide for "Right to Work" without investing disastrous consequences on the economic activity

40. With reference to paragraph 84 to 94 on pages 56 to 68 my views are as under:

a) The Taskforce persists into believing that all the responsibilities towards the labour including responsibilities of training potential work force, lies only with the **employer** or **the Government**. That there is no responsibility of the labour or the Trade Unions or the society at large towards this end. This unfortunately is a reflection of the general thinking in the society, where even an increase in tuition fees whether at school or at college is resisted.

b) There is a total denigration of merit in our Society. This is reflected by the fact that rather than giving sufficient number of scholarship to reward meritorious candidates, there is persistent demand for increasing subsidy for all students.

c) There are loud protests of "education being commercialized" and seats in educational institutions being "purchased by the wealthy", even through these students have scored 85% to 95% marks but could not get admission because of reservations based on caste, tribes, government service (reservation for armed forces always welcome) where the students have scored marks in excess of 35%.

d) Instead of asking the employer for bearing 0.5% of his wage bill as a cost for training apprentices, who an employer may never require. The correct approach would be to find out how **economically viable educational institutions** can be set up where individuals can learn their crafts by payment of fees. If the requirements of skills are correctly gauged, if the facilities are good if the syllabus is upgraded from time to time, many will join these institutions rather than going to colleges.

e) The Taskforce may also find out how in some South East Asian countries the Government establishes training institutions, to which if the employers contributes, in return of which the employer gets some tax advantages for an assured period. This then becomes a way of generating income for training institutions, without financially burdening the employer.

f) Similarly the Taskforce may also find out how in some South East Asian countries if an employer undertakes certain research development activities or certain industrial activities the employer gets tax benefits for an assured period. If such activities are of the kind that absorb trained work force again, it goes towards increasing employment, setting up business activities in approved sector and reduce burden on the employer. Thus the Taskforce must consider how to find **business solutions to economic** problems rather than indiscriminately imposing **additional costs on employers** who get no quit pro quo and thereby **killing the goose that lays the golden eggs**.

g) I am unable to comment on the provisions of Indian Labour Court 1994 as I do not have a copy thereof.

**h)** I am not aware of the various laws quoted except to say that the Equal Remuneration act currently is limited to payment of equal remuneration to women and should continue to be so limited. The concept of equal remuneration for similar jobs and trying to work out comparable worth of jobs cannot function except in **centralised and controlled economy, all of which have proved to be a failure.** Therefore I am not in favour of recommendations pertaining to comparable worth of job. In fact the Supreme Court while interpreting the principle of equal work for equal pay, even in the jobs of ministerial employees, has drawn clear guidelines as to where the concept of equal work for equal pay stops and the concept of different spheres of activity, different levels of educational qualifications, at different entry points, different promotional aspects (and by conceptual extension, different industries, locations, ability to pay, etc.) commence. . The Taskforce may find out whether my information is correct that since 1981China has progressively adopted the **capitalist model of economy and welded it with communist political philosophy**.

**i)** With regard to infancy protection I disagree with the recommendation that the provisions contained in the Payment of Bonus Act in this regard should be removed.

**j)** With regard to the recommendation that there should be no exemption provisions in any legislation I totally disagree. If there have to be no exemption provision then the law by the very nature have to be general and not lay down detailed specific provisions. I can only repeat my **example with regard to the Shops and Commercial Establishments Act** to show the **disastrous consequences** that will follow for MTNL, hotels, airlines, hospitals, etc. if the exemption provisions do not exist in these Acts. There will be many more such examples which can be shown if individual legislations are studied.

41.a) With reference to recommendation of penal provisions under the labour law and having them tried by the labour court the basic objections I have is that the penal provisions are under the Indian penal code and the administration is governed by the criminal procedure code. Conferring the powers of the criminal court on labour court judge will require substantial training of such judges.

b) It is recommended that the penalty of imprisonment be done away and monetary penalty on both sides should be increased. Appropriate amendment should be made in the Provident Fund Act and Gratuity Act for recovering such amounts from the workmen.

c) The management representatives categorically disagree with the recommendations that the burden of proof should be on the **employer for proving his innocence**. This is **against all cannons of law** where the proceedings are adversarial in nature. The taskforce (other than the management representatives) is in fact recommending that the **entire judicial system** be changed to the **inquisitorial** form only for **breach of labour legislations**.

d) If the system has to be changed to the **inquisitorial** form for labour legislation purposes then I recommend for the consideration of the Taskforce that **both labour and management should prove their innocence when the charge is made against it by the other party.** If this proposal is accepted by the Taskforce **the interests of the management and the labour will be truly balanced.**

e) If the current position of only an inspector being able to file a complaint after fulfilling the procedural requirements is to be done away with and if **a workman or union** is to be allowed to file a **complaint** against the management for breach of any labour legislation the **same right** should be given to the **management** to file the **complaint** against the workman and the union.

f) The Taskforce is also requested to consider the implication on the work load of the labour court or a special court appointed for such prosecution if both the parties are allowed to file the complaint against the other.

g) If such a provision is to be made in the various labour laws then atleast the MRTU and Pulp Act should be rescinded.

h) The management representatives disagree with setting of bipartite/ tripartite committees to look into industrial or commercial activities to function as watch dogs to ensure implementation of labour legislations. This once again shows the inclination of the task force to increase **controls** and **state involvement** while professing that it wishes to decrease the same.

i) Even today large number of union functionaries **instead of doing their work** are **busy** performing only **union activities** which have been **held** to be in breach of their contract of employment both by the **Bombay High Court and the Supreme Court**. With the proliferation of the committees there will be a statutory **stamp of approval** for these workers not to do their work.

42. The recommendation for granting tax exemption for increasing employment is not accepted by the management representatives. This is because unless there is work there can be no employment. **Again the liability of employing a workman is a long term liability while tax incentives change on a year to year basis.** Finally many are unemployed because lack of education and skill and therefore they are **unemployable.**

43 a) I finally submit that flexibility in adjusting the labour requirements and bringing in discipline in labour force by change in the labour laws should not be seen form the narrow point of the **direct cost of labour.** It must be seen from the broader economic prospective. Thus if an industrial establishment has to continue only with a view to provide employment it leads to several **negative effects.** Such an establishment is often a **defaulter** to its suppliers and to the financial institutions. This adversely affects the working of the suppliers and increases **non-performing assets of the financial institutions.** If the Company was allowed to reduce/remove the

workforce and release some/all of its assets there would be better returns to the Company, its creditors shareholders and the employees but continuing the Company only for providing employment **wipes up** its networth and increases all assets. If the sale was effected when the Company was capable of being sold, or its assets were capable of being sold they could have been put **better economic use by the new incumbent.** Once these assets are encumbered they are not capable of even being maintained. **Thus Chapter VB, I reiterate finally even deprives the workmen from getting their dues when the Company inevitably closes down for financial difficulties, which are brought about only because of Chapter VB.**

b) Similarly unless the workmen are made responsible for giving the qualitative and quantitative output, capital investments in India will continue to be ineffective because the capital assets will not be optimally used.

c) The virtual impossibility of terminating services for lower qualitative and quantitative output has made India a very poor performer in the export market. This coupled with the large number of defects, which **emanate out of poor attitude of the workforce,** not only give India a image of a supplier of low end products and low quality manufacturer but also imposes heavy penalties on the exporters, emanating out of the rejects.

d) Regrettably all these ills and evils are placed only at the doors steps of the employer and not on th labourer or union who atleast are equal if not the major contributor to the evil of producing shod goods, not meeting deadlines, etc.

**R. P. Bharucha**

C:\LABOURLAWS

November 12, 2001

V.S.Narasimhan

National Commission on Labour

Study Group on Review of Laws

**DRAFT REPORT**

Dear Mr. Sankaran,

I thank you for the draft report.

1) I note that a separate law for small establishment is being recommended. However, I note that it is mentioned that on page 11 para 19 "it may appear that these establishments are being let off the hook. But it is not so; we are providing for these establishments and the workers simple but adequate provisions to protect the interests of the workers satisfactorily".

I also note that this approach is evident throughout the report. While it is important that labour as a resource need to be protected but it is also important to note that industry must survive to

ensure job for the workers. As you will appreciate, the present scenario in our country is not very conducive for employment generation and in fact there is a large scale employment reduction be it public sector or private sector and for that matter even in government.

While again I must agree that the cause for all the present problems cannot be attributed solely to labour, at the same time we must recognize that the stringent labour laws needs to take a pro-industry approach. Perhaps this will generate more employment as it may arrest the present trend of Machine / Capitol replacing the labour.

Coming to the separate law for small enterprises I wish to reiterate that the large number of laws, numbering more than 27 , complicated as it could be with a large number of amendments is difficult to be understood even by the entrepreneur let alone being understood by the employees. The acts like the Factories Act is outmoded in most aspects of its content to cite an example.

Hence when we request for a separate legislation, what we really mean is that the acts could be made such that it could be understood by the entrepreneur without a consultant and also by the employees without a trade union leader, not to speak of the inspector raj which has not helped the improve the factory environment but instead has been the source for breeding corruption. It should also be noted that the small sector has been generating large percentage of employment and is possibly the only sector, at the present juncture, still generating employment though in smaller measure. In fact the limits of ten employees under Factories Act, 20 under the PF act has been the limiting factor for the entrepreneur for restricting the employees,due to the fear of inspectors, more particularly in the context of his inability to understand the laws . The small establishment Act suggested by me with a provision for self certification in the place of inspector raj will positively enthuse the entrepreneur to employ a larger work force as he will not be deterred by the complexity of the present laws. I request that the suggested small establishment act be looked from this point of view.

I further request that the draft act as presented by me be considered for recommending to the commission. If however it is redrafted I will be grateful if I am given an opportunity to study the same. However, I wish to state that it be not be considered as a separate chapter in the general law (refer page 43 para 66) as this was not considered and agreed at the meeting.

2) I suggest that the sales promotion employees be termed as supervisory and not as workmen as this was the consensus at our meetings, In so far as my record indicate.

3) I suggest that the adjudication for reinstatement for employees including the managerial / supervisorial personnel be not considered, as again this was the consensus at the meeting, for very obvious reasons as debated at the meeting elaborately.

4) While I am in agreement with the view of the report "that prior permission or post-facto approval is not necessary in respect of the lay off and retrenchment, I feel that it should be also be extended to the closure without any reservation. I may refer you to the elaborate discussions we had at the meeting when it was agreed that in as much

as the entrepreneur has decided to close the enterprise for reasons like sickness, pollution, etc, the best under the circumstances would be to ensure the payment of dues to the employees alone. Therefore the limit of 300 may be removed.

5) In respect of contract labour the consensus was that it may be permitted in non-core areas also as long as the minimum wages are paid and not the minimum that a regular employee of a comparable category will be receiving in the principal employers establishment
6) I wish to state that the consensus at the meeting was to leave the bonus act as it is without any change though it was stated that bonus cannot be demanded a matter of right.

I think it will be appropriate to study the draft acts as and is ready when we could go into greater details.

I REGRET FOR THE DELAY IN SENDING MY COMMENTS.

With kind regards,
Yours sincerely,

## The Employer's Association - Delhi
## From Mr. M. Dias

November 15, 2001

Mr. T. S. Sankaran
211, Desh Bandhu Apartments,
Kalkaji
New Delhi - 110 019

Dear Sir,

**Subject : Draft Report - Study Group on Review of Laws**

This has reference to the Report drafted by you on behalf of the Study Group on Review of Laws; received on October 27, 2001.

At the outset, kindly accept my sincere regrets for the delay in sending my response to your Report as I was required to draft a paper for presentation at the ILO Asian Regional Employers' Meeting on the Global Compact Schedule at Bangkok on 27-28 November, 2001. As the sole representative of the Country on this programme and the fact that the Survey on the Global Compact required Employers' response not only on Labour issues but on matter pertaining to Human Rights, Environment and various allied issues. Hence, the delay.

A perusal of the draft Report, in my professional capacity as a Lawyer and an Advocate who practices this branch of law, across the country the Report as drafted is indeed welcome. I can clearly visualize that this new labour law will be a paradise for lawyers; it will generate litigation of sorts.

The virgin territories will be - at page 34 paragraph 50 it is stated "These provisions will not bar industrial disputes being raised organised a lay off or retrenchment or closure." The interpretation simpliciter is that the worker would first receive all his dues from the employer and thereafter launch litigation. In fact, currently I have a large number of cases pending before the Tribunals and Courts where the Management has either retrenched the services of the workmen or have closed down their Establishment; yet the Trade Unions representing the workmen have decided to contest the said action of the Employer. As a Lawyer, I am entitled to my fee notwithstanding the fact that the writing is on the wall that the said Establishment has either irretrievably closed down and/or that the Employer has validity retrenched the services of the workmen, in accordance with the law.

Yet another illustration is that although I am a lawyer and had myself specifically requested you not to provide for a mechanism whereby the Courts would issue cease and desist orders or injunctions. In fact, the earlier draft Report discusses at the meeting held on October 13, 2001; this idea was specifically conveyed and you had assured to delete it but in the final draft Report on pages 22-23 at paragraph 30 there is a specific mention of the availability of the legal mechanism whereby the Courts may grant a cease and desist order or injunctions against actions taken by the Employer; as is prevalent under the Maharashtra Trade Union and Provision of Unfair Labour Practices Act. The damage done by this enactment is well-know, leading industries to shift their base from Maharashtra to other States in the country.

Accordingly, the new Labour Laws recommended by the draft Report would indeed be a field day for members of my fraternity - Lawyers; as the opportunities and cause of action would be immense for litigation. I joined the Study Group with the impression that we would simplify the law but this Report convinces me that we have arrived at a scenario where the law would be so complex that in the absence of a competent labour law lawyer, an employer would not be in a position to run his business enterprise.

The above are merely a few illustrations to specifically convey the point that the draft Report as forwarded is wholly unacceptable to me, in my capacity as a member of the Study Group, who has for more that twenty five years work with Employers of all sizes and have endeavoured to improve industrial relations in their Establishments. At one end of the spectrum I advise on a day-to-day basis the Missionaries of Charity, they work for the upliftment of the poor and down trodden; their institution is run by the nuns of Mother Therasa. I also advise various religious institutions as also Non-Governmental Organizations (NHO's) who are engaged in philanthropy such as work with rag pickers, Charitable Trusts, who are engaged in running Hospitals, Educational and Cultural institutions. I also represent and advise Employers who are engaged in the service sector and are in Manufacturing Undertakings of all sizes, having an employee strength from 3 to 3000.

My experience in the field of labour laws over the last so many years has been wide and varied. I am on the Executive Committee of the Council of Indian Employers, the apex employer body in the country, interacting with the International Labour Organization and other Agencies. I am an Executive Member of the Governing Body of the Employers Federation of India (EFI) and a Member of the Industrial Relations Committee of the Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry and (ASSOCHAM). I am also a member of the Board of Management with All India Organization of Employers (AIOE) which is a constituent of the Federation of Indian Chambers of Commerce and Industry (FICCI). I continue to be a member of the Expert Committee on Labour Relations with the PHD Chamber of Commerce and Industry, a Member of the Executive Committee of the Federation of Association of Small Industries of India (FASI) besides several other Organizations.

The Government of India, convenes the Indian Labour Conference as also Standing Labour Committees from time to time; during the last ten years I have regularly participated and contributed at their deliberations on behalf of the organised sector Employers. They have from time to time set up various Bipartite and Tripartite Committees; I have had the privilege to be a member of the same. The Government of India has also set up various statutory Boards; on behalf of Employers I have been nominated to be a member of the ESI Corporation, both at the national and regional level. I have had the distinction of recently being appointed the Chairman of the General Purposes Sub-Committee and to have extensively travelled in the States of Madhya Pradesh and Orissa to submit a Report regarding the functioning of the ESI facilities including their Dispensaries and Hospitals. I am also the member of Apprenticeship Advisory Committee and was a member of the Task Force constituted by the Federation of Indian Chambers of Commerce and Industry for remodelling India's Export Processing Zones under the Chairmanship of Mr K.K. Modi which Report was submitted to Mr. Chandler Abu Naiad, Chief Minister of Andorra Phased for implementation at Vishakhapatnam.

In January 1998 I was invited for a month to Japan to Study and advice Japanese Employers regarding industrial relations practices and related subjects under the changing economic scenario. Besides the above and others, recently in April 2001 the Planning Commission, Government of India in preparation of the Tenth Five Year Plan constituted a Working Group on Labour Laws and other labour regulations with the sole purpose of advising the Government to create an industrial relations environment that would help generate employment and strengthen the social net vis welfare legislations. The said Report has since been submitted on October 16, 2001.

Besides some of the above activities, I have been deeply committed to all aspects relating to Indian Employment Laws and have passionately worked to evolve harmonious relations between Employees and Employers. I have briefly set out my said background to facilitate you to understand and appreciate the depth and width of the experience I hold in respect of Employer-Employee issues. Hence, my response to the draft Report, as prepared by you, needs to be understood in the correct perspective.

Before dealing with the draft Report I would like to set out certain broad parameters and perspectives to the review of labour laws. In my opinion the law should be one that is employment friendly, it does not bind the Employers in shackles particularly after having hired the employee for providing services. The foundation of labour laws has to be based on an environment that would propel productivity, competitiveness and would work in tandem with the global economic scenario thereby strengthening the process of reforms including liberalization, privatization and globalization.

Labour laws should specifically address itself to the needs of special sectors, such as the Small Scale Industries, Information Technology, Export Oriented Units, Non-Governmental Organization and the like. We need to clearly distinguish between employment and social security. The responsibility for employment would rest with the Employer and issues relating to Social Security with the Government. It is a patent fallacy to exclusively burden the Employer with the responsibility of providing Social Security to the worker. Hence, it is imperative that the role of Government be clearly understood as to provide infrastructure, health, literacy, nutrition and maintain law and order. In the new LPG scenario, the market has the largest role to play, followed by social society and the Government.

The pre-eminence bestowed in the draft Report to the survival, strengthening and development of the Trade Union movement in India is wholly misplaced. The Trade Unions were legitimized as far back as in 1926, we are close to celebrating their centenary, their work and worth is for the community to see. The achievements of the trade unions is best reflected by their contributions to the national economy. Their relevance is determined by their membership. The trade unions do not need crutches to stand on; much less the support of this draft Report of the Study Group. Further, this is not the occasion to discuss the merits or demerits of Trade Unions. It is imperative to state here that a perusal of the Report conveys the indelible impression that the author has prepared a grand plan for the revival and strengthening of the Trade Union movement, most particularly when even the workers themselves shun the Trade Unions, which was amply illustrated recently in Bangalore whereat endeavours were made to woo Information Technology workers to enroll them as members of the Trade Unions.

Hence, Labour Laws need to be a vehicle that accelerates economic growth. It has to be progressive and not protective of rights of workmen; in the case of the draft Report, see paragraph 24 page 15 it states that - "the Study Group considers that it is necessary to provide a minimum modicum of protection to such employees (managerial personnel) also against unfair dismissals or removals by way of adjudication by a third party, such protection extending even to reinstatement, if the adjudicating authority so directs." In simple terms the draft Report recommends job protection for Managers. This position is wholly unacceptable.

A perusal of the Report also does not clarify the advantages available to the Employer in the Small Scale sector, who employs persons upto fifty in numbers. The Report does not set out the benefits that would accrue to such an Establishment. Perhaps, there may be a few concessions available in terms of maintenance of record, register and the like, but they are wholly of an inconsequential variety. The Employer in the small scale sector desperately requires the freedom and flexibility of either hiring or firing the work force based entirely on economic imperatives. It should be clearly understood that such flexibility is required to strengthen the economic base of industry and not to intimidate workers and/or to violate

human rights. Today the Indian employer of whatever size employs a worker and enters into matrimony - Catholic style; not the Hindu style. In the former there is no scope for divorce but in the latter it is possibly by mutual consent. Hence, the law needs to be flexible. The draft Report does not reflect these needs. On the other hand, the document submitted by Mr. Narasimhan dated July 31, 2001 to the Study Group with regard to the need for an exclusive labor law for Small and Tiny Industries needs to be strengthened. In fact, it could form the basis and foundation for a progressive law which is equitable and would address the needs of small industries employing upto fifty workmen; not fifty persons.

Having made the aforesaid general comments with regard to the draft report I would like to reiterate what was submitted by me to the Study Group on May 22, 2001 under the heading - Note for Consideration/Discussion of Study Group on Review of Laws. The issues raised in the said document are as under:-

i) The Labour Code should be comprehensive yet simple, to facilitate both worker and employer to precisely understand as to what is stated in the law. To illustrate, while defining a "Workman" a salary limit be prescribed and it be strictly adhered to. The argument often given is that the existing definition of 'workman' Section 2 (s) provides for a salary limit of Rs. 1600/-. If the said salary limit was not revised from time to time, who is responsible? Hence, to urge that a functional definition of "workman" be provided would again raise a plethora of industrial disputes only on the issue as to who is a "supervisor" and who is not. The issue gets contentious when you have establishments as is the order that are structured flat. A functional definition is relevant only where the Establishment is structured hierarchically.

ii) Sector specific labour legislation be available to cater to the unique and specific needs viz. tiny units, small scale units, educational institutions, voluntary organizations Working Journalists, Steel Industry and the like. It should be appreciated that laws are created for men and not vice-versa. Hence, it is imperative that the law should be so drafted that it would encourage harmony between worker and employer rather than encourage conflict and confrontation. The belief with regard to exploitation of labour being the weaker partner needs to be examined in the light of our fifty years experience as free India.

iii) Labour Laws need to be reviewed in the context of emerging needs particularly the market oriented economy. Hence, appropriate modifications as required be recommended most particularly to facilitate globalization, mergers, disinvestment and the like. So that, such major restructuring activities in the new global scenario are smoothly and effectively implemented rather that to engage in prolonged legal battles. Hence, the procedure in identifying a sick industry need to be in place well in advance so that a decent burial is provided to Establishments that are not economically viable and/or are in the process of becoming sick. Regrettably, the existing labour laws are

based on the premise that while all living organism die and meet their end but industry lives for ever and ever and ever.

iv) Basic minimum working standards such as hours of work, method of payment of wages, job description, appointment letter and other basic amenities of life and work be provided so as to obviate possibilities of exploitation. Accordingly, appropriate parameters and mechanisms be set out by the Study Group for core labour standards.

v) The regime of Inspector Raj needs to be done away with. We need to support self-certification mechanisms and ushering an era of trust between the employer and employee. Further, third party interventions should be minimized. Experience teaches us that third party intervention is like the monkey between two cats in a fight. It is imperative that bureaucratic controls, checks, inspections and the like be minimized as they only proliferate corruption. Hence, self operating mechanism be put in place; to illustrate; an employer who decides to retrench the services of workmen should be only liable to the payment of retrenchment compensation and other legal dues. Hence, raising an industrial dispute that the principle of last come first go was not followed or that a vacancy subsequently arose and that the said retrenched workman was not considered suitable for the job, are issues that should be excluded from the law; since it presupposes that the employer does not know how to run his business and that the workman concerned is holy than thou. The implementation and monitoring of labour laws needs a pragmatic approach, without elaborate procedures and systems.

vi) A clear exit policy needs to be put in place so that the uncertainty in the action taken by the employer is obviated. The law can provide payment of a certain fixed amount, say three months gross salary and thereafter there should be no controversy and/or litigation regarding the validity, justification, legality etc. of the action of the Employer in terminating the services of the employee. It should be borne in mind that the employer does not get vicarious pleasure in terminating the services of an employee. The employer rightly or wrongly believes that the employee does not meet his business requirements; therefore deserves to exit him from his services. If, under the Hindu Marriage Act, divorce between an educated husband and his wife if possible on grounds of incompatibility what is the difficulty in accepting the proposition that the employee and employer are incompatible and therefore on payment of a predetermined amount the services of the employee be discontinued. It should be appreciated that 90% of labour litigation before the various Authorities, Courts and Tribunals including the Hon'ble High Courts and Supreme Court is in respect of individual termination. The Government in order to discourage such litigation introduced Act 46 of 1982 by incorporating Section 17 (B) directed the Employer to make payment of full wages to the workman pending proceedings in a higher Court.

Such a provision has not helped, it has only introduced more ills in the system of dispensation of justice. This is particularly observed as a practitioner of the law. Section 17B is a premium for misconduct. In the case of an Award that is potentially illegal, the superior Courts are helpless and are required to pay the workman full wages during the pendency of the litigation in the superior Courts. Therefore it needs to be removed from the law.

vii) A mechanism needs to be put in place whereby sickness in industry is identified at the earliest and appropriate steps are taken by the Employer to rectify the same without intervention of outside agencies.

viii) Appropriate measures need to be put in place to improve the working conditions of the working classes. Hence, provision of basic amenities of life facilitating harmonious healthy and amicable relations for higher productivity amongst workers resulting in overall prosperity of the economy and the nation should be our vision.

ix) To suggestion mechanisms for improving work culture, enhancing production and productivity of all partners. We need to establish a mechanism where wages are linked with performance, production and productivity. In this context holidays need to be drastically reduced including Election day, death of various dignitaries/personalities as also the various types of leave including its quantum.

x) To identify the laws which are no longer relevant and need to be repealed. Further, laws that need to be consolidated. Hence, it is imperative that the feasibility of implementing labour laws such as the Industrial Disputes Act, 1947, Contract Labour (Regulation and Abolition) Act, 1970, The Workmen's Compensation Act, 1923, Employees' State Insurance Act, 1948. The Employees Provident Funds and Miscellaneous Provisions Act, 1952, Factories Act, 1948 etc. through the administrative machinery/procedure existing at present under the State Governments needs examination and direction. Although, these issues were raised, a clear direction is required and decision thereon.

As regards specific comments on the draft are concerned the following submissions are made:-

## I. Introduction

1. **Paragraph 6 Page 3**; it is stated that *"The Study Group came to the conclusion that all laws whether Central or State will have to be looked at by us and within the limitations of time, it should give priority attention to Central Laws"*. However, the reality is that we did not examine or discuss State Laws; even as regards Central Laws, all such legislations were not discussed, most particularly dealing with the practical and functional aspects of such laws.

   India is a country which is over legislated. There are Labour Laws for every aspect of work; including the number of trees, the type of trees their location are provided for under the Uttar Pradesh Factories Rule. Do we subscribe to such a formulation of the law that prescribes specifically the height to be maintained in a factory so as to ensure dehumidification or over crowding under the Factories Act. Frankly, we did not address ourselves to such issues. Hence, have not submitted any recommendation in this regard. In my opinion, the Study Group should have examined conceptually such issues and should have laid down broad parametres in this regard. However, we did not address ourselves to these issues.

2. **Paragraph 8 Page 4**; is not a truthful statement. Speaking for myself, I am aware that there were other members of the Study Group who did not express any dissatisfaction about the initiatives taken by the State Governments and Central Government to amend labour laws and to candidly express their point of view. In fact, it was felt that we as a Group and a part of the Commission should welcome such initiatives to facilitate us in arriving at a position that would be acceptable through out the country. Hence, the statements made by the Union Finance Minister in his budget speech and/ or various recommendations made by various Committees including Mr Montek Singh Ahuluwalia all welcome.

## II. Approach

3. **Paragraph 9 Page 4**; is a quotation from Prof. Otto Khan - Freuend. It is a loaded statement; in any event his quote is not required to be a part of the Report.

4. **Paragraph 10 Page 5**; refers to the inaugural address delivered by the then Vice President of India. The contents are out of context; they do not reflect the times we live in. The said address was in November, 1985, it is sale and sixteen years old. Hence, it should not find any place in the Report.

5. **Paragraph 11 Page 5**; refers to various provisions of the Constitution of India; more particularly Fundamental Rights. There is no dispute that the Constitution of India is an ideal document but as always we seem the to commit fallacy of quoting the ideal whereas the realities in which we live in are far removed. In the circumstances, we need to examine whether Fundamental Rights or Human Rights are static concepts, bereft of the environment in which we live. We in India first enact law and then seek to create the environment for its implementation. Hence, we import fashionable concepts from the advanced industrialized countries but do not provide the basic infrastructure; a case in point is the Right to Work; it is a pious platitude. The reality is that we are in economy that is in recession and a country that has a population of over one billion; where are the jobs; how is the Right to Work a reality. Further, we in the Study Group need to shun utopia; rather we need to create a strong vibrant economy in India.

6. **Paragraph 12, 13, 14,15 and 16 between Page 5 to 8**; deal with various concepts propounded by the ILO. They sound good, they read well, it is great to be on the same wave length as International Organizations, but does it help generate employment, does it help strengthen the Indian Economy, does it help the employer to set up more and more and more industries and industrial establishments.

a) Alternatively, we need to examine as to whether these concepts hinder the growth and development of industry; are we as a nation ready to embrace these concepts knowing our economic development. It is a fact that even a large number of advanced industrialized countries have not ratified as many ILO conventions as we have including largest industrialized nation, USA. Hence, the conclusion is that we need to accept the realities in which we live an to recommend a law that is relevant. Today we are going through recession, where large manufacturing units like - Maruti Udyog Limited have reduced their workforce by 19%,on payment of a generous golden hand shake; since the law does not provide adequate mechanisms for downsizing and retrenching workmen.

b) What is the future of Indian industry; if industry does not survive, workers will also not survive. Hence, let us not enlogise Decent Work or various ILO Conventions or to quote Directive Principles of State Policy as stated in the Constitution of India. We need to address ourselves to the ground realities that stare us in the face of object poverty and a population that is one billion. The situation that exists in India today is typical where Government granaries are bursting, they have no place to store food grains but people in this country are dying of hunger. Hence, the approach of the Study Group needs to be from a position of ground realities rather than from the high-heavens.

7. **Paragraph 17 Page 9**; with regard to defining the organized sector, it should consist of an establishment having a minimum employment of fifty workmen. A non-workman is one who performs supervisory administrative and managerial duties. Further, a non-

workman is a person who earns a salary of more than Rs. 7500/- per month in an establishment employing upto fifty workmen.

8. **Paragraph 18 and 19 Page 10**; each labour legislation provides a specific need be it minimum wages, payment of bonus and the like. It provides for specific contingencies hence an Establishment having twenty or more workmen could be considered for coverage under social welfare legislation as the existing Employees Provident Fund Act, Employees State Insurance Act and the like.

a) It is unfortunate that the Report per se has maintained silence with regard to the duties and responsibilities of the Government towards the working class in the organized sector. There can be no doubt that medical and health facilities are the responsibilities of the State, similarly to provide for any minimum guaranteed amount to keep body and soul together whether as a minimum guaranteed income is the prime responsibility of the State. Other areas that need the intervention of the State is Education particularly to combat child labour, bonded labour and such other forms of activity to survive in the world. Unfortunately, this Report seeks to place these responsibilities primarily on the shoulders of the employer thereby ensuring the Employers' death even before he is born. There should be no misunderstanding that an Employer as per this Report includes all economic activities whether or not he is a 'Dhaba' owner or a shop, a lawyer's office and the like. Further, as per this Report the employer is required to pay for the following facilities.

i) ESI Scheme
ii) Pension
iii) Provident Fund
iv) Wage Guarantee
v) Unemployment Insurance
vi) Skill Development Fund
vii) Legal aid to workers and Trade Unions at the cost of employer
viii) Compulsory Annual Bonus
ix) Payment of Gratuity
x) Compensation in case of certain specified eventuality viz. accident, death, etc.
xi) Lay off, retrenchment, closure compensation

b) It is reiterated that the Report refers to the Indian Labour Code 1994 (Draft) prepared by the National Labour Law Association. It is requested that any reference to the said Code be deleted since the said Code was not discussed, debated, deliberated upon in detail by the Study Group. It was merely referred to by the Chairman and none else. Speaking for myself, I totally disassociate from the said Indian Labour Code (1994) Draft.

c) The Report at paragraph 19 refers to a small establishment as being one that employs up to fifty persons. However, neither this paragraph nor the subsequent paragraphs in the Report clearly spells out the benefits and/or terms and conditions under which an establishment employing upto fifty persons would be regulated. In the absence of a clear statement in this regard; the figure of fifty persons viz. a small establishment does not convey any meaning. Hence, does this paragraph suggest that an Employer who employs less than fifty employees would be able to simpliciter discharge the services of an employee, say on payment of a certain fixed or predetermined compensation. The said paragraph and subsequent paragraph fails to explain; "simple but adequate provisions to protect the interests of workers specifically" speaking for myself, I would believe that keeping in view the entire draft Report the discharge or dismissal of such workmen would be no difference from that as is stipulated for an establishment employing more than fifty persons. **A specific clarification in this regard is required**.

9. **Paragraph 20 Page 11**; begins with the statement *"if labour laws are essential to mean protection of the interests of the workers...."* this is a debatable proposition. My belief is that labour laws are enacted to help the country to improve its economic health of the citizens from poverty to material prosperity. Hence, labour laws need to be so carved that they benefit both employer and worker.

a) The conclusion that *"the considered view of the Study Group that salary limit are not to be the criteria"* is not acceptable. The assertion that the demarcation between a workman and a non-workman should be functional is debatable, thereby leading to uncertainties and long drawn legal battles. It also depends entirely on the perception of the person considering the facts of each case. The functional definition of workman is a sure mechanism to reinvent the wheel i.e. who is a workman. Today, after more than fifty years I as a lawyer am required to challenge before the Court as to what is an "industry". In a recent case of in that was argued before the Hon'ble Supreme Court of India - Hon'ble Mr. Justices S. Rajendra Babu and Mr. S.N. Phukan in the case of Som Vihar Apartment Owners Housing Maintenance Society Ltd. Versus Workmen C/o All India Engineering & General Mazdoor Union. The Court held that **when personal services are rendered to the members of a Society, that is constituted only for the purposes of those members who engage the services of such employees, the activity should not be treated as an "Industry" nor such employees are to be treated as "Workmen".** The case has since been reported as 2001 LLR page 599. A similar fate will be met by the so called functional definition of "workman".

b) To obviate litigation it is suggested that a simple objective criteria be provided so that it is understood even by a dim-witted citizen. Hence, a salary criteria determining the status of the employee as to whether or not he is covered by the job protection law is abundantly clear.

c) Hence, the salary received is a clear determinant of the status of the employee. A mere fact that there are changes in the salary limit does not mean we reject the salary criteria as an indicator for purposes of coverage under the law. We have followed this criteria; what is the new wisdom of having functional definition rather than an objective definition based on salary. Furthermore, a per the draft Report every person except the owner, proprietor, partner, director is excluded from the definition of an *"employee"*, such a position is entirely unacceptable.

d) Conclusions drawn in paragraph 20 to the effect that - *"The Study Group would like a feeling of togetherness being engendered among all workers, and this will be reinforced if there is a unique functional definition of the term 'worker' in all labour laws"* is a pious platitude. The Report has elaborately considered who a "worker" is, where as who is the Employer? Who is the Management? Who are the managerial personnel? What are their duties and responsibilities? Are they answerable for their action; what is they commit an act of dishonesty, are such personnel to be dealt with through the existing disciplinary procedure mechanism. The failure to clarify these issues creates serious doubts and apprehensions with regard to such persons/personnel.

10. **Paragraph 22 Page 13**; the concept of supervisory personnel has not been adequately explained. This is particularly relevant since present organizational structures are based on a flat functional relationship. Hence, the nature of duties are multifarious, they include manual, clerical, technical, and managerial duties. Certain decisions, though occasional, may be of a critical nature. Hence, whether a person is employed in the supervisory category or not would entirely depend on the person who is required to interpret the evidence of the functional job. Hence, the proposal as set out is not acceptable.

11. **Paragraph 24 Page 15**; *"The Study Group considers that it is necessary to provide a minimum modicum of protection to such employees (managerial personnel) also against unfair dismissals or removals by way of adjudication by a third party, such protection extending even to reinstatement, if the adjudicating authority so directs."* This proposal is totally unacceptable. In fact, several members of the Study Group had then expressed serious reservations at such a proposal. Job protection to managers will be the death knell of Indian industries.

12. **Paragraph 25 Page 15**; the definition of the term "Appropriate Government" as set out in the Report will encourage litigation. It is suggested that the term appropriate Government needs to be specifically defined with absolute clarity. In fact, the last sentence in the said paragraph reads:-

**"In case of dispute the matter will be determined by the National Labour Relation Commission".** Such a statement clearly confirms my fear that the issue relating to appropriate Government would be contentious we as Study Group need to settle the same, for all times to come.

a) The Report does not fully explain the ambit, scope and functioning of the National Labour Relation Commission. The Report refers to it as a tripartite body, such a position is not acceptable. Our experience with the labour bureaucracy does not inspire confidence. Hence, a Tripartite Committee is unacceptable. In case of any dispute, the matter should be decided only by an adjudicator who has the qualifications as prescribed in Section 7/7A of the Industrial Disputes Act, 1947.

b) Arbitration in labour disputes is not popular as it is based on trust. In a labour dispute the Arbitrator is either pro-worker or pro-employer or is dishonest; this is visible on reading a couple of Awards passed by the Arbitrator. It is a rare individual who is dispassionate and is accepted as an Arbitrator by both the contesting parties.

c) Regrettably, Courts are either pro-labour or occasionally pro-employer. This is reflected in their Orders and Judgments. The Lefties and Marxist judges have indelibly damaged the edifice of harmonious employer-employee relationship due to their interpretations of labour laws. They have brought in a perpetual class conflict and confrontation between labour and capital. The damage done is difficult to repair. The Study Group in its Report needs to bring in a balance between the two extreme views; - this is only possible by having an objective economic criteria while formulating the law relating to labour matters; including the adjudication mechanism.

13. **Paragraph 26 Page 16**; with regard to coverage of all workers including those under the Central and State Governments is a welcome move. It is not understandable as to why the Report develops cold feet in respect of the largest number of employees in the organized sector viz., those employed by the Government.

**III. Employment Relations**

14. Paragraph 27 Page 177; although it would be the ideal to have a consolidated, single law namely the Law of Employment Relations, the idea is welcome but the reality in respect of economic growth and development both of industry and various regions in the country is not uniform hence to have a uniform single law for the present is not suggested. To illustrate; it would be a good idea to repeal the Sales Promotion Employees (Conditions of Service) Act 1976 but the reality is that the working conditions of sales promotion employees is so distinct and different to say Working Journalist and/or to industrial worker and/or to worker/driver employed with the Missionaries of Charity in Calcutta. Hence, to paint all employers and employees with the same brush and paint will not be feasible nor is it recommended.

    a) In this regard, it cannot be forgotten that the particular industry wherein the employee is working is also relevant. To illustrate; a Sales Promotion Employee engaged in a pharmaceutical Company is on an entirely different wicket as against a Sales Promotion Employee who is employed to sell consumer durables. The law necessarily needs to respond to different classes of employees and employment activity differently. In the circumstances, the suggestion to have a single law for all classes is wholly misconceived. It would be a folly on the part of the Study Group to suggest such an approach; since one single glove cannot fit every hand.

15. Paragraph 28 Page 18; the idea sounds sweet music to the ear to attempt to make the law simple, understood easily as also enforced and implemented in a fair manner. However, to achieve this objective it would not be appropriate to put all economic activities in one basket, as is recommended in paragraph 28.

    a) Accordingly, to have a small-scale unit, commercial establishments, institutions like hospitals, educational establishments, charitable organizations, under the Industrial Disputes Act, 1947 is trite. The damage that would be caused by an industrial action of resorting to a 'strike' in a hospital as against in a factory is distinct and different. In a Hospital the consequences of a strike are distorters not go in a manufacturing undertaking.

    b) In this perspective, it is imperative that the concepts, of public service be retained. It is imperative that certain economic activities be put in the category of public utility service so that the workers in such institutions do not hold the Community to ransom. More than fifty years of independence have shown us the havoc caused by such strikes resorted in public utility services.

Community to ransom. More than fifty years of independence have shown us the havoc caused by such strikes resorted in public utility services.

c) It is strongly recommended that the Essential Services Maintenance Act be given more teeth so that wild cat and illegal strikes resorted to by irresponsible Trade Unions is curbed. Such actions on the part of the Trade Unions create chaos for the community at large. We as a Study Group cannot support such action.

16. **Paragraph 29 Pages 18, 19, 20**; the law relating to employment relations in an establishment employing less than fifty persons should be specific. However, it cannot apply uniformily to all establishments. It is imperative that the nature of business activity needs to be considered. It is also unfair to add up workers employed in various branches or units to arrive at the figure of fifty and above. The assertion that the law will apply even though individual units like a Dispensary or Primary School may have on its precincts less than fifty employees but on aggregating them in respect of specific legal area the totality would be considered. Such a proposition is contrary to the existing labour legislations and would create confusion. Hence, the employment size is to be reckoned in terms of all employees is not acceptable.

a) The suggestion to enable workers to organize themselves into Trade Unions of their choice per se is welcome; should the workmen be so desirous on a voluntary basis. However, the Report suggests mandatory employment relations regulated on the basis of agreed procedures an systems the Management and Union to arrive at, by way of Collective Bargaining is not acceptable. The concept of Collective Bargaining sounds good but the reality is to the contrary. The employer is left collecting funds to pay the workers and the workers through their Trade Unions are consistently bargaining for more. The nature of Collective Bargaining in India has reached a low ebb where by fair or foul means the workers through their Trade Unions resort to every trick, device, civil or criminal to achieve their objective of getting more from the Employer such an approach inevitably leads to high costs to be paid by the customer/consumer; which is not conducive to a competitive market which is the order of the day.

b) I vehemently disagree with the proposition that the extent of unionization is low and even this low level is being eroded. It is regrettable, that Trade Unions have turned into mafia outfits. Their word is law. Their strength is muscle power, political patronage and bureaucratic blessings. We as a civil society have had enough of such lumped trade unionism. It needs to be banished into the annals of history, the sooner the better. Be rest assured, no one will weep at the demise of the trade union movement. The truth is that Unionization has eroded because no decent self-respecting worker desires to be part of such a fraternity. This was recently observed in the city of Bangalore where Trade Unions made every effort

to woo Information Technology personnel to their fold; but they failed miserably. Hence, I would not be a party to put the clock back. Let Trade unions be buried, it is entirely because of their Karma. The classic case is that of Dr Datta Samant who not only murdered the textile industry but also the textile workers who came to work in Bombay from far and near.

c) The Collective Bargaining referred to in this paragraph is not acceptable. It means different things to different persons. It can develop only where the ground rules are clearly laid down and any person violating the same shall stand excluded not only from the process of Collective Bargaining but also from his employment in the Establishment. Recently, a senior Officer in the Labour Department was physically be laboured in his office situated in the Labour Department by a Trade Union leader and is cronies - what action would you recommend against such a Trade Union functionaries. The fact is that such a Trade Union has high political connections, wines and dines with senior bureaucratic, who is to touch such a friend. The reality is that at the grass route level, the enterprise level the so called Trade Union functionaries are part of political parties and criminal gangs. Hence, I would vehemently oppose either strengthening of the so called Trade Union movements or collective bargaining. Furthermore, arbitration has been a failure in resolving industrial disputes in the country and the only preferred mechanism for redressal of industrial disputes are the existing Labour Courts and Industrial Tribunals not the so called Labour Relation Commission.

d) The suggestion to have Collective Bargaining at different levels will only create, confusion, confounded. Already, it is fashionable for Trade Union Workers not to work but to engage themselves whole heartedly during working hours in politics at the Corporate level, Industry level, Regional level and National level, political and the unionism. Such a scenario in the future is wholly unacceptable. It will drive both industry and the economy to further recession.

e) The Labour Relations Commission at the State, Central and National Level will not improve industrial relations. It will not facilitate harmonious relations between employer and employee. The suggestion is purely academic, it is putting old wine in new bottles.

f) Collective Bargaining as hitherto practiced in the country does not have a future in a competitive market where costs, price and productivity are critical factors for survival of an Enterprise. The Collective Bargaining strategies adopted by trade unions adversely affects productivity and makes industry sick at an accelerated pace.

g) It appears that the mechanism for dispute redressal through the process of Conciliation will be aborted. This position is not acceptable. The Report has not exhaustively dealt with the role and strength of the conciliation process.

h) The assertion that the Study Group was not sure that merc changes in the labour laws will be the solution in not true. Further, the assertion that major remedies, in the view of the Study Group lay elsewhere; see page 20 is not true. It is categorically stated that changes in labour laws will be the first step in bringing discipline and productivity to industry, thereby strengthening the economy. During the discussions, it was candidly stated by members that the law first needs to be in place. It would create conditions and an environment; friendly to the growth of industry and the economy as a whole.

i) As regards Labour laws not being implemented; the fault squarely lies on the bureaucracy who are required to implement the law. They are dishonest and corrupt. The Government machinery is bankrupt; they have no funds even to pay wages to their employees. I have personally witnessed the Labour Court staff in District Ghaziabad, Uttar Pradesh who were not paid their salary for several months. The physical infrastructure required for the functioning of the Court is paid for by the Employers. Currently, the Central Government Industrial Tribunal (CGIT) at Kanpur is situated on the top floor of a Hotel of ill repute; what sort of judicial dispensation does the citizen expect from such a set up.

j) The assertion in the Report that Labour Laws have always been the favourite whipping boy of the Management community is a manifestation of a mind set. The implication is that Employers are exploiters; hence they should be fettered with more labour laws. Hence, provide law for every conceivable action of the employer, to illustrate the Uttar Pradesh Factory Rules provides for the number of trees to be planted, the distance at which such trees are to be planted. Hence, the solution as per the Report is to have more laws and more Inspectors to prosecute any infraction of the law by the Management.

k) The assertion that "the Study Group" does consider it expedient to recommend some changes in the existing laws and one only hopes that with these, if and when accepted and legislated for, we will settle down to a regime where labour laws do not become the pre-occupations or excuses for the industry" is a statement betrays lack of understanding of Management-worker dynamics. It is therefore both a presumptuous and a loaded statement; hence not acceptable. As a member of the Study Group who has attended each and every meeting except one, such a comment is unfortunate.

l) It is emphatically repudiated that *"Changes in Labour Laws must be accompanied by a well defined social security packet that will benefit ALL workers, be they in the 'organised' or 'unorganized' sector.* Such as assertion is pure speculation and a pipe dream. Such a proposition was never ever agreed to. It is unfair to make such a conditional statement since there is no social security packet available today that would benefit ALL workers in both the 'organised' and the 'unorganized' sector. Hence, in the first instance it is imperative that employment laws are in place with necessary flexibility. Only thereafter, the social security packet can be considered. The demand that the social security packet be first determined as a conditions precedent for changes in labour laws will make all economic activity prohibitively expensive; leading to the collapse particularly of the tiny and small scale enterprises. On the contrary labour laws on their own strength need to be formulated afresh. The social security packet will thereafter be considered on its own merits.

m) The assertion that until an adequate social security packet is put in place, attempts at liberalization of labour laws must wait is wholly unacceptable. The said assertion amounts to putting the cart before the horse. The dynamo of employer-employee relationship is labour law and not social security. The social security packet is merely the carriage. Hence, before any social security packet is considered and/or acted upon it I imperative that in the first instance labour laws be amended.

17. **Paragraph 30 Pages 20-21**; the reference to the simple common definition is not acceptable. Although, it sounds sweet but the consequences are bitter. It is not understood in the scheme of the Report as to why domestic service was deleted under the coverage of labour laws when every other conceivable worker has been covered. The report also does not deal with volunteers who although paid are engaged in altruistic activities to illustrate; Anganwadi workers and the like.

a) The recommendation to define the terms *wages* and *remuneration* as set out in the Report is not acceptable. It is yet another area for litigation. It is imperative that the law specifically provide for only one term whether wages or remuneration since otherwise both Employer and Employee would need to consult the dictionary to appreciate the distinction between wages and remuneration.

b) The issues relating to go slow, work to rule, and the like are critical issues particularly when collective bargaining is the bedrock of employee-employer relations. Hence, they need to be specifically dealt with by the law. Standing orders, as interpreted by the Courts, do not accord it the status it deserves; hence

more disputes. The existing Standing Orders as in existence in an Establishment are a whim of the Certifying Officer, he decides what should be incorporated in the Standing Orders and how it should be worded. Hence, the law should provide for these concepts in their entirety so that the words, their meaning and interpretation are uniform.

c) The term Retrenchment as set out in the draft Report will lead to further litigation. The stand of the Study Group that Retrenchment is the termination of employment arising out of reduction of surplus workers in an establishment; is in adequate. The various parameters need to be necessarily set out to ensure clarity in the definition and concept.

d) The requirements of last come first go and/or reemployment of retrenched workers needs to be deleted from the law. The Study Group should not consider that the Employer is dumb and stupid; so he retrenches workers employed in his service. The freedom and flexibility for the employer to perform is imperative. The shackles that exist in Sections 25 G and 25 G have no place in the law.

e) The compensation for retrenchment at the existing level is adequate particularly in respect of Establishments employing upto fifty workmen. In the event the compensation is enhanced the purpose of effecting retrenchment in the Establishment will be defeated as the Industry will be sick and the employer will have to consider closure as a better option than retrenchment. Hence, the existing retrenchment compensation determined at fifteen days wage for every completed year of service and a one month's notice in lieu thereof needs to be retained.

f) Strike ballot by the bargaining agent is necessary to ensure that the proposed action has the support and backing of the members who are resorting to a strike. Further, such persons should be entirely liable and responsible for their action. Besides, the action needs to be democratic and an exercise of free choice and option. Further, any indulgence n violence of any nature whatsoever should be treated as a criminal act and action under the law be initiated. Regrettably, under the façade of a strike all sorts of criminal activities are indulged in by the workers and their trade unions. The time has come that such criminal activities need to be stopped and the workers be responsible for their action.

g) The terms *public utility service* has a specific meaning under the law. There is valid justification to term certain activities as public utility service. It is regrettable that employees in such public utility service shamefacedly hold the entire

community to ransom. The assertion *that all types of Undertakings have been declared as public utility services* is a clear manifestation of the dishonesty and corruption in the bureaucracy. If the activity of backery can be included in the list of public utility service, the bureaucrat should be hold responsible. The remedy suggested is worse then the disease. It is regrettable that the Report states that *"there can almost be no legal strike in a public utility service in the present frame work".* Does it imply that legal strikes in a public utility service would be in the greater interest of the economy and the nation. Such a position is not acceptable.

h) The term unfair labour practices is routinely used only to whip the Management, it is suggested that the Study Group provide for unfair Management practices indulged in by both workers and their trade unions is assaulting the Management in every conceivable manner only to achieve their limited objective of **"Grab More"**. Such action on the part of the workers needs to be severally dealt with. To illustrate: frequent demands are made by the workers, and their trade unions that are patently unfair or unjustified but neither the labour administrator, nor the adjudicator is concerned. To illustrate a demand that the workers be provided improvement in the 1939 price index dearness allowance Scheme. It is time that the demands made by workers and their trade unions are carefully scrutinized on economic criteria and only thereafter a reference for adjudication is issued.

i) The recommendation that in the law *some provisions of cease and desist order be provided for as is in the MRTU and PULP Act*: is untenable. This issue was discussed at great length even at the last meeting of the Study Group whereat the Chairman graciously agreed to delete this recommendation. However, regrettably it has been reiterated in the present Report also. I had specifically opposed such a provision, as it would open the floodgates of litigation. Every transfer, termination and/or any other action of the employer would be conveniently challenged before the competent Court thereby making a force of industry and the work place.

18. **Paragraph 31 Page 23**; Enabling workers to organize themselves, to play a useful role and strengthening the growth and development of the Establishment in which they work, is a misnomer. The last fifty years has shown us that the growth and development of industry has been severally retarded due to the licence available to trade unions. Hence, the Textiles, June, Sugar and other industries have been led to penury. Even the temples of modern India; the Public Sector Undertakings that were holding commanding heights in the Indian Economy are today in shambles and the trade unions have substantially contributed to the plight now leading to the disinvestments in the Public Sector Undertakings both of the Central and State Governments.

a) Trade Unions are big business centres; the likes of Dr Datta Samant, R.J. Mehta and other supported by the underworld including those who preach and practice violence in the garb of Trade Union activities is a wholly unacceptable position. The economy, industry and 'the consumer including the society are damned by the so called trade union activities.

19. **Paragraph 33 Page 25**; provides for a dispute redressal mechanism with regard to Employer Organizations. Such a proposal has not come from any such organization. It is therefore not understood as to why the Report is making recommendations in an area which hither to is functioning satisfactorily. Assuming, if the Trade Union is not dynamic and does not meet the aspirations of its member it would wither away. Hence, as a Study Group it is not our mandate to offer such suggestions.

20. **Paragraph 32 Page 24**; the assertion that trade unions are organization of only workers and that other bodies of workers should not be permitted to call themselves Trade Unions is not understood.

a) The term Trade Union as set out in the Report places them on the pedestal of angels. A Trade Union of managerial, administrative, supervisory workers including civil servants, teachers, judges, should all be defined as Trade Unions.

b) The Employers organizations have made no request with the National Commission on Labour that their bodies be covered by the same provisions as would apply to Trade Union workers. It appears the Report has extended its brief into the domain of employers' organization without there being any requests form their organizations or Representatives in the Study Group. Should employers' organizations need to revamp, they would do the needful and advice in this regard is not solicited from the Commission on.

c) The assertion that some section of workers like security, watch and ward staff, confidential staff and such like be excluded from membership of Trade Unions and/or for purposes of collective bargaining needs to be incorporated in the law. In the event such section of workers are hand in glove with trade unions, the Collective Bargaining process in industry does not have a future. It is strongly urged that such categories of workers be specifically excluded from their membership and participation in the trade union activities; so that critical and basic operations in the Establishment are not paralyzed thereby endangering both the community and individuals employed in the Establishment.

d) As regards the payment of fees and subscription to the trade unions, the same is an internal issue between the Trade Union and their members. Hence, any legal provisions in this regard will only amount to interference in the internal Management of such Associations. Further, it would amount to putting the clock back by more laws for every conceivable action.

21. **Paragraph 34 Page 25**; it appears that the Commission has extended its brief by providing for rules and regulations for organization of Trade Unions and their Federation. The said organizations should be permitted to function independently, free of the proposed controls. In the event, they are un-democratic and or function in a manner, which is contrary to good conscience, such Institutions, will necessarily fall by the way side. The purpose of the Commission is to make the law simple; to have the minimum possible number of laws thereby to reduce litigation and to instill co-operation and harmony amongst the partners in production.

22. **Paragraph 35 Page 25**; it is not understood as to what is wrong with craft based Union. In fact, a large number of Unions are guild based i.e. based on their profession. It is a known fact that lawyers have their own Association as also other professions. It is not understood as to why membership on the basis of craft be prohibited.

23. **Paragraph 36 Page 25**; the Trade Union Act provides for a political fund. My experience shows that the nexus between politicians, bureaucrats and trade unions have devastated Indian industries. hence, to make the Trade Unions free from political interference and to strengthen the Trade Union movement as an independent body, the provisions pertaining to Political Fund needs to be deleted from the Act.

a) Collective bargaining as a preferred mode of dealing with all aspects of employee-employer relationship is not acceptable. Experience shows that most valuable and productive time is wasted in collective bargaining at the enterprise level. Hence, the Commission will have to recommend a mechanism which will ensure payment of fair wages to workers; at the same time ensure that the workers shall give productivity at all levels as per agreed norms. Such an independent mechanism will have to necessarily ensure that workers are financially safeguarded.

24. **Paragraph 36 Page 26**; states *"collective bargaining implies strong Trade Union movement"*. The consequence is a weak employer. Hence, to maintain a harmonious balance between the workers and employer, the recommendation of strengthening the Trade Union movement is not acceptable.

25. **Paragraph 40 Page 28**; identifying the bargaining agent, in an individual establishment, the effort should be to identify a single Trade Union. Hence, we would need to discontinue the existing system of bargaining by several Trade Union Canters. It is an unpleasant action is in the interest of the national economy and the growth of industry. A single Trade Union in an establishment is imperative.

26. **Paragraph 42 Page 29**; the setting up of a Labour Relations Commission who amongst others would be the body to resolve disputes between Trade Unions is not a satisfactory mechanism. The Report suggests that the Labour Relations Commission is bestowed with all wisdom, hence all issues be dealt with by the Labour Relations Commission, this is not a tenable position. On the contrary, the existing practice where the Registrar of the Trade Unions is charged with the responsibility of ensuring healthy Trade Union activity needs to be strengthened.

27. **Paragraph 43 Page 30**; the recommendation *to recognise a Trade Union for a fixed period of three years* is not fair or proper. In the event, there is a no confidence against the **Office Bearer** of the Trade Union, there must be an avenue available whereby such persons may be replaced by a body of Office Bearers who are acceptable to the Workmen at large.

28. **Paragraph 44 Page 30**; theoretically it sounds good that *as long as the parties agree the issues to be covered in the Standing Orders do not need certification.* On the contrary, it is suggested and consequences with regard to working conditions. The failure spell out the various procedures and consequences with regard to working conditions. The failure on the part of the Commission to so do would once again be the launching pad for litigation on issues relating to age of retirement, suspension, the misconducts to be included or excluded. Hence, it is imperative that the Standing Orders specifically provide for the terms and conditions of employment under the law. Thereafter, the said provisions will be strictly adhered to and implemented. The Courts will have no role thereafter. Hence, the Standing Orders should provide for minimum requirements for employment and employer-employee relations.

29. **Paragraph 45 Page 31**; the recommendations that *the appropriate Government provide for graded punishment, depending on the nature and gravity of the misconduct* would only be acceptable if the same would then be automatically adhere to by the Courts. To illustrate; if a workman commits theft of say Rs. 500 and that the graded punishment provides for dismissal, then it would not be open to the Labour Courts to substitute the punishment with say stoppage of increment or stoppage of promotion and the like.

30. **Paragraph 46 Page 31**; *the moratorium placed on suspension as* one year is not acceptable. As a practitioner it is observed that a reasonably intelligent delinquent workman can conveniently drag a domestic enquiry for three years or more. The principles of natural justice are so elusive and that interpretations thereon can be mind boggling. It is a difficult task to complete a domestic enquiry within a reasonable time frame. Hence, the existing provision relating to suspension as set out in Section 10 (A) though unhelpful to the Employer is better than what is being recommended.

    a) The recommendation that *the employer will be free to conduct the enquiry exparte for reasons attributable wholly to the worker default* is normally not accepted by the Labour Courts. Hence, the issue relating to payment of subsistence allowance would be another valid cause of action for protracted litigation. It should be borne in mind that the Courts are very suspicious of an ex-parte enquiry and leave no stone unturned to vitiate such a domestic enquiry: this is a ground reality.

31. **Paragraph 47 Page 31**; **Grievance Redressal Committees** are welcome but they need to be strengthened by legal provisions. It appears that the Study Group desirous to abort the Conciliation mechanism. Whereas experience shows that an honest Conciliation Officer is in a position to achieve much more harmony between workers and Management then any other redressal mechanism.

    a) The recommendation *to encourage Arbitration for redressal of a dispute* is not feasible. Based on experience, the credibility of an Arbitrator is normally suspect. Arbitration proceedings are based entirely on the crediability of the Arbitrator and the confidence/trust he exudes. in an environment where the employer is both apprehensive and suspicious of the judicial system, to recommend arbitration in the present context is not feasible. In the first instance, trust and confidence has to be built up in favour of the existing redressal mechanisms, thereafter arbitration, as a mechanism, for resolving disputes could be strengthened.

32. **Paragraph 48 Page 32**; the Report recommends a novel form of prior permission. Earlier the employer ran to the appropriate Government to seek permission in respect of proposed actions of lay off, retrenchment and the like. In fact, Voluntary Retirement Schemes have also been brought in for scrutiny. Further, any change in conditions of service attracted Section 9(A) which implies the tacit approval of the trade union in the Establishment. The Report now suggests that *"a prudent employer will no doubt... he will be ill advised not to consult the bargaining agent on such matters"*, such a proposal is not acceptable as it will perpetuate the existing scenario; making it impossible for the Employer to introduce innovation; technology and healthy economic practices. To save jobs; the Employer will have to give a go by to modern techniques of efficiency and productivity.

33. **Paragraph 49 Page 33**; *Appropriate training to workers* is welcome but the onus to provide such training cannot be laced on the employers. This is a function of the Government. They should be fully responsible to help the workers to undergo training, develop skills and the like. The employers do not have any expertise and/or facilities to provide appropriate training to workers most particularly in an establishment employing upto fifty workers.

34. **Paragraph 50 Page 33/34**; assuming if Chapter 5(B) of the Industrial Disputes Act, 1947 is retained, the limit as stated by the Union Finance Minister in his Budget Speech of 2001 should be accepted and the Chapter be made applicable in respect of Establishments employment 1000 or more workers. Further, if the law is applicable to an Establishment with 1000 and more workers, depending upon the financial health of the Company, the compensation could be determined. It would not be appropriate that all workers be paid as at present i.e. at the rate of fifteen days wage for every completed year of service, if the Balance Sheet of the Company shows that sufficient funds are available a higher rate of compensation could be provided for; say 30 days wage for every completed year of service.

a) The law should specifically state the quantum, the procedure as also the circumstances when an employee may be retrenched, laid off or Establishment closed down. Thereafter, the workman be prohibited from raising an industrial dispute directly. Before launching litigation the matter could be examined by the Conciliation Officer as to whether or not the procedure followed was legal and fair. The current scenario is that the workman takes his legal dues from the employer and thereafter proceeds with the assistance of his trade union friend to raise an industrial dispute of sorts. Such litigation should be discouraged. Hence, the assertion that the provisions will not bar industrial disputes being raised against a lay off or retrenchment or closure is unacceptable.

35. **Paragraph 50 Page 34**; the recommendations *to provide for a sixty days notice prior to Retrenchment* is not acceptable. Experience shows that once a Retrenchment notice is put up, the workers concerned are no longer interested in working and are busy in a variety of trade union activities thereby bringing to a stop all production activity in the establishment. Hence, it is suggested that a fifteen days clear notice be given prior to effecting Retrenchment. As regards the payment of Retrenchment compensation, the rate of one month's wage for every year of completed service could be considered only in case the employer has the necessary financial capacity as is reflected in the Balance Sheet. Otherwise, the payment of such a high rate of Compensation more particularly in respect of closure as suggested in the Report i.e. sixty days would only accelerate the death of the Company.

a) The recommendation for *Compulsory Unemployment Insurance to cover all establishments is not acceptable.* It is not understood by a rationale mind as to why an Employer should so contribute, is it the case in the Report that it is the duty the responsibility of the Government to provide employment to its citizens. The suggestion for Compulsory Unemployment Insurance is myopic; it would only ensure the ill health and ultimate death of a Company due to such grandiose schemes that would bleed the Company to ill health.

b) This is also true of the so called *Wage Guarantee Fund.* It is wholly unacceptable that a Wage Guarantee Fund, be put in place first before so called liberalization from Section 9(A) Chapter 5(A) of the Industrial Disputes Act, 1947 are legislated upon. Any launch of Wage Guarantee Fund would be the death knell of Indian industries. It is unfortunate that the Report instead of holding the Government responsible for generating employment and health of the citizens is shifting the responsibility on the Employers; it is a poor joke.

36. **Paragraph 52 Page 35**; there appears to be wishful thinking; arbitration in the present context where there is a total lack of trust and confidence between workers and employers cannot be a mechanism for Settlement. Furthermore, to expect such Arbitrator during the pendency of a Settlement to provide necessary relief is unadultered imagination from the ground realities.

37. **Paragraph 54 Page 36**; *"Labour adjudication in India"* Annexure 3 has not been enclosed alongwith the Report. In the absence of the same it cannot be commented upon. Notwithstanding, to saddle the Labour Courts with all labour matters is neither feasible nor acceptable. As a practitioner who regularly appears before various Courts on labour matters one normally encounters that such courts do not have the necessary training, background or skill to address themselves to such matters. Hence, to suggest that one Court shall try all types of matters would only create further litigation rather than amicable settlements between workers and employers.

a) The repeated references to the Indian Labour Code (Draft) 1994 should be deleted. The said Code was not discussed in depth or studied exhaustively by members or considered at the meetings of the Study Group. In such a situation, to repeatedly refer to the said Code to garner support and credibility for a certain said Code is unfair and unethical.

38. **Paragraph 55 Page 37**; the illustrations provided *warranting dismissal* are wholly inadequate. To illustrate, acts of misconduct pertaining to defalcation, fraud, sexual harassment and the like also need to be included besides a whole host of other acts of misconduct.

a) During the discussions it was clearly conveyed that Section 11(A) needs to be deleted and that the decision of the Employer with regard to the quantum of punishment should be the prerogative by the employer who is responsible to run the industry. It was expressed that, the Labour Courts/Industrial Tribunals are generous in interpreting misconducts thereby have eroded discipline and the right of the employer to manage his Establishment. Section 11(A) therefore has no place in the new labour laws.

b) Section 17B of the Industrial Disputes Act, 1947 was also discussed at length. It was felt that this provisions deliberately harms the employer even when prima-facie the Award passed by the Labour Court is culpable and malafide. The superior Courts are bound by Section 17B. Hence, as stated in the Report – *"The question of payment of full wages to a workers who has been ordered to be reinstated by the Labour Court may be left to be decided in each case by the superior Court."* The Report should recommend no automatic payment of full wages as is hitherto. It should also be provided that in the event the workman is engaged in any economic activity either directly or otherwise, the financial benefits earned by him through such activities be offset against back wages. It should be the effort of the law not to give premium to delinquent employees through Section 17B.

39. **Paragraph 56 Page 37**; *the system of Lok Adalas in labour matters has not been very successful.* Last week the Labour Minister Mr. Sharad Yadav presided over a Lok Adalat in New Delhi in respect of industrial disputes pending adjudication before the Central Government Industrial Tribunal, Delhi. The entire proceedings were stage managed and disappointing. Hence, in the existing labour management scenario labour Lok Adalats are not practicable.

a) Throughout the Report the Conciliation mechanism ha snot been given the due importance it deserves. It has been found that an honest Conciliation Officer can bring in many more Settlements than a Lok Adalat or arbitration proceedings or even the adjudication machinery. It is observed that the Conciliation Officer does not receive the necessary support from the law and bureaucrats who are responsible for labour administration; which is a reason for its low success rate.

40. **Paragraph 57 Page 38**; the recommendation that a *system of legal aid to workers and trade unions be put in place duly funded, either from public funds and/or at the cost of the employer concerned* is totally unacceptable. It is surprising that the inadequacy of the Government and the bureaucrats who are responsible for Labour Administration; the Employers are being coerced to contribute to so called legal aid fund for workers. The running and functioning of existing funds eloquently speaks about the fate of such

financial support of legal aid to workers. It is regrettable that the clock of this country is being put back.

41. **Paragraph 58 Page 38**; the issues in this paragraph were not discussed at any meeting of the Study Group. My personal view is that if there are no restrictions placed on the appearance of a legal practitioner in any proceedings there shall be no difference between a Civil Court and a Labour Court proceeding. The Labour Courts would function in a similar manner, as are the Civil Courts, the end result would be protracted litigation. Both the employer and the workmen would need to have a battery of lawyers on their pay roll, on a day-to-day basis.

42. **Paragraph 59 Page 38**; the *'whistle blowers law'* could be adopted to Indian conditions to include within its ambit trade unions; the workers and other institutions including the bureaucracy. The Report should recommend adoption of the same by Government and the access to information by the citizen. Hence, instead of such a legislation in industrial relation matters, such a law should be passed by Parliament for the country as a whole in all aspects of life.

43. **Paragraph 61 Page 39**; the information with regard to the so called *High Powered Regulatory Commission* is inadequate. It is not clear as to how many Authorities, Boards, Courts, Labour Relations Commissions including Regulatory Commission would the employer be required to deal with. Today, we have a plethora of agencies to be dealt with, the so called High Powered Regulatory Commission would be yet another; the same in not acceptable.

a) Disinvestment of Public Undertakings is an imperative to prevent economic ruin of the country. There may be differences with regard to the procedure to be followed but none can questions the validity and necessity of disinvestment in Public Undertakings.

b) It is not understood as to how the fundamental rights of workmen will be affected. Assuming, a bread factory is run by the Government and a similar factory is run by a private entrepreneur, why should the workers employed in the Government bread factory cry hoarse regarding Article 12 of the Constitution. Both workers should be treated equally and the process of disinvestment be accelerated.

44. **Paragraph 63 Page 48**; the issue relating to *workers participation in Management* has been discussed for the last several years. It is not understood as to whether workers take up employment to earn their livelihood and/or to participate in Management and play politics. Is production and productivity the focus of the worker or is it the managing

affairs of the employer. It is not understood as to how an employer can carry on his business activities if he is constantly required to negotiate with workers on every aspect of work life. Hence, workers' participation in the Management needs to be kept in abeyance. Today industry is in recession; the employer is fighting a grim battle of survival. Hence, the issue of workers' participation in Management is entirely wholly misconceived.

45. **Paragraph 64 Page 41**; the assertions in the corresponding paragraph are not acceptable since they are vague. In the absence of clarity with regard to the so called small issues for which provisions can be found in the existing laws, the contention is not acceptable that we blindly incorporated.

46. **Paragraph 65 Page 41**; the recommendations as set out in the Report have not maintained a proper balance between the interests of the workers and those of the Management. This document is yet another illustration as to how the Employers are sought to shackled. Furthermore, industry is being hijacked into an orbit and an era of a protected economy or a Socialist country.

47. **Paragraph 66 Page 42**; *Small Entrepreneurs (Employment Relations) Act* as prepared by Mr. Narasimhan could be considered as a model to be emulated and implemented by the Commission.

**IV Contract Labour**

48. **Paragraph 67 to 70 Pages 43 to 45**; the decision of the *Hon'ble Supreme Court of India in the Case of Steel Authority of India on August 30, 2001* needs to be specifically incorporated in the law particularly with regard to no automatic absorption of contract labour; in the employment of the principal employer. The provisions relating to abolition of contract labour need to be deleted. We need to strengthen the concept of Regulation of contract labour. The statement of the Finance Minister on the floor of Parliament during the Budget Speech with regard to Contract Labour needs to be enforced and implemented. The Finance Minister represents both the will of the people and the will of the Government. Hence, even core activities needs to be parceled out on contract. Consequently, Section 10 has no place in the new scheme with regard to the engagement of contract labour.

a) The views with regard to the Labour Relations Commission/Committee have since been spelt out. The said Committee is old wine in new bottles, therefore not acceptable.

## V Law on Wages

49. **Paragraph 71 to 74 Pages 45 to 48**; while drafting the Report it is heartening to refer to the ILO Report regarding jobs of acceptable quality. The reality today however is that thee are no jobs available most particularly in the organised sector which includes employment in Government. Hence, it would be appropriate that the Report focuses more on the ground realities, as they exist.

a) As regards *Bonus* referred to in paragraph 72 page 46 while providing for the mandatory one month wage as bonus could be considered but in the case of an establishment employing up to fifty workmen it may be difficult for them to make financial provisions on this account.

b) The recommendation that demand for Bonus in excess of 8.33% be subject to negotiations is not acceptable. The payment of Bonus is a financial matter. Consequently, the financial records of the Company either make it possible for the Employer to pay Bonus in excess of 8.33% or not. There is absolutely no scope for any negotiations on this issue. This is an another ploy to derail production and productivity in the establishment.

50. **Paragraph 73 Page 47**; it is laudable to have a National Minimum Wage duty notified by the Central Government. However, the ground reality is to the contrary; how is the Central Government to decide the minimum rates of wages to be paid in each State/ Union Territories. It may be better not to have a law than one that is violated with impunity.

a) It is therefore recommended that the existing practice of minimum rates of wages in respect of scheduled employment be continued and determined by the Central Government based on *valid economic criteria*.

b) Several State Governments have announced substantial increases in the minimum rates of wages merely because the election in the State were at hand. Such practices need to be discouraged.

c) The recommendation with regard to piece rate wages and more particularly in respect of home based workers is not acceptable. On the contrary, home based workers should be paid 10% less than the minimum rates of wages since they perform the job at their leisure and with necessary supports/assistance.

Further, merely being a woman does not entitle the person to receive a 10% increase in minimum wages. Such a recommendation would only encourage mal-practices.

d) The assertion that minimum rates of wages must not be allowed to fall below a guaranteed minimum wage is also not acceptable.

e) The experience with regard to the working of Wage Boards is not disappointing. Hence, it is urged that statutory Wage Boards say for Working Journalists, Central Government Employees and the like needs to be strengthened. It needs to be emphasized that such Wage Boards need to function keeping in view economic realities; rather than politics and rhetoric. In the light of experience gained it is suggested that Wage Boards for different categories of employees/ industries such as Cement, Steel and the like is a preferable mode particularly as it does not disrupt the activity in the individual establishment whereat such negotiations are in progress.

f) It is imperative that a time frame be set out for arriving at a Settlements whether through the process of Collective Bargaining or through the mechanism of Wage Boards.

51. Paragraph 74 Page 48; Annexure 5 as has been referred to but a copy of the same has not been furnished; in the absence of the same it is not possible to submit comment on the same. However, should a copy be furnished I would endeavour to reply/respond to the same.

a) The recommendation for adopting a *Wage Policy for the entire country as a comprehensive Wage Policy and adopting an Income Policy; Policy on Prices* is not acceptable as it would usher in a regulatory regime. Such a policy is the anti-thesis of an economic environment that promotes liberalization, privatization and globalisation.

## VI Law Relating to Working Conditions, Welfare, and Safety and Health

52. **Paragraphs 75 to 80 Page 49 to 54**; it is emphatically stated that one glove cannot fit every hand hence it is imperative that the law related to working conditions vary from the nature of industry, its technological level, capital base and a whole host of factors. To illustrate; a candle making unit that is wholly automised and another that is dependent entirely on human labour the norms of working would be entirely distinct and different. Hence, it is imperative that the Report provide for conditions of service that can cope with various contingencies. The failure to do so would only proliferate litigation.

a) The *definition of casual worker, temporary worker and permanent worker as set out in paragraph 77 is* unacceptable. On the contrary, the letter of appointment issued by the Employer shall determine the conditions of service including the duration for which the person is so employed. The Report negatives even what is set out under the law with regard to fixed term employment.

b) It is necessary to provide for fixed term employment, which could be of any duration. The law cannot impose conditions with regard to the duration of employment offered by the Employer. To illustrate; certain projects or assignments may survive for a fixed duration say three to five years; thereafter, that activity may no longer exist. The recommendation that the worker who works continuously for period of one year shall be made a permanent worker is not acceptable.

c) It is imperative that differentiation in employment be provided. Why is it that the Supreme Court of India as has the highest number of holidays as against any other Court of law in the country? Similarly, why do they have a different age of retirement? There is a valid justification for the differentiation. Hence, the recommendations *to have uniform conditions of service* are unacceptable. The conditions would depend largely on the activity, the nature of industry its technology, capital base and such other valid criteria.

d) The recommendation that exemption in respect of establishments in Export Promotion Zones or Special Economic Zones be removed is not acceptable. The economic crises in the country read with the world trade situation makes it imperative for us to create unique and specific employment laws that would help the country to strengthen not only its economic base but to promote exports to earn necessary foreign exchange.

e) The recommendation to establish a canteen in all establishments is not acceptable. The primary job of the employer is to provide employment and basic working conditions. The provision of a canteen mandatorily would only increase labour Management disputes. This has been repeatedly observed most particularly in the organized sector industries.

f) The compulsory provision of a Creche by the employer even in cases where women workers do not have children and that the numbers of children between the ages of 0 to 6 years do not exist is not acceptable. While appreciating that childcare is of great social importance the employer cannot be saddled with such a responsibility where the need or requirement for a creche does not exists.

g) The provision of a Creche is the responsibility of the State. Like education, the provisions of Creche facilities in industrial estates and/or where industries are establishment including factories should be the responsibility of the appropriate Government. Hence, the recommendation that *every establishment employment 50 or more persons establish a creche, properly manned and equipped* is not acceptable.

h) An *additional national holiday on May 1* is not acceptable. At present we have three national holidays and the number of holidays declared under the Negotiable Instruments Act are normally bargained by the trade unions while arriving at Long Term Settlements. Besides the said holidays, there are a large number of casual, sick and privilege leaves. regrettably, the number of such leaves varies from State to State; thereby making it difficult for an employer to effectively function from multi State locations. The Commission needs to recommend to the Government a drastic reduction in holidays as also various leaves available to employees.

i) The law should also provide that an employee who fails to report for this duties for eight consecutive days without prior permission, authorization or sanction of his employer he would automatically loose his job. Such cases be dealt with as if such an employee has voluntarily abandoned his services without prior notice. In such circumstances, he should forfeit one-month gross salary towards notice pay. It is now imperative for the Government to focus on performance and productivity. The culture prevailing in the country "chalta hai" needs to be severely dealt with.

## VII Law Relating to Social Security

53. Paragraph 81 Pages 54 to 56; in the absence of Annexure 6, it is nto possible to respond to the document entitled - Social Security - Key to Economical Reforms. However, it is imperative to state that the National Social Security Authority appears to be an ambitious project. The integrated contribution of 20-25% of wages by the Employer and 15% of the wages by the Worker lacks clarity since it does not spell out precisely as to how this approximation have been worked out and what does it include. Today, an Employer contribution towards Social Security is approximately 40% of wages paid to the workers.

a) The recommendations in the Report reflect a much higher contribution on the part of the Employer since there are suggestions towards creation of appropriate welfare funds - see paragraph 97 as also Legal aid to workers and Trade Unions at the expense of Employers. See paragraph 57 page 38 regarding creation of Wage Guarantee Fund; Unemployment Insurance and Skill Development Fund. In the event the Commission were to act upon the recommendations of the Study Group the Employer would be required to contribute between 60 to 65% of the wages paid to the Worker. In such a perspective the recommendations that the worker would contribute 15% of his wages Social Security is inadequate.

b) It is stated that the creation of any new funds and/or contribution to the same by the Employer should be strictly evaluated on economic criteria and not based on the tenet that workers are poor, they are exploited and they need to be protected. We must examine the issues related to social security dispassionately; keeping in view a valid economic basis.

c) It should be clearly understood that providing social security is not the responsibility of the Employer. It is for the State to provide funds for such contingencies. The functioning of such Schemes should not be in the hands of the civil servants but should function through autonomous Boards so as to ensure that the Social Security Schemes as they exist viz. ESI, EPF and the like are productive, performing and honest.

## VIII Laws Relating to Miscellaneous Matters

54. Paragraph 85 to Page 56; the recommendation *for constituting a Skill Development Fund to provide for the need of vocational training and guidance and to levy on employers of every establishment 0.5% of the Wage Bill*; is unacceptable.

a) The issue has been discussed at the Indian Labour Conference and other Tripartite Forums. Employers are averse to any such levy particularly in view of our experience with regard to the functioning of the Apprenticeship Scheme. Industrial Training Institute and the like. Hence, the Skill Development Fund is also doomed to failure. Employers are also not agreeable to contribute to any such Skill Development Fund because they do not have the financial capacity to fund and finance such a Scheme.

55. **Paragraph 86 Page 57**; *the reference to provisions of the Indian Labour Code 1994 (Draft) dealing with setting up of the National Council of Employment and National Council of Vocational Training and Guidance and Central/State Boards under the Council have been referred to in the Report as being an Annexure 6.* However, the same has not been enclosed. Further, the said provisions were not discussed at out meetings. In the circumstances, reference to the same in the Report of the Study Group is neither fair not justified. In Paragraph 87 *a reference has been made to tripartite consultations; details of which are said to be in Annexure 7* but in the absence of the Annexure it is not possible to respond to the same.

56. Paragraph 89 Page 59; states, *"law and constitutional amendments will not solve the problem of the incidence of child labour.* This proposition is also true in respect of labour laws; the mere amendment in the law is not adequate; the Commission needs to recommend positive mechanisms including an attitudinal change. Hence, workers and employers need to work together with trust; to remove the irritant that lead to industrial strife, conflicts and confrontation. The role of "Outsiders" needs to be minimized. Today information is easily available. Hence, the norms that existed in 1947 thereabouts need to be specifically replaced with modern thoughts and responses.

a) This chapter dealt with several laws but they were not discussed or debated or views solicited at the meetings of the Study Group. In such circumstances, it is not fair to include the same in this Report. However, some Acts were discussed in passing but no firm views were elicited.

57. Paragraph 91 Page 66; in respect of infancy clause needs to be incorporated. Such a clause needs to be provided in various labour legislations. It is required most particularly to facilitate new entrepreneurs to launch new business activities. Such

provisions in the law will motivate Employers to launch new businesses; thereby helping the nation in generating more employment opportunities.

58. **Paragraph 92 Page 67**; regarding grant of Exemptions is imperative. It is not acceptable that such Exemptions be granted only for a period of six months. On the contrary, the business environment is dynamic; the circumstances change. Therefore, labour laws cannot be inflexible. In order to copies with the market requirements labour laws should provide for ample opportunities for obtaining Exemptions.

59. **Paragraph 94 Page 68**; although in paragraph 92 the Report does not advocate grant of exemptions; but in paragraph 94 a recommendation has been made for exclusion from the purview of labour laws including minimum wages, the activities of Khadi and Village Industries Commission and Khadi Village Industries Board. The reasoning in the Report does not make out a case for exclusion of such an activity most particularly as there are a large number of other activities that could be similarly equated viz. religious institutions, voluntary organizations charitable institutions and the like. It is not clear as to the basis of such discrimination or the foundation for grant of such exemption to KVIS and KVIB.

a) The Certificate issues - *"We will recommend that steps must be taken by the Government to ensure that these large number of workers - both men and women - are not engaged on what may be described on exploitative conditions"* is not understood. It is not clear as to how such a conclusion has been arrived at, when the Study Group had no such evidence placed before it.

60. **Paragraph 95 Page 69**; the Essential Services Maintenance Act is both desirable and necessary not only to be on the statute book but also to be effectively implemented. It may be mentioned that recently some employees of the All Institute of Medical Sciences (AIIMS) resorted to a patently illegal strike. The administration of the Hospital was paralyzed. They were incapable to taking any remedial measures. The AIIMS, which is a premier medical Institution, was protected on the basis of a Public Interest Litigation field before the Delhi High Court. The Court vide its Order clearly provided that in the event the strike is not called off and the matter amicably resolved, the provisions of the Essential Services Maintenance Act be brought into force. Hence, ESMA is not a draconian law but a law to bring workers to the negotiating table as also to bring in restraint in their activities which normally are violent in nature; holding the consumer and society to ransom.

61. **Paragraph 96 Page 69**; the recommendation that the violation of Labour Laws and the Rules be tried by a Labour Court are unacceptable. The jurisprudence required as also the mental attitude required to dispense justice in respect of penal provisions of the law is entirely distinct and different.

a) The experience with the Labour Department where a Conciliation Officer doubles up as an Enforcement Officer clearly shows the failure of implementation of Labour Laws. Such an Officer is a failure since the skill, approach and attitude in respect of the two assignments are entirely distinct and different. Long years to legal practice before the Courts has taught us that a Labour Court Judge who is pro-worker, his dispensation of justice in a matter regarding penal provisions of labour laws would also be skewed.

b) This paragraph deals with violations on the part of the Employers but there is a studious silence in respect of blatant criminal activities routinely and repeatedly indulged in by workers against employers and managerial personnel. Such personnel are abused, assaulted and attacked physically, psychologically and even mentally but the Report makes no provision as to how such workers be dealt with; the mere termination of their services, followed by challenging the action of the Management before a Labour Court; thereafter the application of Section 11(A) of the Industrial Disputes Act is a mockery. It is expected of the Report to provide for more stringent action against such workers and their trade union friends who indulge in criminal activity as described above.

62. **Paragraph 97 Page 70**; the *compounding of an offence and creating of a welfare fund* are not acceptable. In the event the Employer commits a crime he should be dealt with suitably under the law. There is no requirement to show any mercy as is sought to be made out in the Report by introducing compounding and a welfare fund. The suggestion without doubt is one sided and pro-worker.

63. **Paragraph 98 Page 70**; with regard to the *burden of proof in all cases is to be on the Employer, even when the case has emanated based on a Complaint lodged by the worker.* Such an approach clearly reflects the mind set, mental approach and psychology of the Author. Such a position even under the law is not fair, just and equitable. Such a test of proof is normally adopted only by criminal Courts and that too in offences such as Rape. Hence, to place the burden of proof on the Employer implies that he is on the same pedestal as a Rapist; which is not acceptable.

a) The reality is that workers and their trade union friends have a thriving business in making complaints galore against the Employer that are patently false, mischievous and dishonest. The litigation process is dilatory. In the circumstances, to place the burden of proof on the Employer is unfair and unjustified it is wholly unacceptable.

64. **Paragraph 99 Page 70**; it requires the *Employer to reimburse the workman for alleged loss of wages and expenditure incurred by him on travel to contest litigation because the worker has filed a Complaint against the employer.* This recommendation is indeed unfortunate since it seeks labour litigation being finance by the Employer. Possibly, a similar provisions should be incorporated in the Code of Civil Procedure where the Plaintiff should charge costs including travel expenses on the Defendant in respect of various expenses from the Defendant. Such a proposition, to my mind is wholly misconceived and untenable. In my leal practice more than 25 years, I have paid several thousands of rupees towards costs to workers and trade unions since either on behalf of the employer I failed to file documents/replies and/or produce witnesses but in all my practice not one single court has ever imposed any costs either on the worker or on the trade union for not filing replies and/or producing witnesses before the Court on the date fixed. This experience clearly sizes up the mental attitude and approach of Courts entrusted with adjudication in Labour matters. Further, there is no parallel in labour/employment laws any where in the world where such a statutory provision exists. Such a recommendation would only make labour laws more rigid, inflexible and highly expensive. However, it would be a boom for lawyers practicing labour law.

65. **Paragraph 100 Page 70**; the recommendation to make *the Office Bearers of a Trade Union as competent persons to file a Complaint and/or to initiate prosecution against the Employer* is wholly misconceived and not acceptable. So also is the recommendation in respect of alleged *Office Bearer of so called Voluntary Organizations duly registered under the Societies Registration Act.* Such a provision in the law would be an appropriate Forum for retired bureaucrats and other busy bodies to maintain a trade against Employers most particularly such Employers who do not accede to illegal demands of such trade unions and Societies. Such a recommendation is wholly misconceived and cannot be considered.

66. **Paragraph 103 page 72**; the recommendation that *every large State and groups of smaller State set up Institutions for Training and Research in labour matters is not acceptable.* The recommendation reflects wasteful expenditure of State Funds. We are a poor country and cannot afford the luxury of such so-called Institutions. Regrettably, the existing Institutions are doing precious little in this direction. We cannot afford to waste valuable financial and other resources on such activities. On the contrary, the existing Institutions need to render satisfactory account of their performance. Experience shows that such Institutions need to render satisfactory account of their performance. Experience shows that such Institutions are the hangouts for retired bureaucrats and others who have nothing better to do than to make a show of their knowledge and expertise in labour Management. Hence no further funds should be allocated for such activities.

It is regretted that the Report has referred to Employers Organizations, although there has been no request on behalf of any Employer Organization to the Commission to consider either their role or their activities and/or to strengthen them. It appears that the dictum followed is - the more the merrier. Hence, more conflict and confusion. Any recommendation with regard to Employers Organization in this regard is not acceptable. Assuming, if Employer Organisation are poised to perish; so be it; the Commission is not required to breathe new life with them. We should remember that on planet Earth only those survive who are the fittest. The Commission need not provide support, sustenance and creches to the Employer Organization for their survival.

67. Paragraph 104 Page 73; the integrated Labour Judiciary system is not feasible. It cannot be effectively implemented. The plan to have Labor Coruts a the base and with State/Central/National Labour Relations Commissions and at the top will only delay justice and make it more expensive. Such a system is wholly unacceptable. The proposal also does not consider the Constitutional requirements viz.; the role of the High Courts and Supreme Court of India. In such a scenario, this recommendation would only multiply litigation with no effective advantage available to the parties.

    The demand for high-level labour adjudicating functionaries and the creation of Boards is a ploy to rehabilitate bureaucrats. Further, where are the financial resources for such services.

68. Paragraph 106 Page 74; the recommendation *to have a system of tax incentives* is wholly misconceived. It is yet another ploy to enlarge the scope of the bureaucracy at the cost and expenses of the consumer, customer and society. We must beware of such sweet temptation.

**Conclusion**

Review of labor laws needs to be focused on the requirement of employment generation, productivity, competitiveness, economic reforms, and the like. Simultaneously, keeping in mind the needs of special sectors of the economy viz., SSI, IT and EPZ/EOUs.

1. The emerging economic environment involving rapid technological changes globalization of economy, liberalization of trade and industry has necessitated reforms in labour laws. While there is a dire necessity to carry out, requisite amendments, it is significantly important to ensure adequate safety net for the workers for sustainable growth.

2. Certain sectors of the industry require special treatment in terms of labour reforms. The enforcement of various labour laws pertaining to SSI Units falls under the jurisdiction of State Governments. It is noted that the administrative regime inrespect

of furnishing of reports and inspections has led to a disproportionate regulatory burden being placed on the small-scale units. The present system may be replaced by a system of "Self Certification" wherein reports submitted on various labour laws by SSI Units are self-certified and this may be treated as prima facie compliance.

3. A system could be devised wherein inspection under the labour laws in SSI Units could be conducted only on the basis of complaints by stakeholders or when absolutely essential in the interest of safety of workers in industry. The system of random inspection of a certain percentage of units on annual basis on a well-identified criteria in a transparent manner can also be adopted.

4. The IT Industry should be kept free from inspection related harassments and that the inspections should be resorted to only when these are absolutely necessary. Routine and periodic inspections of IT establishments under labour laws may not be necessary.

5. In the case of SEZs/EPZs/EOUs, the following suggestions need to be examined expeditiously and necessary action taken accordingly:

   a) Exemption of EOU/EPZ units from the provisions of Contract Labour (Regulation & Abolition) Act;
   b) Delegation of Powers of the Labour Commissioner to the Development Commissioner of Export Processing Zones;
   c) Declaration of EOU and EPZ Units as "Public Utility Services" under the Industrial Disputes Act;
   d) Grant of permission to employ women in night shifts in EOU/EPZs; etc.
   e) Amendment to the Trade Unions Act to prohibit outsiders from assuming leadership of trade unions in these units;
   f) Flexibility to the units to dismiss from service such employees who have resorted to grave and serious misconducts that otherwise amount to criminal activity including resorting to various forms of work stoppages, illegal strike and the like; and
   g) Setting up exclusive Special Industrial Tribunals for SEZs and EPZs, to give top priority to settle the disputes. The relief in such cases should only be monetory in nature; If at all in no case should such workers be reinstated and/or reemployed in the same Establishment.

**Schemes pertaining to social security with particular reference to retrenched workers**

   i) Enhancement of retrenchment compensation under the Industrial Disputes Act and also the introduction and implementation of better safety net.
   ii) There is an urgent need for evolving a scheme to pull a part of VRS exgratia received by such restructured employees to enable them to get regular monthly remuneration.

iii) The erstwhile scheme of NRF needs to be reviewed and restored albeit in a modified form with a view to have wider coverage including workers in State PSUs and private sector.

iv) Persons going out of job need to be rehabilitated and employed in some vocations viz. trade, tourism, etc.

**Implementation of labour laws including reporting requirements, inspection and simplification etc.**

i) It is necessary to expeditiously refer for adjudication to a Labour Court or an Industrial Tribunal a matter that is not settled through the process of Conciliation. In any event the Conciliation mechanism needs to be strengthened and Officers responsible for this redressal mechanism should exclusively be dedicated for the purpose. Hence, their career prospects needs to be linked with Settlements arrived at through the process of Conciliation Officer is treated, as a mere Post Office should be discontinued.

ii) Inspection of an establishment needs to be conducted at the level of an Inspector. Superior officer can inspect the establishments inspected by the subordinate officers only when there are Complaints against such inspection except where question of safety of workers is involved or in units, which handle or manufacture hazardous substances.

iii) The system of "Self-Certification" needs to be widely introduced wherever possible.

iv) The scope of Exemption from Furnishing Return and Maintaining Register by Certain Establishments Act, 1988 which provides for exempting small and very small establishments employing upto nine and nineteen workers respectively from furnishing returns and from maintaining registers prescribed under various labour laws may be widened to cover establishments employing upto 50 workers in respect of very small establishments and upto 200 workers of small establishments.

Thanking you,

Michael Dias
Secretary

# Report of the Study group on

# REVIEW OF LAWS

# PART-II ANNEXURE

## List of Annexure

## Annexure 1

## Labour and the Law

## (Para 9 of the Report)

**"Law is a secondary force in human affairs and especially in labour relations"**, "Law is a technique for the regulation of the social power. This is true of labour law as it is of other aspects of any legal system. Power – the capacity effectively to direct the behaviour of others – is unevenly distributed in all societies. There can be no society without a subordination of some of its members to others, without command and obedience, without rule makers and decision makers. The power to make policy, to make rules and to make decisions, and to ensure that these are obeyed, is a social power. It rests on many foundations, on wealth, on personal prestige, on tradition, sometimes on physical force, often on sheer inertia. It is sometimes supported and sometimes restrained and sometimes even created by the law but the law is not the principle source of labour power".

"Labour law is chiefly concerned with this elementary phenomenon of social power ..... The Law does, to some extent must, conceive the realities of subordination behind the conceptual screen of contracts considered as concluded between equals. This may partly account for the propensity of lawyers to turn a blind eye to the realities of the distribution of power in society."

"The principle purpose of labour law is then to regulate, to support and to restrain the power of management and the power of organised labour. ..... **As a power countervailing management, the trade unions are much more effective than the law has ever been or can ever be."**

"The characteristic feature of the employment relation is thus the individual worker is subordinated to the power of management but that power of management is coordinated with that of organised labour. The regulation of labour results from the combination of these processes of subordination and coordination, of the rules made unilaterally by the employer in conjunction with those agreed between him or his association and the union through collective bargaining at the plant level."

"In concluding these introductory observations we must make one further fundamental point. **Any approach to the relations between management and labour is fruitless unless the divergency of their interest is plainly recognised and articulated**. This is true of any type of society one can think of and certainly of a communist as much as of a capitalist society. There must always be someone who seeks to increase the rate of consumption and some who seek to increase the rate of investment. The distribution of the social product

between consumption and investment can only be determined by a constant and unending dialogue of powers, in Parliament or in the recesses of the Government offices."

"There is, however, one interest which management and labour have in common: It is that the inevitable and necessary conflicts should be regulated from time to time by reasonably predicated procedures, procedures which do not exclude the ultimate result of any of those sanctions through which each contending part must – in case of need – assert its power." **"The conflict between capital and labour is inherent in an industrial society** and therefore, in the labour relationship. Conflicts of interest are inevitable in all societies. **There are rules for their adjustment, there can be no rules for their elimination.**"

## Annexure 2

### ( Para 10 of the Report)

"A nation which is preparing itself for a quantum leap into the 21st century can ill-afford to neglect the health and well-being of its labour and industrial relations system, for **it is, in the ultimate analysis, the men and the women at work who produce the wealth, with science and technology functioning as support to this effect**. Basically, labour law is a mechanism, for arrangement of human relations and as such is susceptible to the influences and vicissitudes of human emotions and frailties; yet the future of industrial development and social well-being are very much dependent upon the evolution of a viable jurisprudence for improved industrial relations and productivity. Quite a few of our labour laws have their origin in the pre-independence period. Even so, the inter-connection between labour legislation and development processes have come to be widely recognized only in recent times. Traditionally labour laws had a protective function, consisting of standards being established both to protect workers in their workplace and for affording them basic minimum level of living conditions. Alongside this function, there also existed in some system, a legal framework for the regulation of industrial relations between employers and workers. These functions had their impact on problems of development but these aspects were not seriously noticed or studied. The emphasis was more on labour legislation for its own sake. Development was a separate proposition. This mutual lack of concern was perhaps due to historical factors. The most important aspect that strikes one is the fact that whereas in developed countries of the Western World, labour legislations followed the emergence of industrialization and in response to demand for economic and social betterment of the workers, in developing countries, on the other hand, emerging of labour laws preceded industrial growth. Thus, the enactment of labour legislation in most developed countries was at a time when industrial employment was replacing farming as a major source of livelihood. This is in contrast to the position in developing countries where the emergence of labour laws took place at a time when the persons who benefited by such laws represented only a small percentage of the total workforce. Whereas labour laws emerged in developed countries when their economy was firmly established, in developing countries, this took place at an infant stage. This may be the reason why the nexus between labour legislation and development processes was neither recognized nor studied. Another aspect of labour legislation in developing countries relates to the process of enacting labour laws. In most of the developing countries many of whom became independent only after the Second World War, the legislative patterns were not indigenous, suited to the requirements of the country but were transplants from abroad. Borrowing from foreign models, often those provided by highly industrialised countries or adapting provisions to the standards set by the International Labour Organisation appears to have been the practice. This resulted in the labour legislation being unrelated to the state of economic growth, the position of the wage earner within the total workforce, the levels of skill and the state of institutional development in the countries in question. This, also, resulted

in a considerable slippage in the implementation of the labour laws. This gap has, also, been widened by the lack of strong trade union movement and effective labour administration. If the evolution of labour legislation in developing countries has, by and large, been independent of the needs and the compulsions of the development processes the reverse has, also, been true. It has only been very lately recognised that development does not consist merely of an increase in the Gross National Product or of the per capita income. Advocates of rapid industrialisation and steady increase in Gross National Product have viewed labour legislation as a stumbling block in their path in so far as it not merely increases the cost and thus acts as a deterrent to investment but imposes undue restrictions on the powers of management to take and implement their decisions. Such an attitude, also, results in investment being diverted towards capital intensive technologies rather than labour intensive technologies which the situation would have demanded. These extreme positions have given way in more recent years to a more balanced understanding and realisation of the inter-relation between labour and development. The currently accepted concept of development rejects the purely economic view earlier held and recognised the importance of development process, leading to strategies and programmes for employment promotion, reduction of disparities in income, satisfaction of minimum needs and improvement in the quality of life, etc. Planners in developing countries have recognised that social objectives have an important place in overall development."

"All these lead me to point out the need for labour laws to be made simple and the labour administration to be vigilant. Large number of labour laws, each with its own different definitions and concepts has only confused the beneficiaries and the implementing authorities. Perhaps the only one who might have benefited are the lawyers. It is time that the plethora of labour laws are looked in a comprehensive manner so that these laws are consolidated in not more than four or five acts under major heads like, industrial relations, wages, social security, conditions of work and safety etc., each with a common definition and concept. Opportunity must be availed of to fill the gap in the existing laws at present so as to avoid parallel provisions in allied laws. In taking up the exercise, more than ordinary care is needed to ensure that the resulting legislations conform to the Directive Principles of State Policy. While no doubt Art. 37 stipulates that the Directive Principles of State Policy shall not be enforceable in any court, this Article also stipulates that it shall be the duty of the State to apply these principles in making laws. That being so, labour legislation or for that matter, any other legislation should reflect the Directive Principles of State Policy in its content.

Even as labour laws will have to be consolidated and codified, it is equally necessary that various adjudicatory authorities under the different labour laws also get unified in single authority at a particular level, say, that of the State or district, according to the volume of work. We, now, have the experience of having labour courts and Industrial Tribunals and others, adjudicating on disputes and dealing with claims petitions under the Industrial

# Labour Adjudication in India:

## Suggestions for a New Adjudicatory System

T.S. Sankaran*

WHILE Reviewing, some years back, a book entitled "Labour Judiciary, Adjudication and Industrial Justice". I raised a question whether the term 'Industrial Justice' should not more appropriately be 'labor justice'. Likewise, this brief article begins with the query whether labour adjudication should be as is generally the case, confined to what can be called 'industrial adjudication' arising out of determination of 'industrial dispute' as defined in the Industrial Disputes Act, 1947.

So much has been written about the current system of adjudication under the Industrial Disputes Act 1947 and presuming that the other articles in this publication of Indian law Institute will also be dealing with that theme, this article is proposed to look at the question more broadly, so as to cover other areas of dispute and their resolution under labour laws. Also, over the years, a situation has arisen in which disputes between employers and workers or between workers an workers, even within the framework of Industrial Dispute Act, 1947, do not constitute 'industrial dispute', as for example, demand for abolition of system of contract labour in an establishment and so on. Equally importantly, the definition of the term 'workman' in the Act keeps out a very large number of supervisory personnel as also persons employed in administrative or managerial capacity; these categories have to see recourse, if they want, to civil courts for redress, unless they happen to come within the jurisdiction of administrative tribunals, under either the centre or the state, or alternatively, have the right to move the high courts or Supreme Court through writ petitions, taking advantage of the position that their employers come within the definition of 'state' under Article 12 of the Constitution.

It will be worthwhile to look briefly at the provisions in some of the important labour laws, relating to the disputes that may arise within the provisions of these laws and the mechanism for their resolution. While talking of 'disputes', it is relevant to recognise that 'disputes' car be both 'disputes of rights' and 'disputes of interests', the former taking the character of cla' petitions in respect of an existing undisputed right and the latter mainly relating to creati . of new rights but also covering interpretion regarding a disputed right. In most, if not all, the labor laws other than Industrial Disputes Act, 1947, the disputes will be essentially disputes of rights, as provided in the relevant law; even under the Industrial Disputes Act, 1947, thee are claim petitions under section 33(c) which are disputes of right. Also, there are within the framework of some, if not all, the other laws, provisions for administrative hierarchies themselves to deal with the disputes.[1] There is yet another set of labour laws which provide for judicial tribunals for deciding disputes, as, for example, EPF Appellate Tribunals under section 7D of Employee Insurance Court under section 74 of the Empoyees State Insurance Act, 1948.

There is still another set of laws where the disputes between employers and employees are governed by the provisions of the Industrial Disputes Act. 1947, as in section 39(i) of the Beedi and Cigar Workers (Condition of Employment) Act, 1966 and section 22 of Payment of Bonus Act, 1865.

The bewildering variety of arrangements that obtain in various laws and in various governments in the matter of decisions and appeals has only added to the mystique of legislation and to complicated litigations and expenditure. The ordinary worker, and even a small employer, often funds the system so complicated and confusing that the worker gets resigned to his fate and the small employer, more often than not, ignores the law and hopes for the best. Is the situation irremediable? Surely not. The obvious remedy is to avoid the multiplication of labour laws and to simplify, rationalise and consolidate the existing laws into a single simple code, avoiding multiplicity of definitions and multitudes of administrative, judicial agencies. A single window approach, which is currently the preferred practice in industry and business, could be incorporated in the labour adjudicative process. This is the basic approach one finds in the Indian Labour Code 1994 (Draft) [1a] which had been prepared by the National Labour Law Association under the guidance of a Committee of Direction headed by Justice D.A. Desai, former Judge, Supreme Court of India and former Chairman, Law Commission of India. What follows is a close adoption of the design of the Code; therefore, the relevant clauses of the Code wherever appropriate have been indicated.[2]

A system of labour judiciary, with labour courts at the base[3] and central/state labour relations commissions[4] above the labour courts with designated powers including appellate powers over the decisions of labour courts[5] will constitute the basic structure of labour judiciary. To deal with disputes of national importance and/or affecting more than one state, a National Labour Relations Commission is also envisaged".[6] The National Labour Relations Commission, apart from having appellate powers over the orders of the central or state labour relations commissions (subclause 2 of clause 149), shall also have powers exercisable by the Supreme Court of Indian under clause 3 of article 32 of the Constitution or in pursuance thereof. [7] The central and state labour relations commissions will be deemed to be set up under Article 323-B of the Constitution.

The labour court will adjudicate matters as specified[7a] and in addition, perform other functions as may be assigned to them under the Code.[8] *The Labour Courts will also have powers to try any offence under code.*[9] Also, all claim petitions relating to any money due to an employee from an employer under a settlement or an award or under the provisions of the Code can be preferred before the appropriate labour court.[10] Labour court will also be, under clause 118, the appellate authority against the order of a registrar of trade unions. Further, under clauses 125 and 126, trade union disputes and employers association disputes will also be determined by labour courts. Clause 6 of Schedule XI provides for an appeal to the labour court against an order passed by a designed authority. In addition,

clause 29 of Schedule XI provides for a long list of matters, question or disputes or claims to be taken up with the labour court for decision. Under subclause 6 of clause 27 of the Code, if any question arises as to the application or interpretation of a standing order, it may be referred to the Labour Court.

All these will mean that labour courts become more or less the first step in labour adjudication in respect of a wide variety of matters. This would require the number of labour courts to be increased considerably, so that relief through them is available nearby to employees. No estimate could be made as to the number of labour courts, additionally required. However, the number will be large enough for the labour courts and labour relations commissions to be constituted into a fairly large labour judiciary. Hence, the Code envisages, *inter alia*, the constitution of an All India Labour Judicial Service in clause 215. It is expected to be a viable service and will be self contained to handle labour adjudication of all types. Such a service will also enable institutional and other arrangements for their training (in-service and pre-service), as also refresher training. All this will obviate the defects and short comings that are often voiced against the present system of labour courts and industrial tribunals. Above all, functionaries under the new dispensation will deal with a wide variety of labour matters and over a period of years, acquire an expertise of a kind that the present system cannot even think of.

While the above arrangement will, hopefully, be adequate for adjudication of disputes and settlement of claims, of various types, in what is known as the "organised sector", such an elaborate hierarchy may not be either necessary or useful for the unorganised sector, particularly n respect of rural unorganised workers. A system of *Gram Nyayalayas and Nyaya Panchayats* can be proposed for this purpose.[11]

## Annexure: Extract From the Indian Labour Code 1994

### (Draft)

27. (1) The Central Government shall prescribe one or more sets of model standing orders or matters specified in Schedule-II.

(2) Every employer shall make standing orders setting out the terms of employment of his employees which shall be as close to the model standing orders as possible but in no case less favourable to the employees.

(3) (a) In making the standing orders the employer shall consult the recognised trade unions;

(b) Differences, if any, between the recognised trade union and the management in respect of the standing orders shall be referred to the Labour Court for decision.

(4) Where the employer has not made his own standing orders, the model standing orders shall apply.

(5) The terms of employment set out in the standing orders shall be subject to the provisions of this code and the terms of settlement or award if any.

(6) If any question arises as to the application or interpretation of a standing order it may be referred to the Labour Court and the Court shall decide the question after giving the parties an opportunity of being heard:

(7) The decision of the Labour Court under this section shall be final and binding on the parties.

118. Any persons aggrieved by the refusal of the Registrar to register a trade union or employers association or by the withdrawal or cancellation of a certificate of registration may within such period as may be prescribed, appeal to the Labour Court concerned and the Court shall after hearing the parties dispose of the appeal as it deems fit.

125. Any dispute between:

(a) one trade union and another;

(b) one group of members and another group of members of the union;

(c) one or more members of the union and the union;

(d) one or more employees who are not members of the union and the union.shall be determined by the labour Court concerned on a reference by any party; and to civil court including the High Court shall have jurisdiction over such disputes.

126. Any Association Dispute between one employers association and another or

between one or more members of the employers association or between one or more employers who are not member of the employers association and the employers association shall be determined by a Labour Court on a reference by any party and no civil court, including a High Court, shall have jurisdiction over such disputes.

144. (1) The Central Government shall, by notification, establish a Labour Relations Commission to be known as the Central Labour Relations Commission.

(2) The State Government shall, by notification establish a labour Relations Commission to be known as the State Labour Relations Commission.

(3) There shall be established by the Central Government, by notification a National Labour Relations Commission for adjudication of any dispute which -

(a) involves a question of national importance or

(b) is of such nature that establishments or undertakings situated in more than one state are likely to be interested in or affected by such disputes.

(4) (i) The Central Labour Relations Commission and each of the State Labour Relations Commissions shall consist of a president and such number of other members representing labour and management as necessary provided that the number of members representing labour shall be equal to the number of members representing management.

(ii) The National Labour Relations Commission shall consist of a president and four other member of whom two shall be public administrators or economists, one shall be a representative of labour organisations and one shall be a representative of organisations of employers.

(iii) Subject to the other provisions of this code the jurisdiction, powers and authority of the Central Labour Relations Commission and the State Labour Commissions may be exercised by benches thereof.

(iv) (a) A bench shall consist of not less than three numbers of whom one shall be a judicial member.

(b) The president may discharge the functions of a judicial member of any bench.

(c) The president may for the purpose of securing that any case or cases which, having regard to the nature of the questions involved requires or require in his opinion or under the rules made by the Central Government, in this behalf, to be decided by a bench composed of more than three members, issue such general or special orders as he may deem fit; provided that every bench constituted in pursuance of this clause shall include at least one judicial member, one non-judicial member representing employers.

(d) The benches of the National Labour Relations Commission and the Central Labour Relations Commission shall sit at such places as the Central Government may by notification specify.

(e) The benches of the State Labour Relations Commission shall sit at such places as the state Government may by notification specify.

(5) (i) The president of the National Labour Commission shall be a sitting judge of the Supreme Court of India.

(ii) The president of the Central Labour Relations Commission or State Labour Relations Commission shall be a sitting or retired judge of a High Court.

(iii) The members of the National, Central and State Labour Relations Commissions shall be persons who have distinguished themselves in the field of economics, public administration, labour movement and management.

(6) (i) There shall be a National Judicial Commission.

(ii) The National Judicial Commission shall comprise of the Chief Justice of India and four other members nominated by the Chief Justice of India of whom two shall be judges of the Supreme Court and two shall be Chief Justice of High Courts.

(iii) The president and members of the National Labour Relations Commission and the Central Labour Relations Commission shall be appointed by the president of India on the recommendation of the National Judicial Commission.

(iv) The president and members of the State Labour Relations Commission shall be appointed by the Government of the State on the recommendation of the National Judicial Commission.

(v) The recommendation of the National Judicial Commission shall be binding on the president or the Governor, as the case may be provided that the Government has information in its possession that any person recommended by the National Judicial Commission is unsuitable for such appointment it shall make the information available to the Commission whereupon the Commission may reconsider its recommendation and make a fresh nomination for the appointment.

(7) (i) In the event of the occurrence of any vacancy in the office of the president of a Labour Relations Commission, the senior most member of the Labour Relations Commission shall act as the president until the date on which a new president is appointed in accordance with the provisions of this code to fill such vacancy enters upon his office.

(ii) When the president of a Labour Relations Commission is unable to discharge his functions owing to absence, illness or any other cause the

senior most member shall discharge the function of the president until the date on which the president resumes office.

(8) The president and members of a Labour Relations Commission shall hold office until they attain the age of seventy years.

(9) The president or any other member of the Labour Relations Commission may, by notice in writing under his hand addressed to the Central Government or the State Government, as the case may be, resign his office:
Provided that the president or other member of the commission shall, unless he is permitted to relinquish his office sooner by the Central Government or the Sate Government, as the case may be, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office whichever is the earliest.

(10) (i) The president, or any other member of the Central Labour Commission and a member of the National Labour Relations Commission may be removed from office by an order made by the president of India on the ground of proved misbehaviour or incapacity on the recommendation of the National Judicial Commission after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(ii) The president or any other member of a State Labour Relations Commission may be removed from office by an order made by the Government of the State on the ground of proved misbehaviour or incapacity by the National Judicial Commission, after an enquiry in which such president or member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(iii) The Central Government shall by rules, lay down the procedure for the investigation of misbehaviour or incapacity of the president or member referred to in sub section (i) and (ii).

(11) (i) The salaries and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the President and other members of the National Labour Relations Commission and the Central Labour Relations Commission shall be such as may be prescribed by the Central Government and those of the President and

members of the State Labour Relations Commission shall be such as may be prescribed by the State Government.

(ii) Neither the salary and allowances nor the other terms and conditions of service of the President or any other member shall be varied to his disadvantage after his appointment.

(12) (i) The National Labour Relations Commission shall have the powers exercisable by the Supreme Court under clause 3 of article 32 of the Constitution or in pursuance thereof.

(ii) No High Court shall have any power of superintendence over the Labour Relations Commissions.

(iii) No Court shall exercise any jurisdiction power or authority in respect of any matter subject to the jurisdiction power or authority of or in its relation to the Labour Relations Commission.

(iv) The Central and State Labour Relations Commissions will be deemed to be set-up under article 323B of the Constitution.

(13) (i) The president of a Labour Relations Commission shall exercise such financial and administrative powers over the Benches as may be vested in him under the rules made by the Central Government or, as the case may be, the State Government.

(ii) The president of a Labour Relations Commission shall have authority to delegate such of his financial and administrative powers as he may think fit, to any other member or officer of the Commission subject to the condition that such member or officer shall while exercising such delegated powers, continue to act under the direction control and supervision of the president.

(14) (i) The Central Government or, as the case may be, the State Government shall determine the nature and categories of the officers and other employees required to assist the Central Labour Relations Commission or the State Labour Relations Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

(ii) The salaries, allowances and conditions of service of the officers and other employees of the Central Labour Relations Commission or the State Labour Relations Commission shall be such as may be specified by rules made by the Central Government or as the case may be, the State Government.

(iii) The officers and other employees of the Labour Relations Commission shall discharge their functions under the general superintendence of the president.

(15) The Central Labour Relations Commission and the State Labour Relations Commission shall have the following functions, namely:

(a) certification of bargaining agents and bargaining councils;
(b) determination of the level at which collective bargaining shall be held;
(c) mediation of disputes which are not settled by collective bargaining and there is no agreement to refer the same to arbitration;
(d) adjudication of disputes which are not settled by collective bargaining, arbitration or mediation: Provided that in cases where the parties agree to arbitration of a dispute but are not able to agree upon an arbitrator the appropriate Labour Relations Commission may, on a motion by either party, get the dispute arbitrated by any member of the commission or by an arbitrator from out of a panel of arbitrators maintained by the commission for the purpose.

148.(1) The appropriate Government may, by notification constitute one or more Labour Courts for adjudication of disputes relating to any matter specified in Part-A of Schedule VIII and for performing such other functions as may be assigned to them under this code.

(2) A Labour Court shall consist of one persons only to be appointed by the appropriate government;

(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless -
(a) he is, or has been a District Judge or an additional District Judge, or
(b) he has, for not less than five years, held any judicial office in India, or
(c) he has, for not less than seven years been an advocate, or
(d) he has, for not less than three years been the presiding officer a Tribunal Constituted under any Central or State Act.

(4) No appointment of a persons possessing the qualification specified in sub-section (2) as presiding officer of a Labour Court shall be made except after consultation with the president of the Central Labour Relations Commission which has jurisdiction over the Labour Court if the appropriate Government for making such appointment is the central government and the president of the State Labour Relations Commission which has jurisdiction over the labour court if the appropriate government for making such appointment in the State Government.

(5) A Labour Court constituted under this session shall function under the overall supervision of the Labour Relations Commission concerned.

(6) If for any reason, a vacancy (Other than temporary absence) occurs in the office of the presiding officer of a Labour Court then the appropriate government shall appoint another person in accordance with the provisions of this code to fill the vacancy and the proceeding may be continued before the Labour Court from the stage at which the vacancy is filled.

(7) No order of the appropriate government appointing any person as the presiding officer of Labour Court shall be called in question in any manner.

149 (1) The Central Labour Relations Commission and the State Labour Relations Commission shall adjudicate relating to any matter except a matter which falls within the jurisdiction of a Labour Court an which is referred to it.

(2) The Labour Relations Commission shall have the jurisdiction and exercise all the power and authority exercisable in relation to an appeal against any order passed by the Labour Court.

(3) The National Labour Relations Commission shall have the jurisdiction and exercise all the powers and authority relating to an appeal against an order by the Central Labour Relations Commission.

(4) (a) Where the appeal is from an order of a Labour Court in relation to the legality or otherwise of a strike or lockout the same shall be preferred within fifteen days from the date of the order appealed against and the Labour Relations Commission shall decide such appeal within thirty days of the filing of such appeal.

(b) In other cases the period of limitation for an appeal under this section shall be sixty days: Provided that the Labour Relations Commission may if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the said period of sixty day permit the appellant to prefer the appeal within a further period of sixty days.

(c) No proceedings before a Labour Relations Commission shall lapse merely on the ground that any period specified in relation to the determination of such appeal by the Commission had expired.

(5) The Labour Relations Commission shall have the same jurisdiction and exercise the same powers and authority in respect of contempt of itself as a High Court has and may exercise and for this purpose the provisions of the Contempt of Courts Act,

shall have effect subject to the modifications that:

(a) The reference therein to a High Court shall be construed as including a reference to the Labour Relations Commission;

(b) the reference to the Advocate General in section 15 of the said Act shall be construed, (I) in relation to the Central Labour Relation Commission as a reference to the Attorney General and the Solicitor General or the Additional Solicitor General and (ii) in relation to the State Labour Relations Commission as a reference to the Advocate General of the State.

(6) (i) Where benches of a Labour Relations Commission are constituted the appropriated Government may, from time to time by notification, make provisions as to the distribution of the business of the commission, amongst the Benches and specify the matters which may be dealt with by each Bench.

(ii) If any question arises as to whether any matter falls within the purview of business allocated to a Bench of the Labour Relations Commission the decision of the president of such commission shall be final.

(7) The order of a Labour Relations Commission shall be executed in the same manner as an order or a decree of a court is executed.

(8) On the application of any of the parties and after notice to the parties, and after hearing such of them as may be desired to be heard, or on his own motion without such notice the president of the Labour Relations Commission may transfer any case pending before on e Bench for disposal to another Bench.

(9) All the decisions of the Labour Relations Commissions shall be taken on the basis of the opinion of the majority but shall be without prejudice to the right of the members to canvass their dissenting opinion if any in other cases.

155 (2) (a) In every establishment employing one thousand or more employees there shall be constituted one or more councils at the shop floor level and a council at the establishment level in accordance with the provision of the scheme.

(b) Each council shall consist of an equal number of persons to represent the employer and the employees,

(c) The appropriate Labour Relations Commission shall in consultation with the employer and after taking into account the following matters, namely:

(i) total number of workmen in the shop floor and the establishment;

(ii) total number of representatives of the employer in the shop floor or the establishment;

(iii) the number of level of authorities in the shop floor or the establishment;

(iv) the number of shop floors in the establishment; and

(v) such other factors as may be specified in the scheme: determine the number of persons who shall represent the employer and the employees in the Council or Councils.

(d) The persons to represent the employer shall be nominated by the employer in such manner as may be specified in the scheme.

(e) The persons to represent the employees shall be nominated by the recognised union, in case there is no recognised union the representation of the employees shall be elected by and from amongst the employees of the establishments by secret ballot as may be prescribed in the scheme. Provided that a persons representing the employees shall cease to be a member of the council when he ceases to be an employee in that establishment and the vacancy so carried shall be filled in such manner as may be specified in the scheme.

(f) The Chairperson of each shop floor council and establishment council shall be chosen from amongst the members thereof.

(g) The terms of office of the members of each council shall be three years from the date of the constitution of the council.

(h) The procedure to be followed in the discharge of their functions by and the manner of filling vacancies amongst the chairpersons and other members of the council shall be such as may be specified in the scheme.

(i) The councils shall meet as and when necessary but not less than four meeting of each council shall be held each year.

(j) Every council shall conduct its business in such manner as may be specified in the scheme; provided that in case where a matter under consideration is beyond the jurisdiction of

(i) a shop floor council, the said matter shall be referred to the establishment council

(ii) an establishment council in relation to a body corporate, the said matter shall be referred to the Board of Management. Provided further that in a case where the representatives of the employees fail to agree on any matter such matter shall be referred to the Board of Management.

(k) A shop Floor Council shall exercise such power and perform such functions as it may deem necessary in relation to matters specified in part A of Schedule IX.

(l) An Establishment Council shall exercise such powers and perform such functions as it may deem necessary in relation to matters specified in part B of Schedule IX, Provided that where no shop Floor Council is constituted the Establishment Council shall exercise such powers and perform such functions as it may deem necessary in relation to matters specified in part A of schedule IX also.

223. No Court other than a Labour Court or a Magistrate of First class shall try any offence under this Code.

224. (1) Where any money is due to an employee from an employer under a settlement or an award under the provisions of this code the employee himself or any other person authorised by him writing in this behalf, or in the case of the death of the employee his assignee or heirs may without prejudice to any other mode of recovery make an application to the Labour Court and if the Labour Court is satisfied that money is so due it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

280(1) (a) A Gram Nyayalaya shall be established for each village or for a group of villages having population of not less than one thousand for resolving disputes between one or more rural labourers and a rural employer or the Board or between one rural labourer and another elating to employment.

(b) The Gram Nyayalaya shall consist of a Panchayat Raj Judge and two other judges to be known as lay judges.

(c) There shall be a cadre of Panchayat Raj Judges and a Panchayat Raj Judge shall belong to that cadre.

(d) The Lay Judges shall be village level workers.

(e) A Panchayat Raj Judge shall possess the qualifications prescribed for appointment as of Magistrate, Civil Judge (Junior Division) or Judicial Magistrate (First Class).

(f) The Lay Judges shall have passed higher secondary or equivalent examination and be socially oriented.

(g) The qualification, the mode of appointment, term of office and other conditions of service of the Panchayati Raj Judge and other lay Judges shall be as prescribed.

(h) The jurisdiction of the Gram Nyayalaya and the procedure to be followed by it shall be as prescribed.

(2) (a) The appropriate Government shall appoint a liaison officer for each Gram Nyayalaya.

(b) The qualification, method of appointment, term of office and other conditions of service and functions of the liaison officer shall be such as may be prescribed.

(c) The function of liaison officer shall be to tour villages within his jurisdiction regularly to contact bonded and rural labour, to ascertain from them whether they are getting the benefits conferred on them law, to collect information about the implementation of law, to motivate the individuals and groups concerned to assert their right by having recourse to Gram Nyayalaya and to submit petitions to Gram Nyayalaya himself on their behalf.

(d) The *locus standi* of the liaison officer shall not be questioned by the party against whom legal action is initiated on the basis of his petition.

(3) (a) There shall be a Nyaya Panchayati in each block and it shall consist of three Panchayat Raj Judgest.

(b) The qualifications, method of appointment, term of office, conditions of service, jurisdiction and the procedure to be following by the Judges of the Nyaya Panchayat shall be such as may be prescribed.

(c) Any party aggrieved by the decision of the Gram Nyayalay may prefer an appeal to the Nyaya Panchayat. The decision of the Nyaya Panchayat shall be final.

(4) Subject to the provisions of sub-sections (1) and (3) of this section the provisions of section 112 to 153 shall apply to the workers and employers registered under this chapter.

**Scdedule-II: Matters to be provided in the Standing Orders**

**(See sub-section (1) of Section 27)**

(1) Minimum age for entry into employment;

(2) Method of filling vacancies;

(3) Medical examination;

(4) Scales or rates of wages including allowances;

(5) Hours of work, holidays and pay days; shift working attendance and late coming;

(6) Conditions of and procedure for grant of leave and holidays and the authorities who may grant the same;

(7) Social security benefits admissible, namely, medical benefit, sickness benefit, maternity benefit, dependents benefit or survivours benefits, provident fund or pension benefit, gratuity and similar other benefits;

(8) Leave travel concession and transport facilities;

(9) Entry into and exit from the premises, liability for search;

(10) Opening, closing and reopening of sections of sections of the establishment, temporary stoppages of work; and the rights and liabilities of the employer and the employees arising therefrom;

(11) Termination of employment and the notice thereof to be given by the employer as well as the employees;

(12) Acts of omission and Commission which constitute misconduct and the punishment that may be imposed for the same;

(13) Suspension;

(14) Transfers;

(15) Means of redress for employees against unfair treatment or wrongful exaction by the employer of his agents or servants;

(16) Any other matter which may be prescribed.

## Schedule VIII Part A

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The applications and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

## Schedule XI

29(1) The labour Court shall decide the following matters, questions or disputes, namely:

(a) Whether any person is an employee with the meaning of this Code or whether he is liable to pay the employees contribution or,

(b) the rate of wages or average daily wages of an employee for the purposes of this code, or

(c) the rate of contribution payable by the principle employer in respect of any employee, or

(d) the person who is or was the principal employer in respect of any employee, or

(e) the right of any person to any benefit and as to the amount and duration thereof, or

(f) any direction issued by the appropriate Board on a review of any payment of dependents benefits,

(g) any other matter which is in dispute between a principal employer and the appropriate Board, or between a principal employer and an immediate employer, or between a person and the appropriate Board or between an employee and principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Code, or any other matter, related to such question or dispute,

(2) Subject to the provisions of sub-paragraph (3) the following claims shall be decided by the Labour Court, namely:

(a) Claim for the recovery of contribution from the principal employer.

(b) Claim by a principal employer to recover contribution from any immediate employer.

(c) Claim against a principal employer;

(d) Claim for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; or

(e) Any claim for the recovery of any benefit admissible under this code.

* Former Additional Labour Secretary, Government of India

[1] Select examples of provisions in some labour laws in respect of administrative hierarchies to deal with disputes : Section 20 of the Apprentices Act, 1961 under which the apprenticeship adviser is empowered to decide a dispute between an employer and an apprentice, with a provision for an appeal against that decision to be preferred to the apprenticeship council. Section 39 of the Beedi and Cigar Workers (Conditions of Employment) Act 1966 under subsection (1) of which the Industrial Disputes Act, 1947 will

apply to matters arising in respect of every industrial premises, while under subsection (2) provision has been made for certain types of disputes between an employer and employee to be referred to a designated authority for settlement, with a provision for appeal to yet another designated authority for settlement, with a provision for appeal to yet another designated authority under sub section (3). Section 51 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 provides for appeal to the appropriate government against award of penalty by the Director General of the central government or chief inspector of the state government. Section 15 of the Contract Labour (Regulation and Abolition) Act, 1983 provides for an appeal to the state government against an order granting or refusing to issue or renew licence or an order registering authority or competent authority. Section 6 of Industrial Employment (Standing orders) Act, 1946 provides for an appeal to an appellate authority appointed by the appropriate government against the orders of the certifying officer. Section 11 of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 provides for an appeal to appellate officer nominated by the appropriate government against the order of registering and licensing officers. Section 7(7) of Payment of Gratuity Act provides an appeal against the order of a controlling authority to the appropriate government or such other authority as may be specified by it.

A variation of the above provisions can be seen in some laws where the law itself provides that an appeal against orders of the administrative authority will lie to the civil judiciary, as for example, section 17 of Payment of Wages Act, 1936, section 11 of Trade Unions Act, 1926 and section 30 of Workmen Compensation Act, 1923. It is interesting to note that such provisions occur in some of the earlier labour legislations that are extant now.

A further variation that can be pointed out is that in several cases the appropriate government may itself designate stipendency magistrates or a sessions judge as the appropriate authority to decide certain matters under the law or to be appellate authority. The pattern varies widely and it is not considered necessary to list out the details, Actwise or statewise.

[1a] Hereinafter after referred to as the Code.

[2] Extracts from the Code of the relevant clauses referred to are given at the end of the paper, as Annexure.

[3] Clause 148.

[4] Clause 144.

[5] Sub-clause 2 of clause 149.

[6] Sub-clause 3 of clause 144.

[7] Sub-clause 12(1) of clause 144.

[7a] These include:

1. the propriety or legality of an order passed by an employer under the standing orders;
2. the application and interpretation of standing orders;
3. discharge or dismissal of workmen including reinstatement of or grant of relief to workmen wrongfully dismissed;
4. withdrawal of any customary concession or privilege;
5. illegality or otherwise of a strike or lock-out; and
6. all matters other than those specified in the Third Schedule.

[8] Sub-clause 1 of clause 148.

[9] Clause 223.

[10] Sub-clause 1 of clause 224.

[11] See clause 280 of the Code.

## Annexure IV

## Draft

## The Small Enterprise (Employment Relations) Act

An Act to regulate employment relations in small enterprises.

1. (i) The Act may be called the Small Enterprises (Employment Relations) Act, 2002.
   (ii) It extends to the whole of India
   (iii) It shall come into force on such date as the Central Government may appoint.
   (iv) It applies to all establishments, be they manufacturing, mining, plantation, construction, service, transport and other enterprises and includes all hospitals and dispensaries, nursing homes, restaurants, eating houses, hotels, shops and establishments, charitable, and educational institutions, cooperatives, consultancy outfits, lawyers outfits and the like in any of which there are not more than 49 employees.

**Explanation:**

(a) The term 'employee' in the above subsection, will include all persons employed, including those who may be in managerial, administrative or supervisory positions.

(b) The term 'establishment' will include branches, sub offices etc. of the enterprise even if they are in different locations within a specified local area, so, however the total number of its employees does not exceed forty nine and the industrial units do not have independent statutory status under any law, such as Sales Tax law, Income Tax law, municipal law and so on.

2. Definitions: In this Act, unless the context otherwise requires:
   (i) 'Appropriate government' means the State Government or the Union Territory Administration in which the establishment is situated.
   (ii) 'Worker' means any person (including an apprentice) employed in any establishment to which this Act applies, including any person whose employment has been terminated, but does not include any person who is employed in a supervisory, administrative or managerial capacity.
   (iii) 'Hospital'
   (iv) 'Education institution'
   (v) 'Charitable or religious institution'
   (vi) 'Young person'
   (vii) 'Wage;
   (viii) 'Remuneration'

3. All workers in every establishment will have the following rights:-
   (a) Right to form themselves into unions or other organisation of workers.
   (b) Right to bargain collectively with employers/employers' organisations regarding terms and conditions of employment, and all other matters, procedural or substantive, arising out of their employment, including retirement benefits, disciplinary matters, etc.
   (c) Right to equal remuneration, i.e., equal pay for equal work, subject to the payment of a 'minimum wage'.
   (d) Right to social security.
   (e) Right to safe and humane conditions of work.
   (f) Right to education and training including opportunity for skill upgradation and professional advancement.

4. (i) Every existing establishment to which this Act applies will have to register itself within three months of the commencement of the Act. Every new establishment coming into existence after the commencement of the Act will have to apply for registration within one month of its coming into existence. The registration will be done by such authority as may be notified for the purpose by the state government/union territory administration concerned, which may also prescribe the form in which registration will have to be applied for and the scale of fees to be paid.

   (ii) The registration will be for a period of 5 years and the establishment can apply for renewal of registration for a further period of 5 years at a time, in the manner prescribed.

5. (1) Every employer in relation to an establishment, employing five workers and more, shall make regulations for the following matters, namely:-
   (a) Method of recruitment of and qualification for appointment and classification of workers
   (b) Procedure for resolution of employment disputes, including resources to Grievance Settlement Authority and to arbitration.
   (c) Any other matter as may be prescribed.

2. (i) Every employer of an establishment, to which this section is applicable, shall, within a period of three months from the date on which this Act becomes applicable to such establishment, establish a Grievance Settlement Authority (GSA) for such establishment.

   (ii) The GSA shall consist of not less than 2 and not more than 6 members, half of whom shall represent the employer and the other half representing the workers; the employer's representatives shall be nominated by the employer and workers representatives shall be chosen in the manner prescribed.

(iii) The term of office of members shall be two years and members will be eligible for reappointment on expiry of the term.

(iv) Each GSA shall be free to evolve its own procedure.

(v) All individual employment disputes, including termination of services, shall be heard and decided by majority by the GSA, and in case of tie, the matter will be left to the decision by the Chief Executive or the Head of the Establishment. Any workmen who is not satisfied with the final decision can opt for arbitration of the dispute, only in cases of termination of services, by an arbitrator, mutually agreed to by the workman and the employer. In case of disagreement on the choice of an arbitrator, from out of a roster of arbitrators that the appropriate government shall maintain.

6. In respect of collective disputes, pertaining to terms and conditions of employment, including wages and allowances, hours of work, safety and health, social security, education and training, welfare, etc, these matters, over and above what may be provided in the law, will have to be discussed and settled between the employers and workers representatives on the basis of collective bargaining. Such settlements may be at the level of individual establishment or a group of establishments in a specific area or specified activity, as may be agreed to by the parties. Such settlements will normally be for a period of three years unless parties agree to a lesser or longer period. The settlements will also provide or be deemed to have provided, an inbuilt clause for arbitration, by a specified arbitrator, of all disputes arising out of the settlement, including interpretation of the settlement. The arbitrator will remain unchanged during the currency of the settlement, excepting for unavoidable circumstances.

7. The bargaining agent on behalf of the employer or employers' organisation on the one hand on behalf of the workers and their representatives will be identified by the appropriate government in case there is no agreement between the parties.

8. **Safety, Health and Welfare**:

(1) The employer shall ensure that the work places are kept clean, well ventilated and well lit, free from dirt and harmful material; where such material is required to be used in the normal activity of the establishment, then its storage will be according to such specifications and restrictions as may be imposed by an appropriate public authority.

(2) The employer will also ensure that wastes and effluents are disposed of properly; for this purpose; it may be permissible for a group of employers to provide for joint disposal of waste and effluents, to the satisfaction of appropriate public authority.

(3) The employer individually or jointly with other employers nearby will make adequate arrangement for supply of potable drinking water and for provision of washing facilities, lavatories and urinals; where there are women workers, separate facility by way of urinals and lavatories will have to be provided for them; all these facilities must be within easy access to the workers.

(4) Safety provisions in respect of moving parts of machines, machinery in motion, hoist, lift, chains, ropes, tackles, etc, protective equipment for the head, eyes, feet, etc. will be as prescribed. It is obligatory for workmen to use protective equipment, as may be prescribed.

9. **Self certification by the employer**

(1) Every employer shall, at the beginning of each year, furnish before the 31st January of the year a certificate confirming that all requirements to safety, health and welfare have been fulfilled according to law and rules thereunder. The certificate will be sent by the employer to the designated authority by registered post, and acknowledgement due.

2. Inspection of establishments on a routine basis will be given up, to ensure that employer increasingly confirm to the legal provisions, voluntarily. However, where there are complaints of non-observance of legal provisions, inspections can and will be carried out, after notice to the employer and the employers organisation of which the concerned employer is a member. Even such complaints will be entertained only after efforts to get these complaints redressed by the employers association or workers organisation has not succeeded.

3. Where on inspection, the complaint is found to be genuine and the self certification is found to have been falsely given by the employer, the penalty provided will include simple imprisonment for a period upto 6 months, along with fine.

10. **Working Hours, Leave and Holidays:-**

(1) No worker will be allowed to work for more than 8 hours in a continuous shift in a day; however, there shall be a break of at least 30 minutes after continuous work for not more than 5 hours, in a shift; also, the total of eight hours work will be within a total spread over of not more than 10 hours.

(2) No women workers will be required or permitted to work in any establishment, between the hours of 8 PM and 6 AM unless there are at least four more women workers, working with her in the restricted hours and the employer has made adequate arrangements for their conveyance, safety and night stay, as may be prescribed.

(3) Where a worker is asked to work for more than 8 hours in a day, he/she shall be entitled to overtime wages at twice the normal rate for the excess period; however, no workers shall be required or permitted to work for more than 54 hours in a week or for more than 10 hours in a day.

(4) Every worker is entitled to one day of rest with full wages after every six days of work; this weekly holiday with wages will be decided in advance by the employer in consultation with workers.

(5) Every worker will be entitled, in addition to the weekly day of rest, four national holidays in a year namely, Independence Day (August15), Republic Day (January 26), Gandhi Jayanti (October 2) and one other day to be determined by the appropriate government after consultations with representatives of employers and workers organisations in the state/union territory. All such holidays will be with full wages.

(6) In addition, every worker will be entitled to leave with full wages at the rate of 20 days per year. The worker will be entitled to accumulate this leave with wages upto a maximum of 60 days. This leave can normally by availed of by the worker with the permission of the employer, after giving the employer reasonable advance notice of his/her intention to avail of the leave.

(7) In addition, each establishment will observe seven festival holidays in a calendar year with full wages to the workers; the exact day, of such holidays shall be decided in advance by the employer in consultation with the workers.

**11. Wages and Bonus**

(1) The wages and allowances to be paid to the worker will be on the basis of collective bargaining between the employer and the workers and will in no case be lower than the minimum rate of wages notified for the State/Union Territory as a whole.

(2) The employer will be responsible for prompt payment of wages to the worker before the 7th day of the succeeding month, without any unauthorised deductions. Authorised deductions will be as may be prescribed.

(3) Besides monthly wages, which may be paid by the day, week or month as decided by the employer in advance and notified to the workers, every employer will pay to every worker an annual bonus calculated at 8 1/3 percent of the wages earned by the worker during the previous accounting year; such bonus shall be disbursed within 3 months of the close of the accounting year. A worker who has worked for periods less than the whole accounting shall be paid bonus proportionately, so however no bonus is payable if the worker has worked for less than 3 months in the accounting year.

**Explanation**: Wages for the purpose of calculating bonus will include basic pay, retention allowance in case of seasonal establishments, dearness allowance, house rent allowance, and city compensatory allowance and no other allowance or payments.

12. Every employer shall exhibit in a prominent place in his establishment, in the local language, the working hours in the establishment, lists of holidays, wage period, annual leave, names of all workers with rates of monthly wages and allowance payable to each; each employer will also send an annual statement to the prescribed authority giving the above details with a certificate that the above provisions have been fully compiled with.

13. Employment of any person who has not completed fourteen years of age is prohibited.

14. (i) The following social security benefits will be provided to workers and in appropriate cases to dependent members of the worker's families which shall include the spouse, dependent children below the age of 18, dependent parents or parents-in-law.

(a) Medical care, to the worker and dependants.

(b) Employment Injury and Disability Benefit to the worker, on the scale prescribed in the Workmen's Compensation Act, 1923.

(c) Provident Fund to the worker or his nominee.

(d) Maternity benefit to women workers.

(e) Sickness benefit to the worker.

(f) Gratuity at the rate 15 days of wages for every year of service, provided that the worker has put in uninterrupted service for at least five years. (such gratuity also to be got insured)

(g) Pension at the rate to be prescribed, from time to time.

(h) Such other benefits including unemployment insurance as may be agreed upon by parties or as may be prescribed.

2. The above mentioned social security benefits will be provided from out of a funds which shall consist of contributors by the employer at the rate of 20 percent of the wages paid to the workers, by the workers at the rate of 13 percent of the wages received by them or accruing to them and a contribution of 2 percent of the wages by the State Government/Union Territory.

Note: (a) Wages for the purposes of this section will be as contained in explanation to Section 11(3).

(b) The implementation of the programme of social security will be on the lines that the Study Team on Social Security may propose.

15. (1) No employer shall dispense with the services of a worker who has been in his employment for less than 5 years, without giving such worker a 30 days notice in writing or wages in lieu of such notice and also severance compensation calcualted at fifteen days wages for each year of completed serviced. (Service for six months or more will be construed as service for a whole year). Where such worker has put in more than 5 years of continuous service, the severance compensation will be at the rate of 22 days wages for each year of completed service. Any dispute relating to termination of services of worker will be disposed in the manner described in sub clause (v) of subseciton 2 of section 5 above.

2. No notice or compensation would be payable to any worker if his or her services are terminated by the employer for proven misconduct. Any dispute arising out of such termination will again be subject to provision of section 5(2)(v).

16. (1) The State Government/Union Territory may by notification appoint inspecting staff consisting of a Chief Inspector of establishments, Joint/Deputy/Asst. Chief Inspector in such numbers as are considered necessary and by notification define their jurisdictions.

(2) The District Magistrate of the District, Chief Executive of the Zilla Parishad and Chief Executive of Nagar Palikas will also be inspectors (*ex officio*).

(3) The main functions of the inspectorate is to assist and advise the employers in the proper implementation of the provisions of the law and of bilateral settlements entered into by the parties. For this purpose, the inspectorate may encourage formation of bipartite area/regional committees consisting of employers and workers representatives; such committees, by their direct knowledge of the extent to which the provisions are being properly implemented or being flouted/evaded, will be in a good position to spread the message of best practices and also to talk to the recalcitrant establishments appropriately.

(4) Notwithstanding the above, the inspectorate will be free to inspect establishments on a random basis to check the correctness or otherwise of their self certifications, referred to in sections 9 and 12 above.

17. (1) Subject to provisions contained in subsection 3 of section 9, the penalties to be imposed on an employer for violation of any provisions of the law or rules framed thereunder will be a fine of Rs. 500/- per offence, going up to Rs. 2500/- per offence in the case of repeated offence.

(2) No court other than a court with powers of 2nd class magistrate will take cognisance of the complaint, which may be launched either by an inspector or an authorised representative of a Trade Union or Employers organisation.

(3) Fifty percent of the fines collected under this section will be credited to the Fund referred to in subsection (2) or section 14.

18. Miscellaneous:

(1) The provisions of this Act will prevail over any other legislation, in respect of employment relations in establishments covered by this Act.

(2) The State Government/Union Territory Administration will have the power to remove any difficulty that is faced in the implementation of this law; such power will however be available only for a period of three year for the commencement of the Act.

18. (1) Rules will be framed and notified by the appropriate government, after publishing the draft rules in the first instance giving a period of three months for interested parties to offer their comments, objections and suggestions all of which will be taken into account by the appropriate government before finally notifying the Rules.

(2) The Central Government may formulate model Rules under the law to provide guidance to the appropriate governments and to facilitate a measure of uniformity in the Rule in all States/Union Territories.

## Anexure V

## Draft Law on Wages

Whereas it is expedient to consolidate all legal provisions relating to wages to workers, it is hereby enacted on follows:

1. (i) This may be called the Wages Act.
   (ii) It extends to the whole of India.
   (iii) It applies to all establishments where there are workers inspective of the nature of activity that is carried on or the number of workers employed therein.

**Definitions**

2. In this Act, unless the context indicates otherwise:
   (a) Appropriate government
   (b) Employer
   (c) Worker
   (d) Wage
   (e) National Minimum Wage
   (f) State Minimum Wage
   (g) Remuneration

3. There shall be no discrimination between males and female workers in the matter of wages; and the principle of equal pay for equal work will be applicable to all workers under the same employer, in respect of work of same or similar nature.

   Where there is any dispute as to whether work is or same or similar nature, the matter will be decided by the appropriate government who may designate persons to decide the question.

4. The minimum wage payable to a worker will be without prejudice to the nature or the employment size of his establishment. No employer will be allowed to pay any worker a wage which is below the minimum wage notified by the State Government/Union Territory.

5. These shall be a minimum wage which the Central Government will determine and notify; the national minimum wage will be revised by the Central Government from to time and in no case less freequently than once in two years. In fixing national minimum wage, the Central Govenment will keep in view the conclusions of the India Labour Conference in its 15th Seesion as also decision of the Supreme Court of India in the case of *Raptakos Brett & Co.*

   The national minimum wage will be applicable throughout the country to every worker in employment, irrespective of the nature of the activity, and shall be notified as daily rate, weekly rate and/or monthly wage.

6. As in section 5 above, each State/Union Territory will also notify a state minimum wage which shall not be less than the national minimum wage; where considered appropriate, Sate/Union Territory may notify separate minimum wage for different regions of the State, so however that on state minimum wage is less than the national minimum wage.

7. The minimum rates of wages may consist of a consolidated wage or consist of basic pay, dearness allowance adjusted every quarter on the basis of 100 percent neutralisation to a cost of living index as may be prescribed and cash value of any food concession given to the worker.

8. Where a worker is employed on a job where payment is based on piece rate basis, the piece rate wages must be so fixed that the outputs by a normal worker in a 8 hour working shift will be enable the workers to earn the equivalent of a time related daily minimum wage that is notified. Where there is failure or inability on the part of the employer to provide the worker with work for all the 8 hours in a shift, the worker will be entitled to proportionate wages, subject to the condition that the piece rate wages paid to him is not less than 75 percent of the notified daily minimum wage.

9. In determining and notifying minimum rates of wages, both time rated and piece rated, the appropriate government may take note of the fact that home based work saves the employer the rent of the premises, lighting and other facilities and therefore add upto 10 persent of the notified minimum wage.

10. All wages to workers shall be paid in cash or credited, with the workers consent, to the workers bank account and where majority of workers in the establishment give their consent in writing wages may be paid partly in kind and partly in cash, so however at least two-thirds of the wage is paid in cash. The value of wages paid in kind will, in case of dispute, be determined by the appropriate government or its designation authority and its decision will be final.

11. All wages will be paid before the 7th day of succeeding month, in cases of monthly payments; where daily wage payments are made, it must be at the end of the shift, and in cases of weekly rated payments, it must be on the last working day of the week, i.e. before the weekly holiday.

12. There shall be no deductions made from the wages of the worker, except those as may be prescribed.

13. The burden of proof that all payments due to a worker has been made in full without any unauthorised deductions and on time will be on the employer. Where the presence of a worker is necessary to appear before a designation authority (as may be notified by the appropriate government) in respect of claim for unpaid wags, then the worker will be entitled to compensation from the employer for loss of wage incurred by him for

prosecuting his claim petition, unless the employer is able to satisfy the designation authority that the claim petition is unfounded.

No claim petition will be entertained unless it is filed within one year of the date on which the claim became due. Such petitions can be filed by the affected worker or by a trade union of which he is a member or by a group of workers.

14. Every worker must be issued an identity card indicating the name of the establishment, name of the worker, designation, details of wages and allowances to be paid and such other details as may be prescribed, in which entries must be made at the end of each wage period showing the amount of wages/allowances after authorised deductions, with the signature of the worker for having received such payments.

15. There shall be paid to every workers an annual bonus calculated at 8 1/3 percent of the wages earned by him/her during the previous accounting year, such amount to be paid within three months of the close of the accounting year. (Wages for the purpose of calculating bonus will comprise basic wage, dearness allowance, retention allowance, young, in case of occasional industries, house rent allowance, city compensatory allowance and no other allowance) Demands for bonus in excess of this annual bonus, either on the basis of profits earned in the accounting year or on basis of production/ productivity will be determined by collective bargaining between the parties, failing which by arbitration or adjudication as an industrial dispute, so however the total bonus including 8 1/3 percent, annual bonus shall not exceed 20 percent of the wages.

16. Removal or difficulties: Power to be with the Central Government, for a period of three year from the commencement of the Act.

17. The Central Government will have the power to make Rules.

18. Repeal and saving.

## Annexure VI

## Social Security – Key to Economic Reforms

**Sanat Mehta**

There is no declared policy on social security in India even after 54 years of independence. There are various schemes framed at various times in a piecemeal manner. This is a sad reflection both on governments and India Labour movement.

But after economic reforms, the lack of coherent social policy has created many hurdles in the implementation of reforms. It is a widely accepted fact that Thatcherism in U.K. had a smooth sailing in U.K., because of wide network of social security started since 1930.

### Profile of Working Population

According to the 1991 census in India, the ratio of working population to population was 38:62. The total number of working population at that time was 279 million. This had grown to 398 millions by 1995.

| Occupation | distribution of employment (In %) |
|---|---|
| Agriculture | 62 |
| Industry | 11 |
| Service | 27 |

As per 1991 census, there were 107 million cultivator and 74 million agricultural workers. In the agriculture sector, landless labour need social security most. I have submitted detailed separate paper on this. If these 74 million landless labourers are provided adequate social security, it will go a long way. As regards secondary sector, 28 millions i.e. 10.4 per cent are engaged in manufacturing, processing, servicing, etc., out of which household industry employed 7 million, whereas construction industry engaged 5 million.

As the study group on labour laws is concerned with the secondary sector, and so any reform in the present frame of labour legislation will attract the urgent need for social security. As percentage of workers employed in regular salary employment is small, it is not a daunting task. This requires only will to act and enforce.

### Employment Situation

Major hurdle in the implementation of reforms is unfavourable employment situation in the country. During the nineties, the economy indicated a GDP growth rate of over 6 per cent and employment growth decline as witnessed during the nineties has got to be reversed if

the reform process has any meaning to masses.

Unfortunately not only do we witness a decline in employment growth but we also find that after the introduction of reforms, casualisation of workforce is on the rise. Casual labour accounted for 31.2 per cent of labour force in 1998 and this has risen to 37 per cent in 1998.

As per report of the Task Force of the Planning Commission on employment opportunities, following picture emerges:

| Occupation | Employed Worker | | | Annual Growth Rate | |
|---|---|---|---|---|---|
| | 1983 | 1993-94 | 1999-00 | 1983-94 | 1994-00 |
| | Millions | | | Percentage | |
| Agriculture | 207.23 | 242.46 | 297.56 | 1.51 | -0.34 |
| Mines and quarrying | 1.76 | 2.70 | 2.27 | 4.16 | -2.8 |
| Manufacturing | 34.03 | 42.50 | 48.01 | 2.14 | 2.05 |
| Elec. Gas and WS | 0.85 | 1.35 | 1.28 | 4.50 | -0.88 |
| Construction | 6.78 | 11.68 | 17.62 | 5.32 | 7.09 |
| Transport, storage and communication | 7.39 | 10.33 | 14.69 | 3.24 | 6.04 |
| Trade | 19.22 | 27.78 | 37.72 | 3.57 | 5.04 |
| Community, Social and per. Services | 23.80 | 35.13 | 33.20 | 2.90 | 0.55 |
| Total employment | 302.76 | 374.45 | 397.00 | 2.04 | 0.98 |

Above table shows that there was some spurt notices in the initial period of reforms; but then growth in employment has tapered down. This is the aggregate picture. But as far as the main areas of employment are concerned, *viz.* agriculture and manufacturing, picture is not at all encouraging. The growth registered in sectors such as trade, transport and communication of course is noteworthy. In short, removal of restrictions on entry, high rate of foreign direct investment and end of permit licence raj have not made any noteworthy impact on employment situation in first decade of reforms.

Developing economies with their limited investable resources and relatively limited alternative employment opportunities, however, cannot easily afford their productive assets and labour force turning non-operational. The resultant loss of jobs, production and revenue are not easily absorbed.

**Problem of Growing Industrial Sickness**

In addition to adverse employment situation, another factor to be considered is the problem of growing industrial sickness in Public and Private Sector in India. The sick industry syndrome in India was an isolated phenomenon in 50s, 60s and 70s, restricted to few hundred units in one-two industry groups and restricted to one-two states only. However, as of March 1996, it is very widespread afflicting 2.64 lakh units in almost all industry groups spread all over the States and the Union Territories in India. This excludes 1.26 lakh non-existent and non-traceable SSI units with an outstanding bank credit of Rs. 240 crores (GOI 1996-97). These 2.64 lakh sick units employ about 55-60 lakh persons. The losses of 117 out of 240 Central Government undertakings are estimated to be Rs 5287 crores in 1983-84, employing 7-8 lakh persons – most of them terminally sick. Forty-nine public sectors units under the Department of Heavy Industry, Government of India, employing 2.03 lakh persons incurred an aggregate loss of Rs. 111.59 crores during 1997-95 compared to an aggregate loss of Rs. 239.6 crores in 1990-91. Out of these 49 public sector enterprises, 34 are loss making. Two hundred twenty-eight public sector enterprises under the Department of Public Enterprises, Government of India, employing 20.5 lakh persons includes 57 chronically sick units, which are registered with Board of Industrial and Financial Reconstruction (BIFR). The losses of the Departmental Commercial Undertakings of the 25 States and 7 Union Territories are Rs. 1780 crores in 1995-96. In addition, the losses of the State Electricity Boards and State Road Transport Corporations are over Rs. 5000 crores. About 875 State-level Public Enterprises incurred a loss of Rs 863 crores in 1991-92. According to Comptroller and Auditor General Report, there are around 500 enterprises owned and operated by the State Governments which have a cumulative loss of over Rs 2000 crores, against a paid up capital of Rs 2300 crores (Bajaj Committee, 1992)

The aggregate scene of industrial sickness in public and private sector in India amounts to a magnitude of around 2.75 lakh units (a very large number of them terminally sick) with total losses of about Rs 31,000 crores and employing about 7-8 million people. Thus, the industrial sickness in India is of massive proportion, which is eating into the vitals of the economy, making it non-competitive in the world market.

In India, firms are a *de-jure* partnership between an industrialist, government and financial institution, but *de facto* labour is= also a partner. When the industrial unit is healthy, each factor of production and all the four partners continue to get their dues, then there is hardly any problem in all industrial units. However, when the industrial units become weak and sick, particularly terminally, the industrial relations scene deteriorates and the conflict increases

because the interest of the *de facto* partners i.e. government financial institutions, industrialist and the labour in the unit, do not converge rather diverge. They all pull into different directions. Each wants to maximise its advantage in this situation at each other's cost. The industrial conflict is at the peak in a falling unit or industry. In weak and sick units profitability and productivity decline. Net worth is eroded. There is default on debt payment. The statutory payments like provident fund, ESI dues, excise, electricity dues, bank dues etc., are not paid regularly. The most important issue concerned in the context of sick units is dealing with the workers who might be displaced if the firm cannot be revived.

**Restructuring, Revival and New Technology**

With such syndrome of industrial sickness, in 1991 we rightly decided to end permit and licence raj so as to make our industries more competitive and productive. But no one ever attended the work of revival of sick industries and restructuring of running industries so as to enable them to absorb new technology seriously.

When Shri Manmohan Singh introduced economic reforms, he took two major policy decisions in 1992 budget. First was to refer sick and loss-making Public Sector Units to BIFR. Second was to provide safety net to workers affected by restructuring through formation of National Renewal Fund. But after years, it was found that out of 23 PSUs referred to BIFR, revival schemes for only 7 PSUs were under implementation; others were allowed to languish.

NRF was formed with the aim of providing safety net and social security to industrial workers who became jobless because of reforms. They were promised retraining and reallocation. They were promised new jobs through employment generation schemes. But, NRF with such high ideals was scuttled by bureaucratic interference. If it was pursued with vigour and sincerity, it would have laid foundation for social security and safety net.

With a result, out of NRF since inception and during 1993-98 period Rs 1819.03 crores were spent on various NRF schemes, the bulk of which (89 per cent) was accounted for VRS packages that 1,00,204 public sector employees opted for it. By the end of 1997, another 1.17 lakh were offered VRS by PSUs out of their own resources. Retaining and reallocation remained a mockery, while employment generation scheme remained on paper. Only 1494 workers were extended counselling during this period. And seeing such performance and the fate of NRF, private sector also accepted VRS or Golden handshake as under of the day.

Slowly NRF was given unceremonial burial and in 1998 Finance Minister in his budget speech liberalised VRS package and proved that NRF is given a go by and VRS became panacea. In addition to liberalisation of VRS package, Finance Minister said:

> "55. A separate Restructuring Fund is being constituted for this purpose and these Public Sector Enterprises will be advanced funds from the budget to offer a compensation package to the workers. Once the labour is separated, the assets of the company will be available for disposal at the best economic price. The proceeds of the disposal after settling all pending liabilities, will be credited to the Restructuring Fund, which get recouped to that extent. This would enable the fund to operate on at least partially self-sustaining basis and it is expected that, in the course of time, budgetary support for the fund will gradually diminish."

One has yet to find out the result of this separate Restructuring Fund as it has hardly made any start.

With all said and done in the name of safety net, socially security and structural adjustment, the net result was increase in losses of PSUs. Losses of PSUs in recent three years have increase from Rs 148.3 crores in 1997-98 to Rs 498.2 crores in 1998-99 and to Rs 918.9 crores in 1999-2000.

What is more worrying is the non-payment of statutory dues of the workers. According to reports, PSUs owe almost Rs 1770 crores (17,700 millions) in arrears to over two lakh employees in 68 Corporations. Out of Rs 1770 crores, Rs.1477.46 crores are statutory dues unpaid for several years.

**Story of turn round Strategy of Closed Textile Mills**

Textile industry was a major employment provider in organised sector. It provided employment to 11.69 lakhs in 1980, prior to commencement of sickness. It was in grip of sickness prior to reforms. As it covered both private and public sector, it is worthwhile to have a look at the history of its turn round efforts.

Eight out of nine subsidiary corporations of National Textile Corporations were referred to BIFR in 1992-93. When financial institutions expressed reluctance to accept and fund modernisation under turn round strategy approved by Govt. Of India in 1992, four Textile Research Associations in 1993 were asked to draw up new turn round strategy. Later on, special Tripartite Committee for NTC was formed by Union Labour Ministry and unanimous agreement was reached on 9-4-1994. GOI approved this on 9-5-1995. Same was placed before BIFR in May 1995. BIFR found the package not viable and issued winding up notices to some subsidiaries of NTC.

Thus, the turn round package remained on paper and finally on 3-3-1997, Textile Minister stated in Lok Sabha that implementation of the package is not possible because of refusal by Govt. of Maharashtra to allow sale of land for turn round.

Same was the position of closed textile mills in private sector. In Ahmedabad some closed textile mills were taken into liquidation. Legal dues, which include gratuity, retirement compensation as per Act, bonus, salary, etc. amounting to Rs 346.10 crores without interest had remained unpaid as on 16-10-1997.

Recently, liquidator of Gujarat High Court sold machinery, building and other assets except land and recovered some money. These mills had closed down between the period 1986 and 1998. After long legal battle, 38,374 workers were allotted Rs 26.93 crores against their legal dues of Rs 269.43 crores by Gujarat High Court. Workers got only 10 per cent of their dues, that too after 13 to 35 years. Plight of textile workers of Ahmedabad, who had struck work for three and a half months during Quit India Movement in 1942, is miserable. As freedom fighters, they got only unemployment as a gift in 50th year of freedom.

In 1992, the then Finance Minister Shri Manmohan Singh referred certain loss-making PSUs to BIFR for turn round. Recently, Government has decided to give burial to BIFR and it is going to be replaced by Tribunal under new Act.

Let us have a look at the tract record of BIFR. It was formed in 1985. As per report, as on 31 March 2001, total 3400 companies were registered with BIFR for revival. Out of this, 2100 crores have been disposed of and cases of 1275 companies employing 8 lakh workers have remained undecided. Aggregate losses of the companies, whose cases are decided, are to the tune of Rs. 25,330 crores, whereas losses of the companies whose cases are pending are to the tune of Rs 32,220 crores.

Government and BIFR keep the accounts of losses and net worth of the companies registered with it for turn round, but no one keeps record of the plight of the workers involved.

The data proves that workers remain mute and helpless spectators for 20 to 35 years.

**Story of Disinvestment**

Disinvestment was considered as another useful instrument of restructuring loss-making PSUs in liberalised economy. In the initial period of reforms, it was announced that money earned out of disinvestment will be used for turn round of loss-making PSUs. Some money will also be put in NRF. But history of disinvestment has proved to be a failure.

Between 1991-92 to 1999-2000, i.e. in nine years of liberalisation, against the target of Rs 44,300 crore, in reality only Rs 18,393 crore was generated out of disinvestment – hardly Rs

2000 crore per annum. It is a fact that nothing much is achieved either in turn round of loss making PSUs, or not much is contributed to NRF.

Latest position of disinvestment indicates that as against the target of Rs 10,000 crores in 2000-2001, only Rs 1,868 crores are collected. Not one of 27 PSUs cleared for disinvestment this year has been privatised. On the contrary, Market Value of PSUs has eroded. VSNL's value has plunged by Rs 24,290 crores in the past 18 months.

In the early years of liberalisation, Disinvestment Commission was appointed under the chairmanship of senior bureaucrat Shri G.V. Ramakrishna. The Commission had recommended that the money generated from the disinvestment be placed in a separate fund for the benefit of the poor and affected workers. But such recommendations were not accepted and Commission itself was wound up. If it had done so, it would have gone a long way.

- For instance, an amount of Rs 5,000 crore could have been given for voluntary retirement and social safety net of the workers.
- Another Rs 3,000 crore could have been given for building rooms for primary schools in villages. Ten thousand new school buildings could have been constructed. Thousands of school premises are at present in a rundown condition, calling for new construction for which the government says it has no money.
- A sum of Rs 10,000 crore could have been set apart for housing construction for the deprived. Some 30 to 40 lakh houses for such people could have been built.

  But not doing any of these, what a huge opportunity of doing public good for the benefit of the poor has been squandered away.

The claim that the money created by disinvestment has been used for village development and agriculture is untenable. The economic survey for 1999-2000 says on page S 47 that development expenditure on such matters has in fact gone down.

**Present crisis**

Thus, all the opportunities of restructuring of industries were lost, with the result that liberalisation with human face lost its human face. Now at present rate of economic growth has slided down, industries are in recession.

After economic reforms it was hoped that our industrial growth will become faster and industries will become more competitive. But after a decade it has remained only a pipe dream.

Leave apart the talk about loss-making PSUs. Recent reports have indicated that top ten industrial firms – ESSAR Steel, Daewo Motors, Lloyds Steel, Mangalore Refinery and Telco

have emerged as the top five loss-making private companies during the first quarter of 2001. Arvind Mills, Core Healthcare, CSSE, Huges Tele.com. and Mahendra are among top ten loss-making companies whose cumulative losses amounted to about Rs 900 crore during April-June 2001. One can add companies like GSFC, GACL also in this list.

As regards new employment in private sector, news indicate the same pattern. Latest news have indicated that twenty three companies of manufacturing sector have cut their workforce by a whooping 40,000 in the last two years amounting to almost 16 per cent of their total workforce. These 23 companies account for 17 per cent of the total sales of private manufacturing sector in 2000-2001. These companies include two Tata Group Companies, Bajaj Auto, Voltas, Philips India, ABB and Zuari Industries and many others. According to analysis made by one research bureau, this employee rationalisation measures have not impacted the bottom line growth of these companies.

**Latest move by Finance Minister**

Against the above-mentioned situation with regard to unemployment, industrial sickness, dismal failure in providing promised safety net, restructuring of industries, unsuccessful attempts of disinvestment policy and recent recession of industries, Finance Minister in his latest budget speech (2001-02) mentioned about removing rigidities in our labour legislations. He said "Some existing provisions in the Industrial Disputes Acts have made it almost impossible for industrial firms to exercise any labour flexibility. The Government is now convinced that some change is necessary in this legislation regarding Contract Labour Act. Of course, he promised protection in terms of health, safety, welfare, social security, etc. Simultaneously he also proposed Ashraya Bima Yojana to meet short-term impact on organised labour force of the on-going liberalisation of the economy.

**Inform, Consult, Impose**

After this budget announcement, organised labour in the country is up in arms against such unilateral decision by passing Indian Labour Conference and Labour Commission. Reasons are obvious.

Though labour has accepted VRS in many units, but experience indicates that VRS has neither resulted in any long-term social security nor after VRS, employees have been able to find any alternative work. Industries are affected by recession. Rates of interest on Provident Fund have been decreased from 12 per cent in 1999 to 9.5 per cent in 2001. Similarly, rate of interest of Post Office Monthly Income Scheme has been reduced from 13 per cent in 1999 to 9.5 per cent in 2001. Same is the position of interest of Kishan Vikas Patra which was 13.43% in 1999 is slashed to 9.5 per cent in 2001. With the collapse of US 64 Scheme of Unit Trust of India and collapse of some urban Co-op. Banks, workers do not find any safe investment options of the VRS.

As against such attitude of Finance Minster, it is worth mentioning that the other day in a recent speech on the future of the European Union, Lionel Joseph, the French Prime Minister, argued that after a decade in which EU's emphasis had been on building single market, it was time to concentrate on 'social Europe'. And so, Council of Ministers of EU had an agreement on a new directive, strengthening the obligations on European firms to 'inform and consult workers' representatives about company strategy (Economist 16: June 2001).

It may be noted here that even without this new directive, European Law already obliges multinational companies to consult workers about certain corporate actions – for example, mass layoffs.

It is pity that in India some multinational are demanding free hand in retrenchment and layoffs in the name of rigidity of labour laws.

Therefore, after a decade of all such experiences and experiments in India, one will have to come to the conclusion that only way out is first to have a sound, coherent social security scheme both for organised and unorganised workers.

If after introduction of NRF in 1992, India had seriously followed its aims and objectives, within 5 years it would have led to a firm social security policy with simultaneously implementing retrenching, reallocation and employment generation, the picture today would have been altogether different.

Lack of coherent approach and piecemeal solutions have turned Indian Labour anti-reforms. This is now a very dangerous situation.

What should policy-makers do? It is clear that time is fast passing for introducing unemployment insurance and contributory social welfare schemes that provide safety net for those who lose their means of livelihood for no fault of their own; or for those who go into retirement without pension plan. And before any one argues that poor should be taken care of before suddenly distressed middle class citizens of this land, let us be clear that such schemes have not been evolved out of public funds. Employees and the firms who hire them should be obliged to make a social security contribution, as in other societies, and this should be administered as a fund for the benefit of contributors. Some one might also argue that we already have the Provident Fund and Gratuity Schemes, but these are clearly inadequate for today's situation. There are plenty of social security models to copy from, around the world, and it should not be difficult to find one that best suits Indian situation.

**Social Security package – A precondition**

At present employees working in public sector and private sectors industries are covered under the following social insurance as well as employees liability schemes.

ESI Scheme for health insurance

Scheme framed under the Employees Provident Fund Act

Workmen's Compensation Act, 1961 for accidents and disability

Maternity Benefit Act, 1961

Paymentr of Gratuity Act, 1971

Industrial Disputes Act for terminal benefits.

There was time and again talk about unemployment insurance/allowance scheme at various foras but no headway has been made.

In addition to the above benefits, many of the organisations have various schemes, such as in banks, hospitalisation expenditure is reimbursed and there is an accident insurance. Many of the PSUs and well-organised industries also have such schemes. Some of them give educational benefits, HBAs, Vehicles Allowances, etc.

All said and done, the cost of all social security schemes as per the study of ILO was only 0.3 percent of GDP in Indian between 1987 and 1989. As per latest study of ILO, average social security receipts and expenditure per head (in US Dollars) in India is: Receipts $ 5.2 and total expenditure $ 1.60 and on benefits the expenditure is 1.40 dollars, whereas in Shri Lanka it is $ 36.60, $ 13.80 and $ 13.60 respectively and in Pakistan, it is $ 7.40, $ 6.40 and $ 6.20 respectively while in Malayasia it is $ 291.00, $ 103.40 and $ 100.2 respectively. Though latest figures are not available, there is not much variation in the last decade.

Apart from low expenditure in India, coverage is also limited. First and foremost is to effect extension of medical care and sickness benefits as well as benefit of P.F. , Gratuity to all employees without salary limits.

At present the rate of old age and disability pension in nearly all pension scheme is 50 percent of the last salary drawn which is adequate but rates of compensation under Workmen's Compensation Act or ESI Act should be suitably raised so that if the said amount is deposited in fixed deposits and interest earned should amount to 50 percent of last drawn salary.

Funding of schemes is a very important aspect. In India, pension scheme for government employees which is in vogue since the days of British Government is also now facing financial crisis. Government of India is likely to introduce contribution by employees. So regarding funding of Pension Schemes for salaried employees, it should be on the basis of social insurance principles, *i.e.* workers and employers should contribute. In addition to this,

a government wedded to social justice should also make available funds from its revenues so as to guarantee minimum pension. Funding by the workmen only, is against the basic principles of social security enshrined in ILO Conventions.

Regarding compensation in the case of injury benefits, the employers should continue to fund the expenses.

Even after such mode of contribution is decided, the management and administration of scheme is vitally an important aspect.

ESI Corporation is a glaring example. In spite of sizeable contribution made by both employers and employees, both are dissatisfied with its administration. Some of the industries who exempted them from ESI have proved that in the same amount they are able to create more satisfaction. Similarly, privatisation of ESI hospitals also is no solution.

Firstly, ESI Corporation should be autonomous in true sense. At present it is considered tripartite and autonomous, but in reality it is under full control of the Ministries of Labour and Finance. This should be ended forthwith. Most strange phenomenon is the control of Finance Ministry, although Govt. of India does not contribute any fund to the Scheme.

The Corporation should be fully autonomous and should be answerable to the Parliamentary only. It should be decentralised and funds should flow directly to the State-level subsidiary Corporations. Govt. of India should also contribute, as it is a social security aiming at health care of the working class.

Corporation has amassed huge reserve funds to the tune of Rs. 4810 crores and so if made autonomous, and run effectively, it can manage better using modern methods of management and IT facilities.

Same applies to the management of Provident Fund. There are at present three different schemes. It has a corpus of Rs 94,000 crores. But, management is not autonomous. Interest on PF is decided by Finance Ministry. Recently Finance Ministry reduce it interest rate from 12 to 11percent, even though EPF organisaiton had recommended 12 percent. Even the date of implementation of reduced rate suggested by Labour Ministry was rejected by Finance Ministry.

Benefits of Workmen's Compensation Act and Maternity Benefit Act can be merged with ESI benefits. But this can succeed only if funds of ESI Corporations are converted into corpus and management has been made autonomous, as suggested earlier.

In case of evolving a good Pension Scheme, recommendations made by Workshop on Reform of the Private Pension and Provident Fund System and EPFO are worth consideration. This Workshop was organised by Asian Development Bank and Deloitte

Touche Tohmatsu. Workshop has envisages comprehensive Pension Reform by 2003.

In case of payment of gratuity, Gratuity Act was amended by Act 22 of 1987, but it has not been notified for implementation so far. This should be implemented forthwith. This will create new climate in case of regular payment of gratuity.

It is absolutely necessary, particularly after Economic Reforms, to have unemployment Insurance Scheme by ordinance, in view of large-scale retrenchment – whether voluntary or otherwise. VRS cannot be accepted as an alternative to the Social Security. Various studies on the effects of VRS have also proved the same. In addition to this, social security, to already retrenched employees should be made.

To these employees, benefit should be so devised that existing workers are ensured benefit at 50% of the last salary drawn. For those who have lost jobs because of restructuring of economy since 1991 can be given such pension at higher rate than 50 percent.

As a special Sub-Group on Social Security is formed by Commission, detailed recommendations are not made here.

The above suggestions are made as a package. Such package should be considered as a pre-condition for any reforms in the existing provisions of Labour Laws.

## Annexe VII

### Administration

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| 177. | There shall be constituted by notification, a tripartite machinery for regular consultation regarding labour policy, labour legislation, labour welfare programme and related matters, by the central Government, consisting of<br>(i) a general conference of the members which shall be called the Indian Labour Conference;<br>(ii) a Standing Committee of the Indian Labour Conference;<br>(iii) the secretariat of the Indian Labour Conference. | **Tripartite Consultation Machinery.** |
| 178. | (1) The Indian Labour Conference shall consist of the Minister for Labour in the Central Government as Chairman and Secretaries to the Government of India in such concerned ministries as may be prescribed, the representatives of each state Government, thirty persons to represent employers and thirty persons to represent employees as members;<br>(2) The meeting of the Conference shall be held once every year<br>(3) Membership of the Conference representing the employers and employees shall be in accordance with such rules as may be made after consultation with the members.<br>(4) Notwithstanding anything contained in Sub-Section (3) in the first constitution of the Conference representatives of the organisations of the employers and employees shall be nominated by the Central Government on the recommendation of the respective organisations as may be considered representated by the Central Government.<br>(5) Each member may be accompanied by advisers not exceeding two in number.<br>(6) Organisations of employers and employees who are not represented in the Conference and other institutions and organisations working in the field of labour may, subject to the approval of the President of the conference send observers to the conference, so however, the observers will have no right to participate in the discussions in the Conference, except with the permission of the President of the Conference for the time being; | **Indian Labour Conference.** |

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| (7) The procedure of the Conference shall be regulated by such rules as may be made after consultation with the members thereof.<br>(8) The conference shall-<br>a. review the labour situation in the country;<br>b. consider the Convention and Recommendation of the International Labour organisation for adoption;<br>c. consider the legislative proposals of the Central Government before they are moved in the Parliament;<br>d. provide a forum for consultation on the items of the agenda of the International Labour conference and other meetings connected therewith and hearing of complaints regarding violation of the rights of labour;<br>e. review the implementation of the conventions and recommendations of the International Labour Organisation, Directive Principles of the Constitution concerning labour and the provisions of this code and other labour laws;<br>f. review the implementation of the programme drawn up by the Central Government for the benefit of labour;<br>g. coordinate the conclusions and recommendations of the State Labour Conference;<br>h. review the implementation of its own recommendations;<br>i. adopt such resolutions and make such recommendations as it may deem necessary;<br>j. and so such other things as may be decided in the Conference itself;<br>(9) The agenda of the Conference shall be prepared by the Standing Committee.<br>(10) The Central Government shall, within a period of two years from the closing of the last session of the Conference, lay the recommendations of the Conference before Parliament with a statement of action taken thereon. | |
| 179. (1) The Standing Committee of the Indian Labour Conference shall consist of the Minister of Labour in the Central Government as Chairman and not more than four secretaries to the Government of India in such concerned Ministries as may be prescribed, persons to represent state governments by rotation, ten persons to represent employers and ten persons to represent employees as members thereof; | **Standing Committee** |

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| | (2) Members representing state Governments, employers and employees shall be such as may be prescribed on the recommendation of the Conference.<br>(3) The Standing Committee shall meet as often as required at intervals not exceeding six months.<br>(4) The procedure of the Committee shall be prescribed on the recommendations of the Committee.<br>(5) The Committee shall consider proposals of policy and programmes of urgent nature which cannot await the meeting of the conference. | |
| 180. | (1) There shall be a Director-General of the Indian Labour Conference who shall be appointed by the Central Government.<br>(2) The Director General shall have the assistance of such other staff as may be required.<br>(3) The functions of the Director-General shall include-<br>a. collection and distribution of information relating to conditions of work and life of labour;<br>b. examination of the subjects which are proposed to be brought before the Standing Committee and the Conference;<br>c. conduct of such special investigations as may be ordered by the Standing Committee and the Conference.<br>d. preparations of the proceedings of the Conference and the meetings of the Standing Committee and issues thereof;<br>e. editing and issue of publications in English, Hindi and other regional languages, dealing with problems of labour; | **Director General.** |
| 181. | There shall be constituted, by notification a national tripartite committee for considering the problems relating to each of the activities ad may be specified by the Indian Labour Conference with a bearing on the conditions of labour employed therein;<br>(i) The composition and procedure of he Committee shall be such as may be prescribed on the recommendations of the Conference.<br>(ii) The committees shall consider the state of-<br>(a) employment;<br>(b) labour relations;<br>(c) safety and health;<br>(d) living conditions of labour and | **National Tripartite Committee.** |

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| | (e) technological developments affecting labour in the respective activities and make appropriate recommendations for improving the conditions of the labour and for development of the activity. | |
| 182. | (1) There shall be a tripartite machinery for regular consultation regarding labour policy, labour legislation, labour welfare programmes and related matters, in each state<br>(2) The machinery shall consist of<br>(i) a General Conference of representatives of the members which shall be called the state Labour Conference;<br>(ii) a Standing Committee of the state labour Conference;<br>(iii) the Secretariat of the state Labour Conference;<br>(3) The composition, the method of appointment and the terms and conditions of appointment of the members of the state Labour Conference and the Standing Committee of the Conference and the Secretariat of the Conference, their functions and their procedure shall be such as may be prescribed on the lines of Tripartite Machinery referred to in Section 177 by the state Government; State Tripartite Machinery | **State Tripartite Machinery** |
| 183. | (1) There shall be established a National Council of Employment;<br>(2) The Council shall be a body corporate.<br>(3) The body shall be tripartite in character and shall include persons who have made notable contribution in the fields of economics, employment, manpower planning and other related subjects.<br>(4) The composition, method of appointment, terms of office and other conditions of service of the Chairman Vice-chairman and members of the Council shall be such as may be prescribed by the Central Government.<br>(5) The functions of the National Council of Employment shall be to advise the appropriate Government on-<br>a. the development and adoption of an employment policy designed to promote full productive and freely chosen employment;<br>b. co-ordination between employment policy and the overall economic and social policy and development programmes;<br>c. assessment of the incidence of unemployment and under employment and the measures that may be taken for relief of the unemployed and underemployed; | **National Council of Employment.** |

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| 185. | (1) There shall be established, by notification, State Board of Employment in each state.<br>(2) The state Board shall be a body corporate.<br>(3) The state Board shall be tripartite in character and shall have persons who have made notable contribution in the field of economics, employment, unemployment, manpower planning, statistics and other related subjects.<br>(4) The composition, method of appointment, term of office and other conditions of service of the Chairman Vice-chairman and members of the state Board shall be as prescribed by the appropriate Government.<br>(5) The functions of he Central and a state Board of employment shall be to;<br>(a) operate the employment service;<br>(b) administer the short term employment programmes;<br>(c) administer unemployment relief;<br>(d) prepare manpower budget and execute the same; and<br>(e) do all other things incidental to the above. | **State Boards of Employment.** |
| 186. | The Central of the state Board shall exercise such administrative and financial powers as may be prescribed by the appropriate Government. | **Power of the Boards.** |
| 187. | (1) There shall be established, by notification, a National Council of Vocational Training and Guidance.<br>(2) The Council shall be a body corporate.<br>(3) The Council shall be tripartite in character and shall have persons who have made notable contributions in the field of vocational training and guidance.<br>(4) The composition, method of appointment, term of office and other conditions of service of the Chairman, Vice-Chairman and members of the Council shall be such as may be prescribed by the Central Government.<br>(5) The functions of the National Council shall be to advise the appropriate Government of the –<br>i) development and adoption of appropriate comprehensive and coordinated policies and programmes of vocational guidance and entrepreneurship development, management training and training for self-employment;<br>ii) development and adoption of complementary systems of general, technical and vocational education;<br>iii) Co-ordination of the programme of vocational guidance and vocational training with other policies and programmes of social and economic development such as employment promotion, social integration, rural development, development of arts and crafts, adaptation of methods and organisation of work to human requirements and improvement or working conditions. | **National Council of Vocational Training and Guidance.** |

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| | d. promotion of employment overseas;<br>e. development of short-term employment programmes;<br>f. Employment Market Analysis and manpower planning;<br>g. prevention of discrimination in employment;<br>h. reservation for the Scheduled Castes, Scheduled Tribes, backward classes and other specified categories of persons; and<br>i. related matters. | |
| 184. | (1) There shall be established, by notification, a Central Board of employment.<br>(2) The Central Board shall be a body corporate.<br>(3) The Central Board shall be tripartite in character and shall included persons who have made notable contribution in the fields of economics, employment, unemployment, manpower planning, statistics and other related subjects.<br>(4) The composition, method of appointment, term of office and other conditions of service of the Chairman Vice-chairman and members of the Council shall be such as may be prescribed by the Central Government.<br>(5) The functions of the National Council of Employment shall be to advise the appropriate Government on-<br>(a) the development and adoption of an employment policy designed to promote full productive and free chosen employment;<br>(b) co-ordinate between employment policy and the overall economic and social policy and development programmes;<br>(c) assessment of the incidence of unemployment and under employment and the measures that may be taken for relief of the unemployed and the underemployed;<br>(d) promotion of employment overseas;<br>(e) development of short-term employment programmes;<br>(f) Employment Market Analysis and manpower planning;<br>(g) prevention of discrimination in employment;<br>(h) reservation for the Scheduled Castes, Scheduled Tribes, backward classes and other specified categories of persons; and<br>(i) related matters. | **Central Board of Employment.** |

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| 188. (1) There shall be established, by notification, a Central Board of Vocational Training and Vocational Guidance and a state Board or Vocational Training and Vocational Guidance in each state.<br>(2) The Central Board or a state Board shall be tripartite in character and shall include persons who have made notable contribution in the field or vocational training and vocational guidance.<br>(3) The Central Board or a state Board shall be a body corporate.<br>(4) The composition, method or appointment, term of office and other conditions or service of the Chairman, Vice-Chairman and other members of the Central Board or a state Board shall be such as may be prescribed by the Central Government or, as the case may be, state Government concerned. | **Central Board and State Board of Vocational Training and Vocational Guidance.** |
| 189. (1) The functions of the Central and a state Board of Vocational Training and Vocational Guidance shall, for the purpose of encouraging adequate training of persons employed or intended to be employed in any activity, be to-<br>(a) provide or secure the provision of such courses or other facilities (which may include residential accommodation) for the training of those persons which the appropriate Board considers adequate having regards to the courses or facilities otherwise available to those persons;<br>(b) approve courses and facilities for training provided by other persons or institutions;<br>(c) consider and to make recommendations, from time to time, with regard to the nature and length of the training required for the employments which in their opinion require such training and further education to be associated with he training, the persons by the to whom the training ought to be give, the standards to be attained as a result of the training and the methods of ascertaining whether those standards have been attained;<br>(d) apply or make arrangements for the application of selection and other tests or other methods for ascertaining the attainment of the standards recommended by the appropriate board and award certificate of the attainment of those standards;<br>(e) assist persons in finding facilities for being trained for employment; | **Powers and functions of the Central and State Boards.** |

(f) arrange for apprehending training;
(g) carry on or assist other persons in carrying on research into any matter relating to training for employment;
(h) provide advice about training for employment in any activity.

(2) The appropriate Board may enter into contract of service or apprenticeship and persons who intend to be employed in any activity and to attend courses or avail themselves of other facilities provided or approved by the Board.

(3) The appropriate Board may at the request of the National Council of Employment or other authorities provide such advice or such other courses and facilities for training as are mentioned in the request.

(4) The appropriate Board may at the request of an employer in any activity provide for his advice about training in such activity.

(5) The appropriate Board may enter into agreement with persons for making payments to the Board for exercising its functions.

(6) The appropriate Board may take part in any arrangements for selection of persons for training for employments.

(7) The appropriate Board may-
(a) pay maintenance and travelling allowances to persons attending courses provided or approved by the Board;
(b) make grants or loans to persons providing courses or other facilities approved by the Board, to persons who make studies for the purpose of providing such courses or facilities and persons who maintain arrangements to provide such courses or facilities which are not for the time being in use.
(c) pay fees to persons providing further education in respect of persons who receive it in association with their training in courses provided or approved by the Board.

(8) The appropriate Board-
(a) shall from time to time submit to the National Council of Vocational Training and Vocational Guidance for its approval proposals for the exercise of its powers and discharge of its functions conferred on it by this section; and
(b) shall from time to time submit to the National Council, for its approval, proposals for the delegation of all or any of those powers and functions to Advisory Committees.

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| (9) The appropriate Board shall give to the National Council such information and facilities for obtaining information with regard to the exercise of its functions, in such manner and at such times as the National Council may reasonably require.<br>(10) The appropriate Board may require employers in the industry; (a) to furnish such returns and other information; (b) to keep such records as may be prescribed and produce them for examination on behalf of the Board as appears to the Board to be necessary for carrying our its functions.<br>(11) The National Council may direct the appropriate Board to exercise the power to require the furnishing of information which is conferred on it by sub-section 10 so as to require employers in any activity to furnish in such form and on such information as the National Council considers that it needs for the purpose of its functions and it shall be the duty of the appropriate Board to comply with the direction.<br>(12) The appropriate Board may with the approval of the National Council exercise such powers and functions in connection with training for employment outside India of persons of Indian origin as are exercisable by it in connection with the training of persons employed or intending to be employed within India, and the Board may enter into agreements with any authority for the making of payments to the Board in respect of the exercise in pursuance of this Sub-Section of powers and functions by the Board.<br>(13) The appropriate Board may, with the approval of the National Council, delegate any power exercisable it by virtue of this section to an advisory committee appointed for that purpose. | |
| 190. (1) The National Council may on its own motion or on the recommendation of the Central Board or a state Board submit to the appropriate Government proposals for the raising and collection of a duty or cess for meeting the expenses on vocational training and vocational guidance.<br>(2) The duty or cess shall be imposed, in accordance with an order made by the appropriate Government giving effect to the proposals approved by the National Council, on employers in the relevant activity except in so far as they are exempted from it by an appropriate order but nothing in this Code shall be construed as requiring the appropriate Government to make a levy or it if it considers inexpedient to do so. | **Vocational Training and Vocational Guidance Fund.** |

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| | (3) proposals for levying a duty or cess must included proposals for exempting from the levy any employer who in view of the small number of his employees or for any other reason in the opinion of the Board is to be exempted and the appropriate Government shall not levy the duty or cess in such cases.<br>(4) The duty or cess levied under this section shall not exceed 0.5 per cent, of the wages of the persons employed by an employer.<br>(5) The proceeds of the duty or cess levied under this Section shall be kept in a separate fund called the Vocational Training and the Guidance Fund in the Public Account ear marked for the purpose of vocational training and vocational guidance.<br>(6) The appropriate Government in consultation with the National Council may make grants and loans to the appropriate Board from the Fund for the propose of vocational training and vocational guidance.<br>(7) The appropriate Government may in consultation with the National Council give to the appropriate Board such directions as it thinks fit for the purpose of securing that the purpose of vocational training and vocational guidance subject to such conditions as may be specified and it shall be the duty of the Board to comply with the directions. | |
| 191. | (1) The Central and state Boards may appoint Advisory Committees in such number as may be necessary to advise on the syllabi, curricula and other aids for vocational training and vocational guidance and related matters.<br>(2) The Committees shall consist of experts in the respective fields of training drawn from universities and other technical institutions, and organisations of employers and workers.<br>(3) The composition, method of appointment, term of office and other conditions of service of the members of the Advisory Committees shall be such as may be prescribed by the appropriate Governments. | **Advisory Committees to be appointed by Central and State Boards.** |